

STRIKING A BALANCE? EMPLOYMENT LAW AFTER THE 1980 ACT.

**Roy Lewis and Bob Simpson
Martin Robertson. 1981**

pbk £4.95, hbk £15.00

ISBN 085529 443 5 pbk

As the era of postwar industrial peace faded out, the first Wilson government started fashioning a big stick for keeping down industrial unrest. It had started its life by repealing the worst of the House of Lords' anti-union judgement in *Rookes v Barnard* and by sugaring the pill of reorganisation and closure with the Redundancy Payments Act — a measure which has amply repaid in workers' acquiescence what it has cost in cash. It finished with *In Place of Strife*, the consultative document which proposed a series of legal fetters on industrial relations and which foundered and sank on massive union opposition.

Two years later the Heath government took office. It brought in the Industrial Relations Act, a combination of a juicy carrot — protection against unfair dismissal — with a series of very big and heavy sticks to weaken and punish trade unions. The negative side of that legislation was fought and defeated by the working class in a series of historic engagements which finally returned a Labour government to power. The second Wilson government first repealed the Indus-

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For the first time the Prior act bites.
Injunction served on secondary pickets

trial Relations Act, re-enacting the employment protection provisions, and then in the Employment Protection Act 1975 building piecemeal upon them.

With the return in 1979 of the Thatcher government the pendulum has again swung back. This lot of Tories have forgotten nothing of their hostility to trade unionism, but they have learned something from their previous efforts at union-bashing. The Employment Act 1980 does not try to incorporate the unions in a grand scheme of registration and regulation. Instead it creates a series of handicaps and disabilities designed to weaken trade union organisation and collective bargaining power.

Roy Lewis and Bob Simpson, both academic commentators with a healthy respect for reality, start and end their commentary on Prior's new Act with a perspective view of it. They correctly locate it as a new means to the old end of improving management's and capital's chances by nobbling the opposition. Ironically, as they note, management in many instances does not want the odds fixed like this. Weak unions mean a multiplicity of organisations with consequent problems for procedure and negotiation; they also make it impossible to strike the sort of bargain which has the union policing its own members to management's great advantage. Instead, and not only metaphorically, real policemen are brought in to do the job with consequences which history has demonstrated often enough.

Lewis and Simpson point out that the new Act does not even live up to the Tory claim to be promoting individual rights. Except where those rights can be promoted at the

expense of union organisation, Prior's Act has cut them down. Unfair dismissal is made harder to prove; maternity rights are hedged about with new restrictions; compensation and guarantee payments are reduced. The whole thrust of the Tory scheme is to backtrack on the last decade of employment rights legislation, returning to the employer's hallowed right to hire and fire at will. At the same time it seeks to injure trade union organisation, most flagrantly by outlawing much secondary industrial action, to a degree which is myopic even by the standards of modern Toryism.

The main body of the book is a critical analysis of what the new Act is doing and why. Because of its depth it is not a handbook, but it is important reading for trade unionists because there is more on the way. The Green Paper on *Trade Union Immunities* is to be followed this year by a Bill introduced by Tebbit: you can get a concise and alarming preview of it in LRD's recent pamphlet *The New Tory Attack on Trade Union Rights* (40p). And after that the Tories are planning more legislation to regulate the workings of trade unions internally. The end product, if they get away with it, will be far more retrograde and crippling than the Industrial Relations Act ever was.

Stephen Sedley