PREM19

70

INDUSTRIAL POLICY

(Industrial relations law)

(Part 1)

PREM 19/70

PART 1

M.T.

557

Confidential Filing

Industrial Relations Legislation.

Picketing and the closed shop and funds for union ballots. Amendment by Order of the Employment Protection Act. Enquiry into union recruitment activities, encompassing SLADE and the NGA.

INDUSTRIAL POLICY

PART 1

May 1979.

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~16.5.79~~							
~~11.6.79~~							
~~B.6.79~~							
~~18.6.79~~							
~~21.6.79~~							
~~29.6.79~~							
~~4.7.79~~							
~~9.7.79~~							

PREM 19/70

PART 2 begins:-

Lord Advocate's Chambers to D. Emp 1.10.79

PART 1 ends:-

E(79) 9th Mtg, Item 3 27.9.79

TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

Reference	Date
E(79) 11	15/06/79
E(79) 10	13/06/79
E(79) 3rd Meeting, Minutes	19/06/79
E(EA)(79) 9th Meeting, Minute 2	25/07/79
E(EA)(79) 21	12/07/79
E(79) 43	21/09/79
E(79) 44	24/09/79
E(79) 9th Meeting, Items 2 & 3	27/09/79

The documents listed above, which were enclosed on this file, have been removed and destroyed. Such documents are the responsibility of the Cabinet Office. When released they are available in the appropriate **CAB** (CABINET OFFICE) CLASSES

Signed C Wayland Date 20 October 2009

PREM Records Team

Ind. Pol.

CONFIDENTIAL

Ref. A0299

PRIME MINISTER

Trade Union Immunities

(E(79) 44)
24.9

BACKGROUND

This paper from Mr. Prior was commissioned at E(79) 3rd Meeting on 19th June, and aims to meet the Manifesto commitment which is quoted in paragraph 1 of the Annex.

2. The existing law gives, in defined circumstances, immunity against civil action in tort for those involved in industrial action. The legislation distinguishes between Individuals - (covered by S13), and Trades Unions - (covered by S14).

3. Most of the immunities go back to 1906 but in the case of individuals the 1976 Act also extended immunity to actions which induce or threaten a breach of contract. This prevents firms from taking an injunction in these cases.

4. Mr. Prior recommends only limited action to alter the law on immunities. He proposes no change for the S14 (Trade Unions) or the S17 (which allows a time delay before injunctions are granted). He argues that S17 has not created any problems, and that Trade Union immunity (S14), though wide, cannot be altered without whipping up extreme opposition because the unions would see it as putting their funds, and therefore their existence, at risk. Any change would also, he argues, weaken union discipline and encourage unofficial action.

5. On S13 he points out that recent court decisions have already narrowed the field to "first customer and suppliers". He does not see that legislation would improve on this or make the position clearer. He suggests two options -

(a) Leave the law as it has now been interpreted (unless the House of Lords overturns the judgment of the Court of Appeal on Express Newspapers vs. MacShane in which case legislation would be needed) apart from action on picketing (as discussed in paper E(79) 43), and on intimidation and Slade (see below). This option is discussed in paragraphs 5 and 6 of the paper.

or (b) return the law broadly to the pre-1971 form (which would remove immunity from direct action to breach of contracts other than contracts of employment). This option is discussed in paragraphs 7-9 of the paper.

6. Option (b) would be presentationally attractive and would be consistent with the line the Government took in Opposition. Mr. Prior's judgment however is against going this far at this stage not least because the CBI are strongly urging caution. He therefore favours option (a). The Solicitor General on the other hand believes that a change to exclude direct action could be effective. This is a legal argument on which most past opinion has been against the Solicitor General's view.

7. In addition to this central question Mr. Prior proposes to act on picketing as in paper E(79) 43. As for intimidation he is considering the feasibility of adding a provision to stop people who cross a picket line losing their union membership (and therefore their job in many cases). He is also considering a provision - as yet undefined - to deal with the SLADE type action (where the union "blacked" non-unionised firms to force their employers into union membership) though specific proposals must, of necessity, await the report on SLADE by Mr. Andrew Leggatt, QC.

8. If Mr. Prior's proposals are adopted, or if option (b) is chosen, he can include all the legislation in a single Bill to be introduced in November, with Second Reading before Christmas. If more is needed, more extensive consultation would be required, and the timetable would slip.

HANDLING

9. The main question is therefore does Mr. Prior's overall approach, including the actions already discussed on picketing and closed shop, command support as striking the right balance between public expectations and union opposition? Or do colleagues think that a tougher course is to be preferred? (The Chancellor's minute of today is relevant here).

10. You might ask Mr. Prior to introduce his paper, and then ask the Solicitor General to explain his view, before opening the matter up to general discussion.

CONCLUSIONS

11. If the Committee accepts Mr. Prior's overall thesis the conclusions are as summarised in paragraph 12 of his paper. If on the other hand the Committee favour option (b) - limiting immunity to inducing breaches of contracts of employment - conclusions 12(i), (ii), (iii) and (v) of the paper stand but conclusion 12(iv) would need to be replaced by an invitation to Mr. Prior to enter into the further consultations referred to in paragraph 9 of his paper and to bring the issue back to the Committee for decision when these conclusions have been completed.

(John Hunt)

25th September, 1979

CONFIDENTIAL

Ref. A0292

PRIME MINISTER

Legislation on Picketing, Closed Shop and Union Ballot

(E(79) 43)
21.9

BACKGROUND

The Government is committed to make changes in the law on picketing, the closed shop and union ballots. The relevant pages of the Manifesto are attached to this brief. E Committee broadly approved the Secretary of State for Employment's proposals for implementing these commitments at the meeting on 19th June (E(79) 3rd Meeting, Items 1 and 2). Since then, he has had formal consultations with the TUC and CBI, and his paper reports the result. The section on picketing relates closely to the separate review of trade union immunities (also promised in the Manifesto) which is the subject of his second paper, E(79) 44. 24.9 (Although we have listed this as a separate item on the agenda, you will find it convenient in one or two places to cross-refer.) You are discussing these papers with Mr. Prior on Wednesday evening, and you may therefore find it convenient to have this brief before then. But it is primarily directed to the handling of the E meeting next day.

2. The general approach is very conveniently summarised in paragraph 5 of the second paper (E(79) 44): the Government's objectives are:

(i) To tip the balance of power away from the unions.

(ii) To give the employer a legal remedy.

(iii) To get general support for these proposals, not least from trade unionists.

(iv) To avoid active trade union opposition to the measures.

(v) To forge an instrument which will remain effective, and not be rendered unworkable by union opposition.

3. The initial response at the TUC Conference was predictable, but not as severe as might be feared. The TUC is committed to a publicity campaign directed against the proposals, but not to any form of direct action.

4. The reforms themselves will not be operative in time to have much direct effect on the current wage round. Paradoxically, however, most of the unions will be reluctant to stir up trouble on the picket lines while the Bill is going through, for fear of demonstrating the need for this - or tougher - legislation. Once the Bill is on the Statute Book, the situation may well change with the unions perhaps testing the employers' nerve or an employer seeking a showdown. The Government cannot then control the course of events. Timing therefore becomes important: and the operation of the Act (from Royal Assent or from a Commencement Order) a point for consideration.

HANDLING

5. I suggest you invite the Secretary of State for Employment to make a general introduction, and then plunge straight into the detail. (The Committee has already had its "Second Reading" debate on the proposals at the meeting on 19th June.) You might note that, although the main proposals are summarised in his covering paper, there is more detail set out in the Annexes.

Picketing (paragraph 5 and Annex I)

6. Who can picket and where? It is common ground that the right to picket must be reserved to those in dispute, and to officers of their unions. The Committee agreed last time round to limit the right, if possible, to those picketing at their place of work, but gave Mr. Prior a discretion to fall back on a wider formula if necessary. He has now plumped for the "place of work", and the Committee will probably welcome this. Apart from the difficulties mentioned in Annex I, the most difficult cases will be building workers (whose "place of work" will be the site where they are employed) and maintenance workers (like the liftmen whose dispute has affected Government offices recently: their place of work will be their depot, not the building where they happen to be working on lifts). Flying pickets would thus be ruled out.

7. Who and what can be picketed? This is the point where you need to track forwards to E(79) 44 on immunities. Paragraph 4 of that paper explains that the courts have recently interpreted trade union immunities to cover the picketing of first customers and suppliers, but probably not beyond that. Again to take a parochial case, it is therefore legal to picket the entrance to Downing Street and

stop the delivery of beer to the Cabinet Office Mess when Civil Service electricians are on strike; but not to picket the man who supplies hops to the brewer. The proposal would make it possible to sue a union who picketed in this way, on the ground that it would be inducing a breach of commercial contract. But unions would still be free to picket and persuade direct employees to break their contracts of employment.

8. How would the law be enforced? The paper explains that the remedy rests with the employer to sue either the union or the individual picket. This, as intended, takes the Government out of the front line, and puts the employer there instead. The fundamental difficulty of "martyrdom" remains but no-one has found a way round this.

9. Police action. In the earlier E discussion, the question was raised of police control of pickets. This has been a subject of separate correspondence between the Secretary of State for Employment and the Home Secretary. The short point is that, while the Government cannot dictate what Chief Constables do, it will find ways of advising them. No formal decision seems necessary.

10. Code of Practice. There is, of course, an existing TUC Code of Practice, and the Secretary of State is anxious that the TUC should not be panicked into withdrawing this. He therefore proposes to take power to produce his own code (which would have the sort of "highway code" status suggested earlier) but not actually to publish it yet. This does not prevent the remaining provisions of the legislation coming into force. No doubt you will want the draft code to be considered by a Ministerial Committee at some stage.

Closed Shop (paragraphs 6-9 and Annex II)

11. Existing employees. The proposal would protect existing employees who refuse, or have earlier refused, to join a closed shop. It would not however cover employees who wish to resign from a union. At E last week, you yourself made the point that AEU workers at Derby might be encouraged to resign from the union rather than take part in further two-day strikes. The proposed changes would not protect them. In firms where a closed shop operated they would lose their jobs.

12. Personal conviction. The proposal substantially widens the definition of those who can legitimately object to joining a union when a closed shop is in force. It does not however cover people who object to membership of a particular union - perhaps because they disagree with its policies. But no-one has yet found a formula which would cover them adequately.

13. Ballots. The 80 per cent test suggested by the Secretary of State should prove acceptable to the Committee, though it will be bitterly fought by the TUC.

14. Joinder. An essential part of the plan if unions are to be faced with the costs of their actions.

15. Code of Practice. As with the picketing code, introduction could be deferred. This seems sensible, to give things time to settle down after the legislation.

16. Arbitrary exclusion or expulsion. This ties in closely with the provisions on picketing but is very far-reaching. It takes away from unions the unilateral right to impose the final sanction of expulsion (and loss of job) in an industrial dispute, and thus strengthens the rights of the individual against his union. But it may also weaken the power of unions to control their more militant members. Nevertheless the Committee will no doubt feel that the protection of the individual is paramount. You may however also care to test opinion in Mr. Prior's tentative suggestion (paragraph 8 of the main paper) that there should be explicit protection against expulsion for union members crossing picket lines.

Ballots (paragraphs 10 and 11 and Annex III)

17. This should be the least controversial part of the legislation, and you need not delay long on Annex III.

Parliamentary Aspects

18. The Secretary of State goes into more detail on these in E(79) 44: you might defer discussion until the third item of the agenda. It is sufficient at this stage to give policy clearance to proposals in this paper, so that drafting can proceed. (Informally, it has already begun.)

CONCLUSIONS

19. It would be sufficient to record agreement to the Secretary of State's proposals as set out in his paper and Annex, subject to any contrary decisions reached in discussion, and to invite him to proceed with the preparation of legislation to give effect to them.

JOHN HUNT

25th September, 1979

Important savings can be made in several ways. We will scrap expensive Socialist programmes, such as the nationalisation of building land. We shall reduce government intervention in industry and particularly that of the National Enterprise Board, whose borrowing powers are planned to reach £4·5 billion. We shall ensure that selective assistance to industry is not wasted, as it was in the case of Labour's assistance to certain oil platform yards, on which over £20 million of public money was spent but no orders received.

The reduction of waste, bureaucracy and over-government will also yield substantial savings. For example, we shall look for economies in the cost (about £1·2 billion) of running our tax and social security systems. By comparison with private industry, local direct labour schemes waste an estimated £400 million a year. Other examples of waste abound, such as the plan to spend £50 million to build another town hall in Southwark.

TRADE UNION REFORM

Free trade unions can only flourish in a free society. A strong and responsible trade union movement could play a big part in our economic recovery. We cannot go on, year after year, tearing ourselves apart in increasingly bitter and calamitous industrial disputes. In bringing about economic recovery, we should all be on the same side. Government and public, management and unions, employers and employees, all have a common interest in raising productivity and profits, thus increasing investment and employment, and improving real living standards for everyone in a high-productivity, high-wage, low-tax economy. Yet at the moment we have the reverse—an economy in which the Government has to hold wages down to try to make us competitive with other countries where higher real wages are paid for by higher output.

The crippling industrial disruption which hit Britain last winter had several causes: years with no growth in production; rigid pay control; high marginal rates of taxation; and the extension of trade union power and privileges. Between 1974 and 1976, Labour enacted a 'militants' charter' of trade union legislation. It tilted the balance of power in bargaining throughout industry away from responsible management and towards unions, and sometimes towards unofficial groups of workers acting in defiance of their official union leadership.

We propose three changes which must be made at once.

Although the Government refused our offer of support to carry them through the House of Commons last January, our proposals command general assent inside and outside the trade union movement.

1. PICKETING

Workers involved in a dispute have a right to try *peacefully* to persuade others to support them by picketing, but we believe that right should be limited to those in dispute picketing at their own place of work. In the last few years some of the picketing we have witnessed has gone much too far. Violence, intimidation and obstruction cannot be tolerated. We shall ensure that the protection of the law is available to those not concerned in the dispute but who at present can suffer severely from secondary action (picketing, blacking and blockading). This means an immediate review of the existing law on immunities in the light of recent decisions, followed by such amendment as may be appropriate of the 1976 legislation in this field. We shall also make any further changes that are necessary so that a citizen's right to work and go about his or her lawful business free from intimidation or obstruction is guaranteed.

2. THE CLOSED SHOP

Labour's strengthening of the closed shop has made picketing a more objectionable weapon. In some disputes, pickets have threatened other workers with the withdrawal of their union cards if they refuse to co-operate. No union card can mean no job. So the law must be changed. People arbitrarily excluded or expelled from any union must be given the right of appeal to a court of law. Existing employees and those with personal conviction must be adequately protected, and if they lose their jobs as a result of a closed shop they must be entitled to ample compensation.

In addition, all agreements for a closed shop must be drawn up in line with the best practice followed at present and only if an overwhelming majority of the workers involved vote for it by secret ballot. We shall therefore propose a statutory code under Section 6 of the 1975 Employment Protection Act. We will not permit a closed shop in the non-industrial civil service and will resist further moves towards it in the newspaper industry. We are also committed to an enquiry into the activities of the SLADE union, which have done so much to bring trade unionism into disrepute.

3. WIDER PARTICIPATION

Too often trade unions are dominated by a handful of extremists who do not reflect the common-sense views of most union members.

Wider use of secret ballots for decision-making throughout the trade union movement should be given every encouragement. We will therefore provide public funds for postal ballots for union elections and other important issues. Every trade unionist should be free to record his decisions as every voter has done for a hundred years in parliamentary elections, without others watching and taking note.

We welcome closer involvement of workers, whether trade unionists or not, in the decisions that affect them at their place of work. It would be wrong to impose by law a system of participation in every company. It would be equally wrong to use the pretext of encouraging genuine worker involvement in order simply to increase union power or facilitate union control of pension funds.

TOO MANY STRIKES

Further changes may be needed to encourage people to behave responsibly and keep the bargains they make at work. Many deficiencies of British industrial relations are without foreign parallel. Strikes are too often a weapon of first rather than last resort. One cause is the financial treatment of strikers and their families. In reviewing the position, therefore, we shall ensure that unions bear their fair share of the cost of supporting those of their members who are on strike.

Labour claim that industrial relations in Britain cannot be improved by changing the law. We disagree. If the law can be used to confer privileges, it can and should also be used to establish obligations. We cannot allow a repetition of the behaviour that we saw outside too many of our factories and hospitals last winter.

RESPONSIBLE PAY BARGAINING

Labour's approach to industrial relations and their disastrous economic policies have made realistic and responsible pay bargaining almost impossible. After encouraging the 'social contract' chaos of 1974-5, they tried to impose responsibility by the prolonged and rigid control of incomes. This policy collapsed

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

PRIME MINISTER

21.9.79

CLOSED SHOP - E(79)43

Since I will not be able to attend the meeting of E on 27th September, I thought it would be useful to send you a few comments on Jim Prior's paper. John Biffen will attend the meeting in any case and may have other points to raise when we have seen the accompanying paper E(79)44.

24/9.

2. I am increasingly doubtful whether Jim Prior's proposals are sufficiently robust. The fact that the TUC have not seriously challenged the proposals in paragraph 6, could be one indication that we have not gone far enough. Personally I would prefer to see conscientious objection to a particular union being allowable as well as objection against joining any union. There could, for example, be individuals who had religious objections to joining communist dominated unions but not other unions. Of course there are difficulties, including those raised by some employer groups, but I should like to suggest that we go for the wider definition.

3. Again on paragraph 8, I am not sure I follow the intention of the last sentence where Jim Prior suggests a provision which deems it unreasonable to expel a member for crossing a picket line. As I understand it, it would remain "reasonable" if a union expelled a member for disobeying a union strike call,

/ so that

so that provision would have only very limited application if it were relevant at all. If it proved possible to draft some definition of unreasonableness, perhaps we could consider also bringing in refusal to join a political strike or refusal to join a strike which had not been properly approved by a majority of the membership, say by secret ballot. There would of course be difficulties in giving the courts powers to decide whether or not a particular dispute was political. But, however that may be, I hope that colleagues will re-consider the adequacy of the approach to which we are so far committed.

4. I am sending copies to other members of E Committee and to Sir John Hunt.

Martin Hall

M. (G.H.)
25 September 1979

[Approved by the
Chancellor of the Exchequer
and signed in his absence]

JD

CONFIDENTIAL

PM approved in draft
– PA
MJS

Caxton House Tothill Street London SW1H 9NA

Telephone Direct Line 01-213 6400
Switchboard 01-213 3000

Ind Pol

Nick Saunders Esq
Private Secretary
10 Downing Street
LONDON SW1

24 September 1979

Dear Nick

CONSULTATIONS ON LEGISLATION

Following your letter of 23 September amendments have since been agreed and approved by the Prime Minister to meet her point on the working paper on trade union recognition, and a copy of the final version of that paper is now attached.

In the circumstances it was not possible to publish today this and the other two working papers on Schedule 11 of the Employment Protection Act 1975 and on individual rights under the employment protection legislation. The Secretary of State is however now sending copies of all three papers to the CBI, TUC and the other organisations involved in the consultations and will be holding a press conference to make the formal publication of the working papers at 12 noon tomorrow (Tuesday).

I am sending copies of this letter and its enclosure to the private secretaries to the members of E and E(EA) Committees, Ian Maxwell (Lord Chancellor's Office), Richard Prescot (Paymaster General's Office), Bill Beckett (Law Officers Department) and Martin Vile (Cabinet Office).

Yours sincerely,

ANDREW HARDMAN
Private Secretary

WORKING PAPER ON THE TRADE UNION RECOGNITION PROVISIONS OF THE EMPLOYMENT PROTECTION ACT 1975

1 In the three years they have been in operation, the recognition provisions in Sections 11-16 of the Employment Protection Act 1975 have given rise to numerous problems and difficulties. There appears to be general agreement on the part of employers, trade unions and ACAS alike that the provisions have proved unsatisfactory and that the law needs to be changed. There is however little or no agreement about the nature, or indeed the direction, of the changes required.

2 In addition ACAS is becoming increasingly concerned about the effects of its operation of the statutory provisions on its other, voluntary, role in conciliation and the provision of advice. In its last annual Report the Council stated that the Service's essentially voluntary role in conciliation and the provision of advice did "not sit easily with the statutory duties in Sections 11-16 of the Employment Protection Act".

3 The Chairman of ACAS has since sent the Secretary of State a letter (attached) which sets out the grounds of concern to the ACAS Council. He makes it clear that the Council is not commenting on the substance of the judicial decisions, but on their effect on the practical operation of the Council and the Service which it supervises and goes on to make, in particular, the following points;

- a considerably larger number of recognition issues have been settled voluntarily than through the full statutory procedures;

- the discretion which the Council feels it requires in order to function properly is now seen, as a result of judicial decisions, to be much narrower than the Service originally understood was Parliament's intention;

- consequently the Council has become increasingly conscious of the growing incompatibility between some of its statutory duties and the actions it would have preferred to take on grounds of good industrial relations practice;

- some of the duties imposed on the Service by the recognition provisions of the Act are not necessarily compatible with its duty to promote the improvement of industrial relations;

- where an employer or a union refuses to co-operate with ACAS it is left with a duty it cannot perform;

- the effect of the findings of the Court of Appeal is said by the Council to be that the Service is obliged to make findings on a whole series of matters which it may consider irrelevant or unnecessary and in some cases harmful to industrial relations;

- the Act gives ACAS no guidance on the criteria to be adopted in determining what is a bargaining group and it has not been possible for the Council to agree on any criteria which would be generally applicable;

- the Service has been put in the position where it may be instrumental in undermining existing voluntary procedures;

- in the view of the Council there are potential difficulties inherent in the confirmation by the Courts that ACAS is to be regarded as a tribunal when considering legal issues.

4 The Chairman concludes his letter in the following terms:

> The experience of three years of operation of the statutory procedures have shown the difficulties of operating without criteria and the damaging effect on industrial relations which can result from the Court's interpretation of the statute. The Service's ability to exercise its own judgement in recognition matters has always been circumscribed by the legislation. The discretion of the Council has been further limited by the decisions of the Courts which have made it progressively more difficult for the Council to exercise its industrial relations judgement in reaching decisions on recognition issues. Even the functioning of the Council is likely to become impracticable as a result of its being deemed to be acting in a judicial capacity. The Council therefore wishes me to advise you that in the light of the increasing difficulties which it is encountering it cannot satisfactorily operate the statutory recognition procedures as they stand.

5 The situation disclosed in this letter is a matter of considerable concern to the Government as is the consideration that the working of the recognition provisions should have caused the impartiality of the Service to be called into question, thereby affecting the valuable work of ACAS generally. This effect has been accentuated when the working of these provisions has been set in the context of the terms of reference of ACAS (Section 1 of the Act), the wording of which has also been called into question.

6 The Government see no grounds in this situation for criticism of the courts. They have fulfilled their proper function of interpreting the statute law in its application to the cases brought before them. The Government do, however, accept that there is now an urgent need for the statutory procedures on trade union recognition to be changed in view of the problems encountered in their operation. Indeed, the experience of operating these statutory procedures does raise the question whether it is necessary or valuable to have statutory provisions of this kind to deal with these matters or whether it would be better to rely on the ability of ACAS to help settle recognition disputes through the provision of voluntary conciliation and advice, as happens in most cases at present. The Government would welcome views on the issues raised in this paper.

Advisory, Conciliation and Arbitration Service

Cleland House, Page Street, London SW1P 4ND Telephone Direct Line 01-211 0181
Switchboard 01-211 3000

29 June 1979

Rt Hon James Prior MP PC
Secretary of State for Employment
8 St James's Square
LONDON SW1

Dear John Prior,

In its annual report for 1978 the Council commented on the operation of the statutory provisions for dealing with trade union recognition issues. The Council said that the Service's essentially voluntary role in conciliation and the provision of advice did "not sit easily with the statutory duties in Sections 11 - 16 of the Employment Protection Act". A number of factors contributed to this view and there have since been developments which have deepened the Council's uneasiness. The Council considered the matter further at its meeting on 27 June and desired that I should write to you to draw your attention to its views.

The Service has always approached its duties under the statutory provisions in the generally held belief that the best means of resolving industrial relations problems is by voluntary agreement. In fact, over 80 per cent of the references on which ACAS action has been completed have been settled voluntarily, ie the reference has been withdrawn and no report issued under Section 12. As a result of such settlements by 31 December 1978 some form of collective bargaining has been extended to over 40,000 employees. This compares with the total of just over 10,000 who have obtained the benefits of collective bargaining through the 20 per cent of references which have gone through the full statutory procedure and resulted in reports published under Section 12.

During the same period, considerably more recognition issues were referred to the Service under the voluntary provisions of Section 2 of the Act than were referred under Section 11 (although some Section 2 references do in fact become Section 11 references where the trade union fails to secure recognition through the former). The table below shows the comparative figures from February 1976 to 31 May 1979.

	Section 2	Section 11
1976	769	461 (in 11 months)
1977	677	577
1978	539	279
1979 (in 5 months)	205	99

Rt Hon James Prior MP PC
Secretary of State for Employment

29 June 1979

In seeking to promote the settlement by agreement of recognition issues referred under the statutory provisions the Service has acted in the belief that ACAS was invested by Parliament with considerable discretion as to how it conducted its affairs. The Council understood that its constitution reflected Parliament's intention to bring together the collective wisdom of both sides of industry with a view to enabling the Service to carry out its general duties under Section 1(2) of the Act. This belief is reinforced by the provisions in the Act relating to the Service's functions of conciliation, arbitration, advice and inquiry and the preparation of codes of practice, all of which allow the Service to exercise discretion in carrying out its duties.

The statutory provisions on trade union recognition also allow for the Service to exercise an element of discretion in carrying out its duties. Under these provisions the Service has to consult all parties who it considers will be affected by the outcome of a reference and to "make such inquiries as it thinks fit". The Service has also to ascertain the opinions of workers to whom an issue relates "by any means it thinks fit". The Service was therefore intended to have a considerable degree of discretion in carrying out not only its general duties under Section 1(2) but also its specific duties under Sections 11 to 14 of the Act.

A body such as the Council of ACAS requires this discretion in order to function properly. To reconcile the conflicting approaches of the two sides of industry to a matter like trade union recognition the Service has to find ways in which compromises can be reached. This essential discretion is now seen, as a result of judicial decisions, to be much narrower than the Service originally understood was Parliament's intention. The Council has become increasingly conscious of the growing incompatibility between some of its statutory duties and the actions it would have preferred to take on the grounds of good industrial relations practice. Finally, the continued operation of the Council has been brought into question as a result of judicial comment on the role of Council members, requiring it to adopt a much more constrained legal procedure.

The Council, it should be clear, is not here commenting on the substance of the judicial decisions but on their effect on the practical operation of the Council and the Service. The Council is, however, concerned that its effectiveness in developing the voluntary approach to industrial relations problems is being undermined by the impression which is created by the number of cases under Section 11 in which we are involved in the Courts.

Rt Hon James Prior MP PC
Secretary of State for Employment

29 June 1979

The Council believes that some of the duties imposed on the Service by the provisions of Sections 11 - 14 are not necessarily compatible with its duty to promote the improvement of industrial relations. For example, the Service has a duty to pursue and complete any reference made to it in respect of any group of workers that a trade union cares to define. In some instances, for the Service to proceed with these duties will be injurious to good industrial relations. The Service, however, has no discretion not to proceed however much it believes that its intervention would be harmful. This is particularly so in cases of competitive claims by unions which the Act appears to have encouraged. Examples have been seen in the water industry and amongst polytechnic teachers where the Act has been used as a vehicle for outside unions to challenge those already recognised by the employer through existing collective bargaining machinery.

The Grunwick case established that the Service has a mandatory duty to ascertain the opinions of workers to whom a recognition issue relates. The statute provides for no discretion, so that even where an employer or a union refuses co-operation, the Service is left with a duty it cannot perform. The procedures are therefore statutorily binding on ACAS whilst leaving employers and unions free to co-operate with the Service on a voluntary basis. In some cases this has resulted in ACAS being unable to report under Section 12 of the Act, (as with the Michelin and Grunwick cases).

The Court of Appeal in the UKAPE/W H Allen case, in addition to the matters discussed below, has said that the Service is obliged to make findings on a whole series of matters which it may consider irrelevant or unnecessary and in some cases harmful to industrial relations. For example, the Service could be required to pronounce on the appropriateness of a trade union for a particular group of workers. This would be quite contrary to the normal traditions of British industrial relations where trade unions organise on the basis of spheres of influence rather than on imposed structural criteria. Similarly, the Service could be required to pronounce on the appropriateness of a particular bargaining group even in cases where it does not intend to make a recommendation. This could prejudice the emergence of a more appropriate grouping in future.

On the other hand, the Act gives ACAS no guidance as to the criteria to be adopted in determining a bargaining group or the level of support which it should consider appropriate in

deciding a recognition issue beyond the general formulations in Section 1. Nor has it been possible for the Council to agree on any such criteria which would be generally applicable. The absence of criteria has made the decision-making duty of the Council increasingly difficult, and one which can only be carried out at all by the exercise of a wide discretion. As time passes without criteria, the risk increases of the Council making apparently conflicting decisions on similar facts which may lead to the Council appearing to outsiders to be inequitable or partisan to the detriment of the impartial traditions of the Service in other areas such as conciliation and advisory work. There is also the risk of the Council being unable to reach, in some cases, agreed conclusions.

The Council accepts that the exercise of any discretion invested in ACAS by Parliament can be subjected to scrutiny by the Courts but such legal decisions are now having a serious effect on the way in which the Service carries out its duties. Thus, in the UKAPE/W H Allen case, ACAS was held to have failed to take into account a number of factors which the Court considered to be relevant and moreover took the view that ACAS had exercised its discretion unreasonably by taking into account certain other factors, such as threats of industrial action. If this decision is upheld by the House of Lords, the Service will be further inhibited in exercising its industrial relations judgment in recognition cases. It might lead to the Service being required to recommend the break-up of existing negotiating machinery or the fragmentation of the existing grouping of an employer's work-force and could reduce the Service to the role of a balloting agent.

Similarly, in the recent case brought against the Service by the Engineers' and Managers' Association, the discretion which the Service believes it possesses to defer proceeding with its inquiries whilst there is a relevant unresolved issue being considered through the TUC's Bridlington procedures (or any other established procedures) was removed. This could undermine those voluntary procedures by providing an alternative route for dealing with the problem. This development runs counter to the general approach to industrial relations problems, both by ACAS and by its predecessors in the Government service since 1896, that issues should be settled by the parties through the various agreed voluntary procedures before third parties intervene. This loss of discretion to defer carrying out part of the statutory procedures also seems likely to apply in all cases where the Service would prefer on industrial relations grounds to await the outcome of other relevant developments before proceeding.

Rt Hon James Prior MP PC
Secretary of State for Employment

29 June 1979

The Courts have now confirmed that ACAS is to be regarded as a tribunal when considering recognition issues. All the legal rules and principles of tribunals should be applied. There is therefore a risk that many decisions of the Service might be challenged because Council members have taken part in decisions in which, it might be alleged, they have a vested interest. Given the nature of the constitution of the Council, which the statute intends should draw experience from both sides of industry, it is clearly unrealistic to expect some of those same members not to take part in the deliberations on an important industrial relations matter. In the view of the Council it would be contrary to the intentions of Parliament expressed in Schedule 1 to the Act that certain members should be disenfranchised. Should that remain the position the Council could not continue to function.

The experiences of three years of operation of the statutory procedures have shown the difficulties of operating without criteria and the damaging effect on industrial relations which can result from the Courts' interpretation of the statute. The Service's ability to exercise its own judgments in recognition matters has always been circumscribed by the legislation. The discretion of the Council has been further limited by the decisions of the Courts which have made it progressively more difficult for the Council to exercise its industrial relations judgment in reaching decisions on recognition issues. Even the functioning of the Council is likely to become impracticable as a result of its being deemed to be acting in a judicial capacity. The Council therefore wishes me to advise you that in the light of the increasing difficulties which it is encountering it cannot satisfactorily operate the statutory recognition procedures as they stand.

Yours sincerely

J E Mortimer

REVISED VERSION - CLEARED BY PM MJ 24/9

6. The Government see no grounds in this situation for criticism of the courts. They have fulfilled their proper function of interpreting the statute law in its application to the cases brought before them. The Government do however accept that there is now an urgent need for the statutory procedures on trade union recognition to be changed in view of the problems encountered in their operation. Indeed, the experience of operating the statutory procedures does raise the question whether it is necessary or valuable to have statutory provisions of this kind to deal with these matters or whether it would be better to rely on the ability of ACAS to help settle recognition disputes through the provision of voluntary conciliation and advice, as happens in most cases at present. The Government would welcome views on the issues raised in this paper.

CONFIDENTIAL

MFJ

cc LCO, PGO, LOD, CO, HO, FCO, HMT, DOI, LPO, DM, MAFF, DOT, DN, CS, HMT, DOE, SO, WO

10 DOWNING STREET

From the Private Secretary

23 September 1979

Dear Ian

Consultations on Legislation

The Prime Minister has seen your Secretary of State's minute of 21 September. I have already sent you the Prime Minister's detailed comments on the paper on the recognition provisions of the Employment Protection Act 1975. This letter is simply to record for copy recipients that the Prime Minister asked for reconsideration of the draft of that paper, to make it clear that the Government did not endorse the criticisms of the courts in the terms in which they were made in Mr. Mortimer's letter to your Secretary of State of 29 June. You undertook to consult urgently about changes to meet the Prime Minister's point.

I am copying this letter to Private Secretaries to the members of E and E(EA) committees, Ian Maxwell (Lord Chancellor's Office), Richard Prescot (Paymaster General's Office), Bill Beckett (Law Officers' Department) and Martin Vile (Cabinet Office).

Yours ever

Nick Sanders

I.A.W. Fair, Esq.,
Department of Employment

CONFIDENTIAL

CONFIDENTIAL

10 DOWNING STREET

From the Private Secretary

23 September 1979

Dear Ian

Consultations on Legislation

As I told you on the telephone today, in addition to her comments on the draft of the papers attached to your Secretary of State's minute of 21 September - about which I have written to you separately - the Prime Minister noted that in future she should be allowed more time to consider papers than was allowed in this instance. She took the view that to circulate a paper late on a Friday which required clearance before a press conference to be held the following Monday was simply not good enough. You would do well to bear this in mind on any similar occasion in future.

I am copying this letter to Martin Vile (Cabinet Office).

Yours ever

Nick Sanders

I.A.W. Fair, Esq.
Department of Employment

CONFIDENTIAL

(DM, LCO + LOD by Special Messenger)

CONFIDENTIAL

cc HMT
DOI
LCO-
LOD-
CO.

10 DOWNING STREET

From the Private Secretary

23 September 1979

Dear Ian

Consultations on Legislation

The Prime Minister has seen your Secretary of State's minute to her of 21 September. As I told you and Andrew Hardman on the telephone over the weekend, the Prime Minister was unhappy about the draft consultative paper on the recognition provisions of the Employment Protection Act 1975. She commented that Mr. Mortimer's letter, and the quotation from it included in the covering note, are a stinging criticism of the decisions of the courts in the exercise of their duty of interpreting Parliamentary legislation. In her view, that criticism cannot and must not be endorsed by the Government. The Prime Minister added that the paper conveys the impression that Mr. Mortimer's letter is the main reason for requiring a change.

She asked that the Lord Chancellor and the Solicitor General should consider the draft of the paper and comment on it. The Lord Chancellor subsequently told me that he thought that the document would be improved by the inclusion of a section in the covering note which made it clear that the Government disassociated itself from the brasher criticisms of the courts included in Mr. Mortimer's letter. You told me that Mr. Prior was to see the Solicitor General at 2200 on 23 September in any case, and that arrangements would be made for him to see the paper before that meeting.

It would be helpful if you could let us know as soon as on Monday morning as possible what arrangements you have decided to make to meet the Lord Chancellor's suggestion and any further points made by the Solicitor General. The Prime Minister would not be prepared to agree to the paper being published until any points made by the Lord Chancellor and the Solicitor General had been met.

/Finally,

CONFIDENTIAL

Finally, the Prime Minister has commented that the way the paper is drafted invites the obvious reply that the law needs strengthening in favour of recognition. That is not the Government's view.

I am copying this letter to Tony Battishill (HM Treasury), Andrew Duguid (Department of Industry), Ian Maxwell (Lord Chancellor's Office), Bill Beckett (Law Officers' Department) and Martin Vile (Cabinet Office).

Yours ever

Nick Sanders

-

I.A.W. Fair, Esq.,
Department of Employment

vk

CONFIDENTIAL

Prime Minister

Content that Mr. Prior proceed as at X?

(Mr. Prior hasn't give us much time to object) TL 21/9

PRIME MINISTER

As a basis for formal consultations I have prepared working papers on three subjects - Schedule 11 of the Employment Protection Act 1975 and the Fair Wages Resolution, Trade Union Recognition and Amendments to the Employment Protection Legislation. Copies of these papers are attached. The first paper follows the discussions of E Committee on 19 June, the second follows correspondence from the Chairman of ACAS and the third follows discussion in E(EA) Committee on 25 July.

X Now that the TUC Congress is over, I propose to open consultations with the TUC, CBI and other organisations, and am sending them copies of the papers on Monday 24 September. I propose to hold a press conference to discuss the papers the same day, and to give them all due publicity.

I am hoping to conclude consultations in time to allow consideration of detailed proposals for legislation in December, and have made this clear in the letters accompanying the working papers. This will allow 2 months for consultations.

I am sending copies of this minute and its enclosures to other members of E and E(EA) Committees, the Lord Chancellor, the Paymaster General, the Solicitor General and Sir John Hunt.

① I take it that this paper has not been before any cabinet Committee.

To send the papers round on Friday night for comment against a background of a press conference on Monday just isn't good enough.

J P

21 September 1979

(Approved by the Secretary of State and signed in his absence)

② I have been through these papers — I have several detailed comments but will not pursue them in view of the time factor. However the paper that worries me [illegible] [illegible] Mr. [illegible] letter. The [illegible], [illegible] are a [illegible] criticism of the decisions of the Courts. P.R.D.

in the exercise of their duty of interpreting Parliamentary legislation.* That criticism cannot and must not be endorsed by the Government. The paper conveys the impression that that letter is the main reason for requiring a change.

I should like the Lord Chancellor's view & the S.G.'s view because I am very unhappy about it. If they approve – let the paper go. – but not unless.

Further – the way the paper is drafted in the observations imply that the law needs strengthening in favour of recognition. That is not our view.

M. T.

* Have marked the worst examples as ① ② & ③

WORKING PAPER ON THE TRADE UNION RECOGNITION PROVISIONS OF THE EMPLOYMENT PROTECTION ACT 1975

1 In the three years they have been in operation, the recognition provisions in Sections 11-16 of the Employment Protection Act 1975 have given rise to numerous problems and difficulties. There appears to be general agreement on the part of employers, trade unions and ACAS alike that the provisions have proved unsatisfactory and that the law needs to be changed. There is however little or no agreement about the nature, or indeed the direction, of the changes required.

2 In addition ACAS is becoming increasingly concerned about the effects of its operation of the statutory provisions on its other, voluntary, role in conciliation and the provision of advice. In its last annual Report the Council stated that the Service's essentially voluntary role in conciliation and the provision of advice did "not sit easily with the statutory duties in Sections 11-16 of the Employment Protection Act".

3 The Chairman of ACAS has since sent the Secretary of State a letter (attached) which sets out the ~~grounds~~ matter of concern of the ACAS Council. ~~making, in particular, the following points:~~

He makes it clear that the Council is not commenting on the substance of the judicial decisions but on their effect on the practical operation of the Council and the service which it supervises, and he goes on to make in particular the following points:

- a considerably larger number of recognition issues have been settled voluntarily than through the full statutory procedures;

- the discretion which the Council feels it requires in order to function properly is now seen, as a result of judicial decisions, to be much narrower than the Service originally understood was Parliament's intention;

- consequently the Council has become increasingly conscious of the growing incompatibility between some of its statutory duties and the actions it would have preferred to take on grounds of good industrial relations practice;

- some of the duties imposed on the Service by the recognition provisions of the Act are not necessarily compatible with its duty to promote the improvement of industrial relations;

- where an employer or a union refuses to co-operate with ACAS it is left with a duty it cannot perform;

- the effect of the finding of the Court of Appeal is said by the Council to be that ~~the Court of Appeal has said that~~ the Service is obliged to make findings on a whole series of matters which it may consider irrelevant or unnecessary and in some cases harmful to industrial relations;

- the Act gives ACAS no guidance on the criteria to be adopted in determining what is a bargaining group and it has not been possible for the Council to agree on any criteria which would be generally applicable;

- the Service has been put in the position where it may be instrumental in undermining existing voluntary procedures;

- in the view of the Council there are potential difficulties inherent in the confirmation by the Courts that ACAS is to be regarded as a tribunal when considering legal issues.

4 The Chairman concludes his letter in the following terms:

> The experience of three years of operation of the statutory procedures have shown the difficulties of operating without criteria and the damaging effect on industrial relations which can result from the Court's interpretation of the statute. The Service's ability to exercise its own judgement in recognition matters has always been circumscribed by the legislation. The discretion of the Council has been further limited by the decisions of the Courts which have made it progressively more difficult for the Council to exercise its industrial relations judgement in reaching decisions on recognition issues. Even the functioning of the Council is likely to become impracticable as a result of its being deemed to be acting in a judicial capacity. The Council therefore wishes me to advise you that in the light of the increasing difficulties which it is encountering it cannot satisfactorily operate the statutory recognition procedures as they stand.

5 The situation disclosed in this letter is a matter of considerable concern to the Government as is the consideration that the working of the recognition provisions should have caused the impartiality of the Service to be called into question, thereby affecting the valuable work of ACAS generally. This effect has been accentuated when the working of these provisions has been set in the context of the terms of reference of ACAS(Section 1 of the Act), the wording of which has also been called into question.

6 The Government accept that there is now an urgent need for the law to be changed. Indeed, the experience in operation of these statutory procedures on trade union recognition does raise the question whether it is necessary or valuable to have statutory provisions of this kind to deal with these matters or whether it would be better to rely on the ability of ACAS to help settle recognition disputes through the provision of voluntary conciliation and advice, as happens in most cases at present. The Government would welcome views on the issues raised in this paper.

Advisory, Conciliation and Arbitration Service

Cleland House, Page Street, London SW1P 4ND Telephone Direct Line 01-211 0181
Switchboard 01-211 3000

29 June 1979

Rt Hon James Prior MP PC
Secretary of State for Employment
8 St James's Square
LONDON SW1

Dear Mr Prior,

In its annual report for 1978 the Council commented on the operation of the statutory provisions for dealing with trade union recognition issues. The Council said that the Service's essentially voluntary role in conciliation and the provision of advice did "not sit easily with the statutory duties in Sections 11 - 16 of the Employment Protection Act". A number of factors contributed to this view and there have since been developments which have deepened the Council's uneasiness. The Council considered the matter further at its meeting on 27 June and desired that I should write to you to draw your attention to its views.

The Service has always approached its duties under the statutory provisions in the generally held belief that the best means of resolving industrial relations problems is by voluntary agreement. In fact, over 80 per cent of the references on which ACAS action has been completed have been settled voluntarily, ie the reference has been withdrawn and no report issued under Section 12. As a result of such settlements by 31 December 1978 some form of collective bargaining has been extended to over 40,000 employees. This compares with the total of just over 10,000 who have obtained the benefits of collective bargaining through the 20 per cent of references which have gone through the full statutory procedure and resulted in reports published under Section 12.

During the same period, considerably more recognition issues were referred to the Service under the voluntary provisions of Section 2 of the Act than were referred under Section 11 (although some Section 2 references do in fact become Section 11 references where the trade union fails to secure recognition through the former). The table below shows the comparative figures from February 1976 to 31 May 1979.

	Section 2	Section 11
1976	769	461 (in 11 months)
1977	677	577
1978	539	279
1979 (in 5 months)	205	99

Rt Hon James Prior MP PC
Secretary of State for Employment

29 June 1979

In seeking to promote the settlement by agreement of recognition issues referred under the statutory provisions the Service has acted in the belief that ACAS was invested by Parliament with considerable discretion as to how it conducted its affairs. The Council understood that its constitution reflected Parliament's intention to bring together the collective wisdom of both sides of industry with a view to enabling the Service to carry out its general duties under Section 1(2) of the Act. This belief is reinforced by the provisions in the Act relating to the Service's functions of conciliation, arbitration, advice and inquiry and the preparation of codes of practice, all of which allow the Service to exercise discretion in carrying out its duties.

The statutory provisions on trade union recognition also allow for the Service to exercise an element of discretion in carrying out its duties. Under these provisions the Service has to consult all parties who it considers will be affected by the outcome of a reference and to "make such inquiries as it thinks fit". The Service has also to ascertain the opinions of workers to whom an issue relates "by any means it thinks fit". The Service was therefore intended to have a considerable degree of discretion in carrying out not only its general duties under Section 1(2) but also its specific duties under Sections 11 to 14 of the Act.

A body such as the Council of ACAS requires this discretion in order to function properly. To reconcile the conflicting approaches of the two sides of industry to a matter like trade union recognition the Service has to find ways in which compromises can be reached. This essential discretion is now seen, as a result of judicial decisions, to be much narrower than the Service originally understood was Parliament's intention. The Council has become increasingly conscious of the growing incompatibility between some of its statutory duties and the actions it would have preferred to take on the grounds of good industrial relations practice. Finally, the continued operation of the Council has been brought into question as a result of judicial comment on the role of Council members, requiring it to adopt a much more constrained legal procedure.

The Council, it should be clear, is not here commenting on the substance of the judicial decisions but on their effect on the practical operation of the Council and the Service. The Council is, however, concerned that its effectiveness in developing the voluntary approach to industrial relations problems is being undermined by the impression which is created by the number of cases under Section 11 in which we are involved in the Courts.

Rt Hon James Prior MP PC
Secretary of State for Employment

29 June 1979

The Council believes that some of the duties imposed on the Service by the provisions of Sections 11 - 14 are not necessarily compatible with its duty to promote the improvement of industrial relations. For example, the Service has a duty to pursue and complete any reference made to it in respect of any group of workers that a trade union cares to define. In some instances, for the Service to proceed with these duties will be injurious to good industrial relations. The Service, however, has no discretion not to proceed however much it believes that its intervention would be harmful. This is particularly so in cases of competitive claims by unions which the Act appears to have encouraged. Examples have been seen in the water industry and amongst polytechnic teachers where the Act has been used as a vehicle for outside unions to challenge those already recognised by the employer through existing collective bargaining machinery.

The Grunwick case established that the Service has a mandatory duty to ascertain the opinions of workers to whom a recognition issue relates. The statute provides for no discretion, so that even where an employer or a union refuses co-operation, the Service is left with a duty it cannot perform. The procedures are therefore statutorily binding on ACAS whilst leaving employers and unions free to co-operate with the Service on a voluntary basis. In some cases this has resulted in ACAS being unable to report under Section 12 of the Act, (as with the Michelin and Grunwick cases).

The Court of Appeal in the UKAPE/W H Allen case, in addition to the matters discussed below, has said that the Service is obliged to make findings on a whole series of matters which it may consider irrelevant or unnecessary and in some cases harmful to industrial relations. For example, the Service could be required to pronounce on the appropriateness of a trade union for a particular group of workers. This would be quite contrary to the normal traditions of British industrial relations where trade unions organise on the basis of spheres of influence rather than on imposed structural criteria. Similarly, the Service could be required to pronounce on the appropriateness of a particular bargaining group even in cases where it does not intend to make a recommendation. This could prejudice the emergence of a more appropriate grouping in future.

On the other hand, the Act gives ACAS no guidance as to the criteria to be adopted in determining a bargaining group or the level of support which it should consider appropriate in

Rt Hon James Prior MP PC
Secretary of State for Employment

29 June 1979

deciding a recognition issue beyond the general formulations in Section 1. Nor has it been possible for the Council to agree on any such criteria which would be generally applicable. The absence of criteria has made the decision-making duty of the Council increasingly difficult, and one which can only be carried out at all by the exercise of a wide discretion. As time passes without criteria, the risk increases of the Council making apparently conflicting decisions on similar facts which may lead to the Council appearing to outsiders to be inequitable or partisan to the detriment of the impartial traditions of the Service in other areas such as conciliation and advisory work. There is also the risk of the Council being unable to reach, in some cases, agreed conclusions.

(2) The Council accepts that the exercise of any discretion invested in ACAS by Parliament can be subjected to scrutiny by the Courts but such legal decisions are now having a serious effect on the way in which the Service carries out its duties. Thus, in the UKAPE/W H Allen case, ACAS was held to have failed to take into account a number of factors which the Court considered to be relevant and moreover took the view that ACAS had exercised its discretion unreasonably by taking into account certain other factors, such as threats of industrial action. If this decision is upheld by the House of Lords, the Service will be further inhibited in exercising its industrial relations judgment in recognition cases. It might lead to the Service being required to recommend the break-up of existing negotiating machinery or the fragmentation of the existing grouping of an employer's work-force and could reduce the Service to the role of a balloting agent.

Similarly, in the recent case brought against the Service by the Engineers' and Managers' Association, the discretion which the Service believes it possesses to defer proceeding with its inquiries whilst there is a relevant unresolved issue being considered through the TUC's Bridlington procedures (or any other established procedures) was removed. This could undermine those voluntary procedures by providing an alternative route for dealing with the problem. This development runs counter to the general approach to industrial relations problems, both by ACAS and by its predecessors in the Government Service since 1896, that issues should be settled by the parties through the various agreed voluntary procedures before third parties intervene. This loss of discretion to defer carrying out part of the statutory procedures also seems likely to apply in all cases where the Service would prefer on industrial relations grounds to await the outcome of other relevant developments before proceeding.

Rt Hon James Prior MP PC
Secretary of State for Employment

29 June 1979

The Courts have now confirmed that ACAS is to be regarded as a tribunal when considering recognition issues. All the legal rules and principles of tribunals should be applied. There is therefore a risk that many decisions of the Service might be challenged because Council members have taken part in decisions in which, it might be alleged, they have a vested interest. Given the nature of the constitution of the Council, which the statute intends should draw experience from both sides of industry, it is clearly unrealistic to expect some of those same members not to take part in the deliberations on an important industrial relations matter. In the view of the Council it would be contrary to the intentions of Parliament expressed in Schedule 1 to the Act that certain members should be disenfranchised. Should that remain the position the Council could not continue to function.

(3) The experiences of three years of operation of the statutory procedures have shown the difficulties of operating without criteria and the damaging effect on industrial relations which can result from the Courts' interpretation of the statute. The Service's ability to exercise its own judgments in recognition matters has always been circumscribed by the legislation. The discretion of the Council has been further limited by the decisions of the Courts which have made it progressively more difficult for the Council to exercise its industrial relations judgment in reaching decisions on recognition issues. Even the functioning of the Council is likely to become impracticable as a result of its being deemed to be acting in a judicial capacity. The Council therefore wishes me to advise you that in the light of the increasing difficulties which it is encountering it cannot satisfactorily operate the statutory recognition procedures as they stand.

Yours sincerely

J E Mortimer

WORKING PAPER ON PROPOSED AMENDMENTS TO THE EMPLOYMENT PROTECTION LEGISLATION

Introduction

1. The Government's manifesto stated an intention to amend laws such as the Employment Protection Act where they damage smaller businesses - and larger ones too - and actually prevent the creation of jobs. The provisions in the employment protection legislation which have come in for most criticism are those relating to unfair dismissal and the attendant industrial tribunal procedures.

2. The Government are fully committed to the concept of employment protection: indeed, it was a Conservative Government which first brought into the law the concept of remedies for unfair dismissal, and arranged that such cases should be dealt with by the system of tripartite industrial tribunals. They recognise that among its benefits the legislation has helped to improve some employers' disciplinary procedures, and that more still needs to be done to help employers and employees understand its provisions. But practical experience in the operation of the legislation has shown the need, while maintaining essential protection for employees, to change certain provisions which bear over-harshly on employers, discouraging recruitment, especially in small businesses, and to make certain adjustments to take account of problems which have emerged.

3. Parliament has already approved two changes by Order from 1 October - one extending the qualifying period for unfair dismissal complaints and the other reducing the compulsory period for consultation with trade unions, and notification to the Department of Employment, in the case of certain redundancies. Proposals for further amendment of the legislation are set out in the annexes to this paper and deal with the following matters:

Unfair dismissal provisions
Industrial tribunal procedures
Maternity provisions
Guarantee pay provisions

4. The Government would welcome views on these proposals.

UNFAIR DISMISSAL PROVISIONS

The onus of proof in unfair dismissal cases

Since the introduction of remedies for unfair dismissal under the Industrial Relations Act 1971 it has been for the employer to show the reason for dismissal and that it was a reason which may by statute justify dismissal. For dismissal to be fair, the employer has also had to act reasonably in treating that reason as sufficient to justify dismissing the employee, but until the Trade Union and Labour Relations Act 1974 the question of whether the employer had acted reasonably was something for the tribunal itself to determine and not for the employer to demonstrate. Under the 1974 Act, however, the employer had to show, not only the reason for the dismissal, but also whether he had acted reasonably; and the Employment Protection (Consolidation) Act 1978 (Section 57(3)) now states that "..... determination of the question whether the dismissal was fair .... shall depend on whether the employer can satisfy the tribunal ..... that he acted reasonably".

2. As a result there has been widespread feeling among employers that they are "guilty until proved innocent". Although few cases are in practice decided on the onus of proof, it is believed that the provision has put employers at an unfair disadvantage in cases where the substance of the employee's complaint is not clear to the employer or where the employee's case is weak.

3. The Government therefore propose that the onus of proof as to reasonableness should be made neutral as between employer and employee. Thus, once the employer has shown that the reason for dismissal was a reason which by statute may justify dismissal, the law would not specifically place the onus on either employer or employee to show reasonableness, and the tribunal would have discretion to require evidence from either party according to the circumstances. This will require amendment to Section 57(3) of the Employment Protection (Consolidation) Act 1978.

Waiver of right to complain of unfair dismissal at the expiry of a fixed term contract

4. Since the Industrial Relations Act 1971 it has been considered reasonable that employers and employees should be able freely to enter

into fixed term contracts which provide that at their conclusion the employee will not have the right to bring a complaint of unfair dismissal. At present employees who are taken on for a fixed term of over 2 years may by this means waive their right to complain of unfair dismissal at the expiry of the term. The 2 year period corresponded with the initial qualifying period of service for complaints of unfair dismissal, but when the qualifying period was reduced in 1975 from 2 years to six months the provision on fixed term contracts remained unchanged.

5. From 1 October the qualifying period of service will be raised from six months to one year. The Government believe that a fixed term contract of one year or more is of sufficient length to permit waiver of the right to claim for unfair dismissal upon expiry of the term. They propose accordingly to amend the legislation so as to permit waivers in fixed term contracts of one year or more, thus bringing the provision into line with the new qualifying period for unfair dismissal complaints. The unfair dismissal provisions would still apply, however, to cases where fixed term contracts had been terminated by the employer before the date of expiry of the contract, whether terminated by notice or not.

The basic award of compensation for unfair dismissal

6. One of the components of compensation for unfair dismissal is the basic award. This is separate from any compensatory award that may be made, and is payable automatically upon a finding of unfair dismissal. The basic award is calculated, like a redundancy payment, by reference to the age and length of service of an employee, but there is a statutory minimum of two weeks' pay.

7. The Government see no justification in principle why an employee should be paid a minimum of two weeks' pay when by reason of his age and length of service he would have qualified for less than this amount. Furthermore, although the basic award may be reduced when there is a finding of contributory fault on the part of the employee, the minimum of two weeks' pay must be awarded whatever the circumstances and however blameworthy the employee. (This is in contrast to the compensatory award which may be reduced to nil where there is a finding of 100% contributory fault.) Nor is it possible for a tribunal to reduce the basic award if an employee has failed to mitigate his loss (although, again, the compensatory award may be reduced for this reason). Finally, in cases where misconduct on the part of an employee is discovered after the dismissal, it is

not possible to reduce a basic award on the ground of contributory fault. Attention was drawn to these defects in the House of Lords in the case of Devis v Atkins (1977 AC 931).

8. To remedy these defects, the Government propose that the legislation should be amended:

(i) to repeal section 73(8), which provides that a minimum basic award of 2 weeks' pay must be given;

(ii) to empower tribunals to reduce below the present minimum, or extinguish, the basic award in cases of contributory fault on the part of the employee;

(iii) to empower tribunals to reduce the basic award if an employee has failed to mitigate his loss; and

(iv) to give tribunals discretion to reduce or extinguish the basic award in cases where misconduct on the part of the applicant has come to light between the date of dismissal and the date of the hearing.

The special position of small firms

9. The Government are anxious to ease the burden on small firms of the employment protection legislation, and in particular the unfair dismissal provisions. In the case of many small firms personal relationships are very close, and formal disciplinary procedures are inappropriate. This applies especially in firms which are too small to have a full time personnel officer.

10. There are, however, difficulties in imposing different requirements on firms simply by reason of their different sizes. It would generally be undesirable to give special treatment to small firms in a way that would, on a permanent basis, create a 'second tier' of employees who have less protection, especially since protection is no less necessary in small firms than in large. There are also problems associated with the definition of a 'small' firm and the imposition of an arbitrary cut-off.

11. The changes by Order that are being made from 1 October in the statutory requirements will already considerably help small firms; and the further proposals set out in this paper on which views are now being sought would also benefit them especially. The Government believe, however, that there are two further changes to the unfair dismissal provisions which should be made in the particular interests of small firms; and they propose:

(i) to amend the general provisions relating to the fairness of a dismissal (Section 57 of the Employment Protection (Consolidation) Act 1978) so that industrial tribunals would be specifically required to take into account the circumstances - for example, the size and resources - of a firm when considering whether or not an employer has carried out a dismissal reasonably; and

(ii) to exempt new firms with less than 20 employees from the unfair dismissal provisions for the first 2 years of trading. During this period employees would still accumulate service towards the qualifying period for unfair dismissal complaints, but they would be able to exercise their rights only after the first 2 years of the firm's life. Employers would be under an obligation to give employees, before recruitment, a written notification of their rights in regard to unfair dismissal.

INDUSTRIAL TRIBUNAL PROCEDURE

The industrial tribunals were originally conceived as an informal and speedy way of settling grievances. The growth of both statute and case law on unfair dismissal and other matters has conduced to some tribunal proceedings becoming longer and more legalistic. This development is disliked by both employers and employees. There is also a widespread belief among employers that many cases which reach the stage of a tribunal hearing are without merit and should have been sifted out earlier.

2. In fact a number of cases are already sifted out before a full hearing if they are out of jurisdiction or as a result of intervention by the conciliation service of ACAS - although the latter category undoubtedly includes a proportion of cases which the employer has settled (against his judgement of their merits) to avoid the trouble, cost and risk to him of tribunal proceedings. In consequence, about two thirds of all cases brought to tribunals are conciliated or withdrawn. Tribunals also have the power to award costs against a party who brings a frivolous or vexatious complaint. Nevertheless, the Government believe that there is need for adjustment.

3. The Government therefore propose to make the following changes to the procedural rules of tribunals:

(i) to give tribunals explicit authority to conduct proceedings in whatever manner they consider most suitable, while avoiding formality and without being bound by the stricter rules regarding admissibility of evidence as applied in the courts.

(ii) to enable tribunals to advise either party that his case appears to be weak and that costs may be awarded against him if he chooses to pursue his contentions to a hearing. This could be done at a preliminary hearing with one or both of the parties present.

(iii) to widen the rule on costs, so that costs may be awarded against a party who brings or conducts a case "unreasonably".

(iv) to take a view on documentary evidence if they so choose.

4. The Government have a statutory obligation to consult the Council on Tribunals on amendments to tribunal procedures and these proposals are made subject to the view of the Council, which will be sought.

MATERNITY PROVISIONS

The maternity provisions (Section 33-48 and 60-61 of the Employment Protection (Consolidation) Act 1978) give an employee who is expecting a baby three statutory rights:

(a) protection from unfair dismissal on the grounds of pregnancy;

(b) maternity pay for six weeks: this is paid by the employer, who can claim a rebate from the Maternity Pay Fund which is administered by the Department of Employment;

(c) reinstatement in her former job after a period of maternity leave not exceeding 29 weeks from the beginning of the week in which the baby is born. Among the qualifying conditions for reinstatement is the requirement that at least 3 weeks before she stops work (unless it is not reasonably practicable) she must give notice to her employer (in writing if he so requests) that she will do so because of her condition, and (if it is the case) that she intends to return to work within the 29 week period. She must also notify her employer of her proposed date of return at least one week before that date.

2. The maternity pay and reinstatement provisions have not worked satisfactorily in practice. In the case of maternity pay employers have found the administrative procedure involved in claiming the rebate burdensome. It would not be right to transfer responsibility for maternity payments to the State, since this would mean abandoning the principle that this is an obligation which properly falls on employers. Nor would such a change be in the interests of employees, since it would mean moving away from the principle that maternity pay should be maintained at the same level as the employee's previous earnings. The Government want to reduce the administrative procedures to a minimum, and are examining ways in which this may be done within the present scheme.

3. In the case of reinstatement employers are often faced by the uncertainty of whether or not the employee will actually return to work after having her baby; and it is frequently difficult, especially in small firms, to fit the employee back into her original job. To ease these practical problems the Government propose to amend the statutory reinstatement provisions:

(i) to require the employee to provide in writing the current notifications of her intended absence from work and her intention to return to work, and to

provide the second notification at least 28 days before the intended date of return, instead of the present 7 days;

(ii) to require the employee to provide an additional notification in writing, not later than 6 weeks after her confinement, of her intention to return to work.

Failure on the part of the employee to fulfil any of these requirements would (as at present) result in the loss of her right to reinstatement.

(iii) to provide that, where it is not reasonably practicable for the employer to make available the original job, the employee shall be offered suitable alternative employment. At present, where it is not practicable because of redundancy for an employer to allow the employee to return after confinement to her original job, the employer must offer her alternative employment; this new job must be suitable in relation to the employee and appropriate for her to do in the circumstances, and its terms and conditions must not be substantially less favourable than her previous job. The proposal is to extend this provision so that it shall apply also to situations where it is not reasonably practicable for the employer to employ the returner in her old job. The employee would have a trial period, say of 4 weeks, in the new job before having to decide definitely whether to accept it or not. Appeal to an industrial tribunal would be available in the case of any dispute over the application of new provision in particular cases.

4. The Government invite comment on a further suggestion which has been made to give special assistance to small firms regarding the reinstatement provisions. This is that where it is not reasonably practicable for an employer either to make available to the employee her original job or to offer her suitable alternative employment (because the firm is too small to have such employment available), the employer may be exempted from the obligation to reinstate her. The suggestion is that this exemption should apply only to firms with less than 20 employees. The onus would be on the employer to show that he qualified in all respects for this exemption. This suggested change would not, of course, remove the employer's liability for notice pay or any other rights to which the woman may be entitled upon termination of her employment, in all cases where she has already exercised her right to return by notifying her employer of her proposed date of return, or where her contract of employment has continued to subsist during her maternity absence.

GUARANTEE PAY PROVISIONS

Current legislation (Employment Protection (Consolidation) Act 1978 S. 12-18) specifies that employees who are not provided with work for a full day in which they would normally be required to work under their contracts of employment are entitled to receive a guarantee payment from their employer. No more than 5 days' guarantee payments are payable in any one of the quarters beginning 1 February, 1 May, 1 August and 1 November. An employee is not, however, entitled to guarantee pay if the lay-off is due to a trade dispute involving any employee of his employer or of an associated employer.

2. These provisions caused difficulties during last winter's lorry drivers' dispute, which began in late January and lasted into February, thus causing many employers to meet the considerable liability of two quarters' guarantee pay in close succession.

3. The Government accordingly propose that the calculation of entitlement to guarantee pay should be based on a rolling period rather than fixed quarterly periods as at present. In this way no more than 5 days' guarantee pay would be payable by an employer over any period of three consecutive months. This arrangement would reduce the likely number of guarantee payments falling to be made by an employer, and would also establish a more equitable method of calculating entitlement.

TERMS AND CONDITIONS OF EMPLOYMENT

WORKING PAPER ON SCHEDULE 11 OF THE EMPLOYMENT PROTECTION ACT 1975 AND THE FAIR WAGES RESOLUTION

1 The Government would welcome views on the operation of Schedule 11 and of the Fair Wages Resolution. These provisions are described in Annex A.

2 Between January 1977 (when the Schedule came into operation) and July 1979, a total of some 2,000 claims were reported to the Advisory, Conciliation and Arbitration Service and some 850 awards were issued by the Central Arbitration Committee. Although most awards have related to small groups of employees, some large negotiating groups have also been the subject of awards. Four out of five awards have been based on the "general level" of terms and conditions observed by employers in similar circumstances in the same industry and district.

3 In the same period, the number of awards made under the broadly similar provisions of the Fair Wages Resolution (applicable directly to employees of Government contractors and by extension to the employees of some contractors to local authorities and the nationalised industries) rose from 8 in 1974 to 271 in 1978.

SCHEDULE 11

Problems

4 Experience of the application of Schedule 11 has indicated certain defects and has given rise to a number of criticisms, including the following.

(a) The main objective of Schedule 11 was held to be the elimination of "pockets of low pay". This is not how the Schedule has been applied in practice; many higher paid groups have benefitted from awards.

(b) The Schedule was extensively used as a means of circumventing the restrictions of pay policy. The Central Arbitration Committee in its

Annual Report for 1978 suggested that some employers colluded in the reporting of claims.

(c) In an established system of free collective bargaining, arbitration arrangements have an important place; but unilateral access to statutory arbitration and its extensive use run counter to the need to establish and develop by agreement sound procedures for the resolution of pay and other issues. It can hinder attempts to improve arrangements for collective bargaining.

(d) Awards made for relatively small groups of employees can disrupt agreed pay structures, undermine established collective bargaining arrangements and give rise to claims by other groups of employees (possibly represented by other trade unions) in the same negotiating structure for the preservation of relativities or for comparable treatment.

(e) The procedure for arbitration on the general level of terms and conditions observed for comparable workers of employers whose circumstances are similar does not allow all the considerations which should help to determine terms and conditions of employment to be fully considered, eg market prospects, profitability, labour efficiency, prices.

(f) The Central Arbitration Committee, in its Annual Reports, has drawn attention to difficulties encountered in the application of Schedule 11 arising from the fact that for a variety of reasons some groups have easier access to the "general level" provision than others.

Comment

5 Low pay. All successful claims are in principle on behalf of employees who are low paid relative to other comparable groups in the same industry and district. In practice, however, the majority of the claims reported (particularly under para 2(b) of the Schedule) have been in respect of employees who could not be regarded as low paid on any absolute test, including some claims on behalf of employees earning twice the national average or more. Only one award has been made under Part II of the Schedule (see Annex A).

6 Economic effects. Although the direct effect on the national pay bill has been small, increases to individual groups and their repercussive effects have in some cases had a substantial effect on employers' costs. Insofar as employers and unions colluded to get round pay policy, some reduction in claims can be expected. But the Schedule will continue to require employers in some circumstances to concede increases based on outside comparisons, irrespective of productivity levels or ability to pay. In the longer term the effect could be to reduce competitiveness and threaten employment.

7 Effects on industrial relations. In some cases the Schedule has undoubtedly helped to resolve particular issues which may otherwise have presented persistent difficulties. This has to be balanced, however, against the considerable industrial relations difficulties which have arisen from awards in respect of certain categories of employees leading to pressures from other groups, both in the same and different negotiating structures, for increases to maintain differentials or other relativities. More generally, both employers' and unions' responsibility and interest in establishing and following sound and agreed arrangements for collective bargaining and the resolution of disputes have been weakened.

FAIR WAGES RESOLUTION

8 Similar problems have arisen in certain industries from the application of the Fair Wages Resolution. It might now be questioned how far special protection for the employees of Government contractors which is not available to other groups of employees can still be justified. The Government believes that there is a case for reviewing the Fair Wages Resolution in the light of modern conditions.

9 The UK has ratified ILO Convention 94 (1949) which requires clauses in similar terms to those in the Resolution to be included in public contracts; but it may be that changes could be contemplated in the detailed content and application of the Resolution which would meet the Convention's essential principles while mitigating some of the difficulties that have been encountered.

CONCLUSION

10 The antecedents of Schedule 11 and of the Fair Wages Resolution go back a long way in industrial relations history. The first Fair Wages Resolution wa

was introduced in 1891 to prevent "sweated labour" being used in unfair competition for Government contracts. Schedule 11 derives via the Terms and Conditions of Employment Act 1959 from emergency wartime legislation providing for compulsory arbitration and prohibiting strike action.

11 It can be argued that the development of trade union organisation since the 1940s, and the widespread extension of collective bargaining which has accompanied it, make both sets of provisions out-dated; and that, as a matter of principle, statutory provision for compulsory arbitration at the behest of one party is incompatible with free and responsible collective bargaining and its continued development. This consideration might be regarded as having particular weight in relation to Part I of Schedule 11 under which claims can be reported only by an independent union recognised by the employer concerned (or an employers' association). An employer cannot resist the making of a claim, nor can he avoid complying with an award.

12 The Government would welcome views on the matters discussed in this paper, and on possible alternative courses of action such as -

(a) the repeal of Schedule 11;

(b) the repeal of the "general level" provision of Schedule 11;

(c) the amendment of the Schedule so as to remedy some of its defects, eg by requiring the Central Arbitration Committee to take into account the effect of awards on employers' pay structures.

13 The course which is adopted in relation to Schedule 11 may have implications for the Fair Wages Resolution and for other existing legislation - see Annex B. Comments on these provisions are also invited.

ANNEX B

RELATED LEGISLATIVE PROVISIONS

A Legislation which includes provision for the determination of questions about terms and conditions by specific reference to the Fair Wages Resolution -

(i) Housing Act 1957 (Section 92(3)(a))
(ii) Films Act 1960 (Section 42)
(iii) Road Traffic Act 1960 (Section 152)
(iv) Independent Broadcasting Authority Act 1973 (Section 16).

B Other legislation providing for terms and conditions to be determined by reference to comparisons with other similar employees -

(i) Road Haulage Wages Act 1938 (Part II)
(ii) Civil Aviation Act 1949 (Section 15).

ANNEX A

SCHEDULE 11 OF THE EMPLOYMENT PROTECTION ACT

1 Schedule 11 provides for claims that an employer is not observing relevant terms and conditions of employment to be reported to the Advisory, Conciliation and Arbitration Service and, if not settled by conciliation, referred to the Central Arbitration Committee for formal hearing and award. Claims can be based on comparisons with either "recognised terms and conditions" under national or district agreements or, in their absence, the "general level" observed by other employers in the same industry and district. Employees whose pay is fixed by statutory arrangements - other than those covered by Wages Councils - are excluded from the Schedule's scope, as are Crown service employees. Claims can be based on the "general level" only insofar as there are no "recognised terms and conditions" (including agreements incorporated minimum terms and conditions).

2 Part II of the Schedule makes special additional provision for workers within the field of operation of a Wages Council or Agricultural Wages Board. It enables claims to be based on the lowest rate contained in collective agreements covering a significant number of establishments, either generally or in the district.

FAIR WAGES RESOLUTION

3 The current Fair Wages Resolution was adopted in 1946. It contains provisions broadly similar to those in Schedule 11 except that "general level" comparisons can more readily be drawn because of references to wages and conditions that are "established" (rather than "recognised") for the industry in the "district". The Resolution applies directly to Government contractors but comparable provision is in practice made in most contracts with local authorities and nationalised industries.

Original in CJK
cc O/Kmp.
Ind Pol.

10 DOWNING STREET

THE PRIME MINISTER

19 September 1979

Dear William

Thank you for your letter of 29 August.

I cannot agree more with you in what you say about overmanning and the devastating effect on jobs that trade union resistance to technological change can have. I have admired the stance which you have taken at the Times over the new technology, and I can only hope that the current dispute will be resolved soon on terms which achieve your objectives.

In many ways, I sympathise with your suggestion that we should have legislation making strike action unlawful unless proper disputes procedures have been followed. But we tried an approach of this kind in the 1971 Act and very few employers made use of the provisions. However, Jim Prior is looking into this whole question. I understand that you have also written to him, and he will be letting you have his detailed comments in the near future.

Yours ever

MT

William Rees-Mogg, Esq.

jfh

Original filed Civil Service (Cultes & Civil Service Strikes) Sept 79

CONFIDENTIAL

CC HMT
LPO
DOI
DOT
DHSS
MOD
AGO
CO

JFH
Mr Wolfson
Mr Hoskyns
Mr James

10 DOWNING STREET

From the Private Secretary

12 September 1979

Dear Ian.

The Prime Minister held a meeting this evening to discuss the industrial relations situation. In addition to your Secretary of State, the Chancellor of the Exchequer, the Lord President and the Secretaries of State for Industry and Trade were present. The following are the main points which came up in discussion.

Ministerial Statements

The Prime Minister said she wanted to be sure that Ministers were adopting the right posture in relation to the current rash of industrial disputes. A balance had to be struck. On the one hand, Ministers needed to avoid getting involved in disputes by making unnecessary or inflamatory statements. On the other hand, it was important to bring home to the public and to those who were striking the effects of strike action. Ministers needed to drive home the basic message that strikes and excessive pay settlements cause unemployment. The more specific examples that could be produced the better. It was all the more essential to spell out this message since it seemed likely that the trade unions would be mounting an increasing attack on the Government on the unemployment issue.

In discussion, it was pointed out that the TUC Conference had produced hardly anything positive; but there was still a real risk that the trade unions would unite against the Government. The Government's aim should be to keep them disunited, and this meant that Ministers needed to take care with their language. Moreover, it would be a mistake to give the trade unions a pretext for breaking off their contacts with the Government - since these on the whole were beneficial. The best publicity was criticism by trade unionists themselves, but unfortunately there were few trade union leaders who were sympathetic to the Government's line. On the other hand, Ministers needed to press home the basic economic argument, and while avoiding provocation, language had to be used which would catch the public's imagination.

It was agreed that the approach outlined by the Prime Minister was the right one, and that Ministers were at present striking about the right balance in commenting on the various disputes (or as in some cases, such as British Leyland, avoiding comment).

/Media Coverage

CONFIDENTIAL

Media Coverage

In further discussion, it was argued that TV coverage of the current disputes was very inadequate. This was largely because the commentators and interviewers failed to ask the right questions and to point up the economic issues properly. It would be worth studying the performance of industrial correspondents over a short period, and then expose their inadequacies. It was also argued that Information Departments were not doing enough to educate and influence correspondents so as to ensure that they did ask the right questions.

It was agreed that further consideration should be given to how Information Departments could do more to help in this area. The Chancellor of the Exchequer and the Secretary of State for Industry should consult with the No. 10 Press Secretary and report back to the Prime Minister.

Civil Service Disputes

Lord Soames said that the Civil Service unions were becoming increasingly ready to strike, and there was little doubt that further trouble could be expected over the proposed Civil Service cuts. They were using all the techniques at their disposal - and, in particular, they were taking out on strike small numbers of key people so as to bring major services to a halt. The latest example was the dispute at the Child Benefit Centre in Newcastle.

Lord Soames went on to say that a major difficulty for Civil Service managers was that they could not lay off non-industrial civil servants without pay, and therefore it was much more difficult than in the private sector (or indeed in respect of industrial civil servants) to bring pressure on a few strikers to return to work.

In a short discussion, it was questioned whether the law really did prevent non-industrial civil servants from being laid off without pay. If that were the legal position, then consideration had to be given to changing the law; alternatively, the conditions of service of civil servants might have to be changed to allow lay off without pay.

It was agreed that these questions should be considered further by a group consisting of the Lord President (in the Chair), the Attorney-General, the Secretaries of State for Employment, Social Services and Defence and the Chancellor of the Exchequer. The group should report back to the Prime Minister as soon as possible.

I am sending copies of this to Tony Battishill (HM Treasury), Jim Buckley (Lord President's Office), Andrew Duguid (Department of Industry), Tom Harris (Department of Trade), Don Brereton (DHSS), Roger Facer (Ministry of Defence), Bill Beckett (Attorney-General's Office) and Martin Vile (Cabinet Office).

Yours ever,

Tim Lankester.

Ian Fair, Esq.,
Department of Employment.

CONFIDENTIAL

DEPARTMENT OF TRADE 1 VICTORIA STREET LONDON SW1H 0ET Telephone 01-215 7877

Industrial Policy

In PM's Meeting folder

From the Secretary of State

12/9

Tim Lankester Esq
10 Downing Street
LONDON
SW1

12 September 1979

Dear Tim,

GOVERNMENT APPROACH TO INDUSTRIAL RELATIONS

... My Secretary of State has asked me to circulate the attached draft of a press statement he proposes to issue tomorrow morning at the time of his departure to California (where he will be meeting, inter alia, the Lockheed Corporation). This announcement of the new British Airways order for Tristars will coincide with similar announcements by British Airways, Lockheed and Rolls Royce.

The announcement will of course also coincide with closures announced by Rolls Royce yesterday as a result of the current industrial dispute with the engineering unions.

Mr Nott proposes therefore to use the opportunity to speak about the impact of this action on employment and exports.

He would welcome the views of the Prime Minister and his colleagues on his draft and suggests that these might be given at the meeting this evening to discuss the Government's approach to industrial relations issues.

Contd...

CONFIDENTIAL

From the Secretary of State

I am therefore copying this letter and the enclosure to the private secretaries to Ministers attending that meeting, to Richard Prescott (Paymaster General's Office) and to Mr John Hoskyns.

Yours sincerely,

Tom Harris

T G HARRIS
Private Secretary

DRAFT PRESS NOTICE

BA TRISTARS ORDER

"An unhappy day to announce good news"
says John Nott

Mr John Nott, Secretary of State for Trade, speaking at Heathrow airport today before leaving on a three week tour covering the West Coast of the United States, Fiji, New Zealand and Australia said "On my departure this morning for California - a market which is approximately the size of the United Kingdom as a whole - it is a matter of considerable pride that I can announce my approval of a further order for British Airways for the purchase of six Lockheed Tristar 200 aircraft - powered by Rolls Royce RB 211 engines".

"These Tristars will be part of British Airways' new fleet, replacing outdated, noisy and less efficient planes."

"As well as providing modern, wide-body capacity, the Tristar will use much less fuel - an important priority for all airlines. They will help British Airways to keep its share of the growing international airline market".

Mr Nott is due to visit Lockheed's Palmdale Plant where the TriStar is built and the Mountain View headquarters of the Fairchild Corporation, which is collaborating with GEC in establishing a micro-electronics plant on Merseyside. He commented:

"Lockheed is Rolls Royce's largest customer - and together with Boeing - it provides among the most exciting opportunities for British technology in the 1980's. The market for aero-engines - particularly in the United States domestic market - is a huge one, and the record of Rolls Royce in delivery is second to none. The reliability of its products and the capacity to deliver are rightfully matters of

considerable British pride and satisfaction".

"As I depart to play my part, on behalf of British exports and technology in this huge market," said Mr Nott, "I am mindful of the dedication, enthusiasm and determination of thousands of skilled men on the shop floor at Rolls Royce - together with a generation of salesmen, middle management and senior management who have successfully sold this great British product in the toughest and most competitive market in the world".

"You can imagine my equal dismay - and concern - on behalf of my country and of its reputation abroad that/the very day of my departure Rolls Royce should be crippled by an absurd dispute which has been fomented by certain leaders of the Engineering Unions who have pursued their overtime ban - and their "days of inaction" - apparently without full consultation with their own members on the shop floor - and in total disregard of the problems which face British exports in a (developing) recession in world trade".

/"This industrial action has already destroyed the jobs of 90 shipyard workers in my own constituency (in the firm of Holmans). The AUEW claim that their action is to raise the wages of low-paid workers. In fact, it is destroying their jobs. The paid-up union workers in my own constituency (which already has the highest unemployment in the country) have said to me "what is the use of £80 per week if you haven't got a job". Most of them earn over £100 per week on overtime - and they have no dispute with the management which has now called in a Receiver at the yard."/7

OR

/"Already this industrial action has destroyed jobs in a number of small industrial companies including a shipyard in my own constituency"/7

"This tragic loss of employment among small business is a warning to the country. It is a warning to the supplies of Rolls Royce. It is a warning to millions of honest, decent, loyal and hardworking Union members that the time has come to stop this total and senseless

disregard for jobs - and the future prosperity of their country. The shop floor must demand to be consulted - and loyalty must be tempered by determined independence and common sense on the part of each and every worker."

"After the events of last winter - union leaders are hesitant about accusing the Conservative Government of "confrontation". But we are now accused of "provocation" because we point out all the things that everyone in the country knows are wrong. No doubt these remarks will be called "provocative". Elements in the Union movement seem to expect a one-day debate about the problems - a debate in which they can speak and criticise while others listen, but where advice and criticism of themselves and their actions is shouted down".

"The Government is not- and will not - attack Trade Union rights. We are engaged in a debate about Trade Union immunities which is quite a different thing. We are engaged in a determined effort to create the environment for new jobs and higher wages. But it is the duty of a democratically elected government to decide which groups in the Community should have legal immunities denied to others. No-one else in our society except a few Trade Union leaders proposes "vigorous resistance" to minor changes in the law. Few people outside the top echelons of some Trade Unions can understand how their action can raise the living standards of their members. "Days of inaction" do not produce more goods and services, for this is the only way of raising the take-home wages of our workers to West German standards. How can pay increase if national output does not increase? If the TUC can provide a formula for higher pay with lower output it is true that all our problems would be solved!

"What chance is there that the dreaming and ranting, characteristics of too many speeches at the TUC conference last week, will give way to realism and a two-way debate. In fact, the signs are not unhopeful. More and more union members are beginning to question their leaders action. Men on the shop floor are asking the question "what is the

purpose of undermining the tremendous reputation of British engineering and technology, represented by Rolls Royce - and thousands of jobs up and down the country in small engineering companies when we are not in any kind of industrial disute."

"This country still retains a world-wide reputation for engineering skill and excellence. As the Secretary of State for Trade I will play my part in selling Britain's products in the increasinly competitive conditions of the early 1980's. But neither I, nor any other salesman, can win and retain the orders of British Industry unless we can cease the kind of senseless action which is characterised by the current engineering dispute - and the closure of Rolls Royce as I depart today".

CONFIDENTIAL

In PM's mtg folder

PRIME MINISTER

In preparation for our meeting on Wednesday evening, 12 September, I attach a note prepared by officials covering the Trades Union Congress and some thoughts about the possible government approach to industrial relations issues in the future. It might also be attached useful for us to discuss John Hoskyn's paper on the follow-up to the Trades Union Congress which he sent me under cover of his letter of 5 September.

I am copying this to the Chancellor of the Exchequer, the Lord President, the Secretary of State for Industry and the Secretary of State for Trade.

J P

11 September 1979

CONFIDENTIAL

TRADES UNION CONGRESS 1979 AND FUTURE GOVERNMENT APPROACH TO INDUSTRIAL RELATIONS

1. This note briefly records some of the main impressions provided by the debates and the decisions taken.

2. Above all else, it was evident that the leadership of the TUC was anxious to demonstrate a unity and seek to secure a role in the aftermath of the General Election; conscious that a special relationship of influence with government had been lost and conscious too that industrial action last Winter had alienated many trade unionists from traditional support of the Labour Party. There was no public expression of regret for the failure of the attempted maintenance of a social contract, other than the reiteration of the claim that the Labour Government had inevitably courted the consequences of damaging industrial action in seeking to insist on a 5 per cent wage ceiling for the 1978/79 wage round. Ready support was accorded the view that the effects of this action had been widely distorted by the media.

3. It was also evident that at present the trade union movement has no effective leaders. These traditionally come from the power base that only the largest unions can provide and the TUC secretariat cannot fill the vacuum.

4. With this as background the important consequences were:-

(a) A ready display of unity was achieved by outright rejection of and unanimous opposition to the Government's industrial, economic, energy, and social policies. There were no dissenting voices to be heard and no attempt was made to construct reasoned alternative approaches which might have carried with them some exercise of obligation by the movement itself.

(b) Congress decided to enter immediate discussions with the Labour Party to formulate economic and social policies to form the basis of a programme for a labour administration and by its endorsement of the TUC's "Campaign for Economic and Social Advance" directed towards the public generally as well as union members. Mr Murray was at pains to forestall criticism, that industrial action in defence of members' interests could be accounted political.

(c) The more militant influences in the movement already prepared to seek to mount direct action against the Government's policies and their consequences are likely to have been encouraged by the outcome of Congress even though more moderate influences were successful in circumventing much of what they attempted. An amendment calling for resistance by all means, including the calling of mass demonstrations, was moved and seconded by General Secretaries who are members of the Communist Party and, though opposed by the General Council, was only very narrowly defeated.

5. On industrial relations legislation, a motion was unanimously passed rejecting the Government's proposals and calling for resistance to them both by a publicity campaign and by the TUC providing advice and assistance to unions on the practical implications and any necessary support to unions faced with what might be judged unacceptable judicial decisions under current legislation. The General Council avoided a proposal that the TUC should withdraw from discussions with the Government, but it was evident that there can be no possibility of compromise or agreement and the motion provides a basis on which could be built demands for united support for unions and members affected by the proposals when enacted.

6. In the major debate on economic policy a series of motions were passed unanimously. These included the components of an alternative economic strategy, eg a balanced growth of employment and output in the public and private sectors, higher investment, price stabilisation, the maintenance of the "Social wage", a strengthening of publicly-owned industries, defence of the role of the National Enterprise Board, control of multi-national companies, maintenance of job creation programmes, to be urged on the Government.

7. Of greater significance was a motion requiring the General Council to initiate a national campaign to assist unions in negotiating a 35-hour week without loss of pay as a means of combating unemployment. This is not new but there are now signs that a reduction in minimum working hours will be more vigorously sought by unions this Winter and it is already providing the major difficulty in the way of a settlement in the national engineering dispute. A concession in that industry would spread quickly.

8. Congress reaffirmed its opposition to any form of wage restraint, as was to be expected, including any restraint provided by cash limits in the public sector. It rejected the approach of reductions in manpower to finance pay increases in the public services and the policy of not increasing cash limits to meet all foreseen increases in costs.

9. No specific pay targets were endorsed for the coming pay round. Traditionally the TUC accepts that claims and settlements must be left to constituent unions, although target minimum basic rates have been established from time to time. In debate however speakers were insistent on the need to defend living standards by which was meant the justification for increases in pay to fully reflect the prospective increase in the RPI. The RPI was derisively dismissed as any guide. It is not however possible to judge that any decision by Congress will itself determine the level of pay expectations or the extent of industrial action which might be experienced. The most important determinants will remain the forecast level for the RPI, coupled with the level of the last settlement for the group concerned against the subsequent movement of the index, together with what might begin to be perceived as a "going-rate". For the latter, early major settlements and what is thought to be the success or otherwise of industrial action will be critical.

10. As for public expenditure, the General Council was instructed to develop and co-ordinate with unions a campaign to oppose cuts in all "socially desirable" expenditure, including the possibility, for example, of a national day of action. The General Council will prove reluctant to adopt such a possibility but it is not possible to be sure that the pressures for such action will not grow to the point that some such demonstration could be in prospect with each union being left to decide whether to instruct its members to participate. Perhaps more significant was the decision to give full support to unions opposing the loss of jobs and services in the public services. Although this is unlikely to lead to any sympathetic industrial action, it provides support for the decisions already taken by some unions, eg NUPE and the CPSA, to resist economies by the industrial action of their members.

11. It is too soon to reach any detailed assessment of the significance of the Congress for industrial prospects in the coming months. Unions individually will determine their objectives for pay and the extent to which they might be prepared

to resist the consequences of the curtailment of public expenditure. The rhetoric of Congress is likely to prove of less significance than unions' own judgements on what might be achieved by industrial action and at what cost. Nevertheless, there are evident dangers from a situation in which the TUC, inadequately led and united in little but outright opposition to the Government, has sought to demonstrate a unity in defence of members' interests. The general climate has not improved and can well have worsened.

12. This makes it the more important that public support, including the support of many individual trade union members, needs to be secured and maintained for the implementation of the Government's policies. And that both the objectives and the selected means are fully and carefully explained in reasoned argument. Direct challenges to the TUC or to its leading personalities are unlikely to be helpful and more likely to be viewed as a drawing of battle lines for confrontation on which militancy could thrive. The many difficult issues ahead in securing fundamental change will all need to be handled sensitively as well as firmly. The more moderate establishment in the TUC is fearful of the militant pressures which might be released in the movement and, conscious of the movement's disarray, less than confident of its ability to withstand them. It recognises that the Government has years of office ahead and would prefer to await the consequences of the policies being adopted, whether acceptable in outturn or not, rather than be pushed to confrontation. The apparent weakness of the TUC increases rather than lessens the risk that its inherent authority and ability to damage and frustrate could come to be deployed against the Government.

Department of Employment
10 September 1979

Industrial Policy.
CF - pls file on
industrial relations file
TL.
10/9/79

status in law so that it could be taken into account in court proceedings. The Secretary of State would, however, intend to make use of the power only in the absence of comprehensive and effective voluntary guidance.

5. Public Support for Government Policy

Members may find the following results of a MORI opinion poll, conducted earlier in the year, of interest:

	Trade Unionists	All
...Agree with a ban on secondary picketing:	86	89
...Agree that there should be a limit on the number of pickets allowed at any location:	76	82
...Agree that strikes should not be called until there has been a postal ballot of union members:	82	89
...(not published). Agree with proposal to introduce postal ballots in election of union officials, to be paid for by Govt.:	66	65

(Daily Express 6/2/79 and 7/2/79)

Conservative Research Department,
24, Old Queen Street, London SW1.

MAP/LAS
12/7/79

SofS. In PM's Mtg folder
To see. Despatch
14/9.

6/9.

10 DOWNING STREET

5 September 1979

The Rt Hon James Prior MP
Secretary of State
Department of Employment
8 St James's Square
LONDON SW1

Dear Jim,

I discussed the follow-up to Trades Union Congress yesterday, with Angus, and we agreed that I would put some thoughts down on paper as to how we should do the follow-up. The attached note is self-explanatory, and I have copied to the Chancellor, Secretary of State for Trade, and the Paymaster General.

Yours

JOHN HOSKYNS

cc Mr Taylor
Mr Norris
Mr Waring
Mr Wilson
Mr D B Smith
Mr Dent
Mr Allison
Mr Ratt
Mr Butcher
Mr Mooney
Mr Shepherd.

To see. This has been sent to the SofS tonight 14/9

FOLLOW-UP TO CONGRESS

1. INTRODUCTION

1.1 The "Quick Campaign" is designed to head-off excessive wage claims over the next two to three months. This will lead into the "Long Campaign", on which Norman Strauss and I are working (with a paper to be ready in early October). The Long Campaign must propose a coherent strategy for communications right through to the next election.

1.2 The Quick Campaign must, of course, lead naturally into the Long Campaign. It has to do three things: first, keep the union leaders on the moral and intellectual defensive; second, keep hammering home the bare essentials of economic reality; third establish beyond any doubt the Government's determination to cure inflation, leaving the responsibility for excessive unemployment firmly with the unions.

2. CONGRESS AND THE CHANCELLOR'S SPEECH

2.1 The objective of the Chancellor's speech was to set the criteria by which the media, and thus the public, could judge the relevance of Congress, and thus of the union movement, to the country's problems. The aim was to try to break out of the past habits of thought, in which people have been persuaded to accept that all life's hardships are the result of Conservatism, the market, capitalism, and the private sector; with the trade unions cast as benevolent prosecuting council on behalf of all ordinary decent exploited people etc. It is essential that this process of putting the onus of proof on the unions - a process which started last winter - should be followed through. Hence the Chancellor's speech.

2.2 It seems to have worked quite well, but it is important that our messages stay critical but reasonable, as the Chancellor's was, leaving the more explicit attacks, ridicule, etc, to the media.

3. WHAT SHOULD THE FOLLOW-UP ACHIEVE?

3.1 Having told people what to look for at Blackpool, we now have to make sure they did so. The media will no doubt do some of this for us, but we can't leave that to chance.

3.2 The follow-up should therefore remind people of the criteria proposed by the Chancellor and then summarise and comment on the Blackpool proceedings to show how they measured up.

3.3 The way we do it has to strengthen our own authority. We should not pull any punches, but it should be scrupulously honest, reasonable, questioning; on no account scornful or ridiculing.

SUGGESTIONS FOR FOLLOW-UP

4.1 I understand from the Paymaster General that the Secretary of State for Employment is likely to be interviewed on radio, perhaps also TV, on Thursday or Friday. If that is the case or he decides to make a short statement, I suggest at Appendix A some possible ingredients. I also understand from the Paymaster that the Secretary of State for Trade will be making either a speech or publishing a letter to his constituents on Saturday, for the Sunday papers, and that this would be more of a complete rounding-up of the Blackpool proceedings. Appendix B is a very rough shot at the sort of thing he might say. It quotes union leaders' own words, as they are very telling.

JH
5 September 1979

SOME POINTS FOR INTERVIEWS: SECRETARY OF STATE FOR EMPLOYMENT

You might like to consider making some of the following points:

(1) Most people know now that the British economy faces a rough passage over the next couple of years. In his speech last weekend, the Chancellor urged the union leaders to talk about the real problems and issues this raised rather than using Congress in the traditional way, as an anti-Conservative political rally. People must judge for themselves, but I think that most of us would agree that Blackpool was a disappointing and depressing spectacle. Having rejected the suggestion that they are living in an economic dream world, much of what was said confirmed beyond any doubt that they are still dreaming.

(2) I am afraid that I was very disappointed with Tom Jackson's opening speech as President. He said (I quote him verbatim here so that you can paraphrase him as you like): "We cannot and indeed will not restrain wage demands when the Government has abandoned all attempts to control the rocketing level of prices. . . . We must defend our members' living standards."

Many people must despair when they hear statements of that kind. Surely Mr Jackson knows that the re-acceleration of inflation is largely the result of the 1978 pre-election boom and very big wage awards at the beginning of this year, together with Labour's readiness to print the money for it? Surely he knows that oil prices have risen substantially since we came into office, and that affects almost all prices? Does he think that Labour's attempt to control prices between 1974 and 1979 - when we had the highest inflation ever - was a success? Does he really think that he can solve these problems, by stopping work and demanding higher wages? Perhaps he believes that we really <u>can</u> all go on strike for West German living standards? Doesn't someone in the TUC have a clear enough understanding of elementary economics to to able to explain the simple realities to their members? How on earth are "days of action" by the union movement - or more precisely, days of inaction - going to make their members or anyone better off? We've heard this sort of stuff now for the last 15 years. It really is time for something different.

(3) I have said, on many previous occasions, that union leaders and officials should not claim to speak for all their members, since barely half of all trade unionists vote Labour. This time we saw a responsible and moderate union leader - Mr Terry Duffy - admitting publicly the extreme Left-wing pressure on him to take immoderate actions.

What we are beginning to see, I think, is the crisis of Left and Right which is rocking the Labour Party itself, now beginning to show in the trade unions. In the past, suggestions of Left-wing influence have always been dismissed as "Reds under the beds" scares. Indeed, just before the election, Mr Callaghan and Mr Murray pooh-poohed such remarks. Now, Shadow Ministers and trade union leaders alike are publicly admitting that they were true. I hope that message is not lost on the public.

(4) So it's been a disappointing and worrying Congress, because if trade union leaders and negotiators fail to understand the measures which any Government has to take to squeeze out inflation - indeed, Mr Healey took just these measures in 1975 before they lost their nerve again in 1978/9 - they are going to do their own members great injury in terms of unemployment. But I am not too despondent. I believe that as the Congress atmosphere fades, reality will, after all, begin to break in. On our side, therefore, we must patiently and persistently explain the realities and prepare people for them.

POSSIBLE STATEMENT OR SPEECH: SECRETARY OF STATE FOR TRADE

The days of Trades Union Congress at Blackpool have been days of judgment. They have given the people of this country a chance to see what sort of lead the TUC is going to give to union members and the country as a whole, in the difficult times ahead.

Last weekend the Chancellor said that the union leaders were living in a dream world and urged them to come out of that dream before it was too late. Everything we saw at Blackpool suggests that the Chancellor was right.

The burden of proof now rests on the unions. They are on trial. It is for their leaders to show the country what the unions are for and how well they can do it. The experience of last winter, and the speeches of last week, will together have ensured that the public will look more critically at the trade unions. In the past, union leaders have tended to attack anyone who criticises them. That has been very unhealthy for the country because it has meant that genuine discussion of what is wrong, and proposals for change, never takes place.

Look for example at last week's unanimous approval of a resolution demanding "vigorous resistance to fundamental attacks on trade union rights". [redacted], These rights are not God-given. It is the country, through its democratically-elected Government, that decides whether certain groups should, in particular circumstances, have legal immunities which are denied to others. No-one else in our society proposes "vigorous resistance" to changes in the law.

We heard Mr Joe Wade of the National Graphical Association saying, "If our opponents will not listen to the voice of reason, let them feel the full weight of our industrial strength". Who is sounding reasonable here?

After the events of last winter, union leaders are less ready to accuse the Conservatives of confrontation. Confrontation has come to mean something rather different. But we are still accused of provocation, because we point to things that everyone knows are wrong. For example, Mr Moss Evans says that if we continue to "provoke" the unions, then we will quite naturally "get a response". It appears that that response

may take the form of a day of action. But it is really just another day of inaction, in which people are encouraged to produce nothing, in order to win higher living standards.

Mr Evans promises "bloody revolution" if large numbers of jobs are lost at British Leyland. Meanwhile, the Confederation of Shipbuilding and Engineering Unions deprives industry of ~~millions~~ hundreds of thousands of working days each week by strike action. Who is protecting who?

We see the same lack of reasoned argument on economic matters. Mr Tom Jackson tells us that union members cannot hold back on pay demands. Yet it appears that they can easily hold back on production, by going on strike. What can they do to increase pay, if national output has not increased? If Mr Jackson can give us a formula for doing that, many of our problems would be solved. As it is, the action he and his colleagues propose is dangerously close to the one suggested by the Chancellor last weekend - that perhaps the whole country should go on permanent strike for West German living standards!

And in case you think that this is an exaggeration, listen to what a Transport and General Workers spokesman said when promising that lorry drivers would claim a 100% increase. "Our lads drive on the continent and see what their wages are. They get twice as much as we do, and we will be looking for something in line with them."*

The events of last winter confronted most people's sense of right and wrong. Much of what was said at Blackpool insulted their intelligence. What chance is there that this dreaming and ranting will give way to realism and debate? In fact, I think that we should be hopeful - patient and calm, but hopeful. More and more union members are beginning to question their leaders' actions. There are responsible leaders who know how much has gone wrong, though few of them are prepared, as Mr Sidney Weighell was, last week, to raise any of the real issues for public discussion.

We have to help the trade union movement to find its way again. It takes two to consult. Each side must listen. It does not mean that they have to agree, but they must listen to other points of view and give reasoned answers. Most people know today that the union

---

*Report in the Evening Standard, 4 September 1979

leadership will only accept a one-way debate with the public - a debate in which they can speak and criticise while others listen, but where advice and criticism of themselves and their actions is immediately shouted down.

I am sad that the union leaders did not seize the opportunity at Blackpool to discuss the things that really matter. But we must do so, and continue patiently doing so, until they are ready to join the debate.

It is crucially important that everyone, trade union members and non-members alike, understand that this Government is resolved to cure inflation. If union leaders try to extract big pay increases from a no-growth economy, which is what we now have, at the same time as we squeeze out inflation, all they will do is put hundreds of thousands more of their members and other workers into the dole queues. (This last paragraph might be better inserted somewhere else, but it should be a standard part of every speech and interview for the next three months.)

CONFIDENTIAL

End Pol

Caxton House Tothill Street London SW1H 9NA

Telephone Direct Line 01-213 6400

Switchboard 01-213 3000

M Pattison Esq
Private Secretary
Prime Minister's Office
10 Downing Street
LONDON SW1

Top Copy to:-
Parliament, Pt 2,
Legislation

4 September 1979

Dear Mike

In your letter to John Stevens of 29 August you asked for a progress report for the Prime Minister on the preparation of the trade union legislation.

In the case of the "first wave" of the proposed changes - that is the main Manifesto commitments on picketing, the closed shop and public support for union ballots - we are still in the process of consultation. The CBI Council meets on 19 September and we shall be receiving their views directly afterwards. The Secretary of State is then intending in accordance with his previously-agreed timetable to put detailed legislative proposals on these three matters for decision to E Committee in the last week of September. Meanwhile arrangements have been made with the Chancellor of the Duchy to enable Parliamentary Counsel to undertake appropriate work on drafting in advance of the policy decisions

In the case of the "second wave" changes - amendments to the Employment Protection Acts, the statutory recognition provisions (Sections 11-16) and Schedule 11 - consultations will be completed in the second half of November.

Then there is the question of trade union immunities. The Manifesto promised an immediate review in the light of recent decisions. The review has been carried out by officials and the Secretary of State will be putting this too to E Committee in late September with his recommendations.

The exact timing of the introduction of legislation will therefore depend on the decision to be taken by E Committee on whether there is to be one or two Bills.

I am copying this letter to Murdo Maclean (Chiel Whips Office), Martin Vile (Cabinet Office), and John Stevens (Chancellor of the Duchy of Lancaster's Office).

Yours Sincerely,

ANDREW HARDMAN
Private Secretary

Drain Knight 2.9.79 1st p.l 2

This is an article by Mr Prior which will appear in this Sunday's News of the World. Fortunately, reasonably complementary to the Chancellor's speech. JL 31/8

ADJUSTING THE BALANCE

You don't have to be an expert to know that industrial relations in Britain need improvement. You only have to go abroad to see how far we are slipping down the league table of prosperity. Commonsense tells us all that we cannot go on as we are.

For far too long the relations between both sides of industry have been operatin like a see-saw. In the early 1970s it was the Industrial Relations Act that everyone said was tipping the balance. Tipping it too far in favour of the bosses and too much against the interests of the unions.

Now the balance has tipped too far in the other direction. Last winter showed to the whole nation that the weight of power has shifted. A few militant people can now bring essential services to a halt. They can involve themselves in the disputes of others where they may not be wanted. They can take their own disputes to other people's places of work, where they may not be welcome.

This is not democracy. Nor do I believe this is the true heritage of the trade union movement. And the electorate of this country - of whom over 12 million are themselves trade unionists - did not believe it either when it came for them to voice their own private opinions at the ballot box last May.

This Government is not in business to bash the trade union movement. We are not attempting to sap the strength of the TUC. We believe a strong and responsible trade union movement has a major part to play in our economic recovery and we seek their co-operation.

But this Government is in business to restore the balance; to make sure that a few militants cannot lead the reasonable majority into actions they do not approve of for causes they do not believe in.

Anyone who has ever used a balance or even a weighing machine in a shop, will know that to get the pointer exactly on the right mark needs very gentle adjustment and pressure - not a great weight on one side or the other. That is why the measures that we are proposing to the TUC and the CBI need only tackle a few sensitive areas. This is not a plan for fundamental industrial relations change. And emphatically it is not a bosses' conspiracy to demolish a great democratic institution.

It is no secret that the Government is coming under just as much pressure from

some bosses to swing the balance much harder, as it is from those trade unionists who wish us to do nothing.

But we know from experience that the people best qualified to improve industrial relations are those people who work in industry - managers and the trade unionists.

* Management wants to get on with the job of running its business efficiently and profitably - and it is in all our interests that they should be given a fair crack of the whip.

* Unions want to get on with their job of improving the real living standards of their members. A fair day's work for a fair day's pay is still the name of the game and long may it remain so. But fair money cannot be wrung out of the country by unfair means. You can't get owt for nowt!

* The Government wants to create the right economic climate. That will not be done by setting management and unions at one another's throats. A team playing together will always beat 11 individuals concerned only with themselves. Similarly a good referee is not always blowing his whistle, but he sees that the rules are observed. The Government should only step in when the rules have gone wrong, and then only to make such changes as are absolutely necessary.

Of course we cannot command improvements in industrial relations through changes in the law. But what the law can ensure is that the right framework exists for everyone involved to have a say in what goes on and that abuses either by employers or unions are checked.

The law must:-

* PROTECT people whose jobs are threatened by a dispute in which they are not involved;
* SAFEGUARD the right to work free from obstruction and intimidation;
* GIVE proper protection to people who could lose their jobs because of the closed shop;
* ALLOW the voice of the majority in a trade union to be heard and acted upon - not just the will of a small minority;
* ENCOURAGE the creation of new jobs by revising some laws that discourage employers from taking on more workers.

To this end we have put out three discussion papers so that everyone concerned can see just what is being proposed. The areas that they deal with - the areas where we believe the balance needs adjusting are the closed shop, picketing and

On the closed shop we say, let the man or woman who has a real, deeply held personal reason for not wanting to belong to a trade union be free to take that view without the threat of losing their job without compensation.

On picketing we say, limit picketing to those people who are taking part in a dispute at their own workplaces. And if people insist on taking their disputes to premises that are not involved then they should no longer be immune from the possible consequences if an employer thinks his business is being unlawfully damaged.

On secret ballots we say, everyone in a union should have the chance to make his views count without fear of reprisals. The Government would pay the costs of secret ballots held to decide union elections and other important matters.

We are not saying ban strikes. The right to withdraw labour in a dispute is a time-honoured and legitimate action and nothing should change that.

We are not saying outlaw the closed shop. It has been a fact of our industrial life for a long time.

We are not saying arrest the pickets - peaceful pursuasion at your own place of work is a democratically sound principle. But it should not be allowed to escalate to the point where it becomes intimidation or threatens the jobs of others not involved in the dispute.

We are not saying send trade unionists to prison. The determined martyr has always had that opportunity if he was hell bent on it. Nothing we are proposing would add to that in any way.

Some people stand to lose by these proposals. But they are few in number - the mindless militants who stand for nothing but their own self-importance.

An awful lot of people stand to benefit - not just people in the trade union movement who want to get on with the job but the pensioners, the poor and the disadvantaged who have to depend on the rest of us doing a decent day's work in order to ensure any hope of a more prosperous future for themselves.

And all it needs is a bit of common sense to adjust the balance.

SUBJECT

CONFIDENTIAL

MAP
cc Master

NOTE FOR RECORD

The Prime Minister spoke to the Secretary of State for Employment on the telephone at 1315 on 23 August.

Mr. Prior said that he wished to report to the Prime Minister on his discussions with the TUC Economic Committee the previous day. The TUC side had been fairly intransigent, but he had expected this. Their position was illustrated by the fact that their Press statement had been written in advance. Despite the difficulties, he considered it important to be seen to be going through the motions on consultation.

The Prime Minister said that she strongly agreed with the point he had made on radio about the current economic difficulties being exacerbated as a result of last winter's industrial disruption. She asked Mr. Prior how the negotiating position of the trade unions could be consistent with the fact that more trade union members had voted Conservative in the last Election than ever before. Were the views of these trade unionists being represented? It seemed that the Labour Party's position, not the position of trade unionists, was coming through.

Mr. Prior said that the consultation process would have to be gone through, otherwise there would be difficult repercussions. But the going would remain rough. Harry Urwin had done most of the talking, with some support from Len Murray. The group of 20 had delegated these two to speak, and he had been specifically asked not to put questions to others. The meeting had lasted 1 hour 50 minutes. It had got nowhere. The trade union side accused the Government of being woolly. He nevertheless was increasingly convinced of the need to stick to the toughest formulation for the forthcoming legislation. Otherwise the Government would be seen to be taking a feeble line. The Prime Minister confirmed that she agreed with this. Mr. Prior said that he was increasingly attracted by the prospect of introducing two Bills, with the first one narrowly drawn to limit the scope for amendments, and obstruction in Committee. The Prime Minister argued that it would be impossible to push any Bill through quickly. If the Government introduced one brief

/Bill

CONFIDENTIAL

Bill, but failed to get this through quickly, it would give the Opposition a much bigger handle with which to tackle the next Bill. She was therefore inclined to tackle one Bill. If there were two, both would require the use of the guillotine, there would be two Committee Stages, and problems would be considerably increased. Mr. Prior said that he would wish to discuss this further with the Prime Minister. In the meantime, he had to conclude consultations on issues such as employment protection, and immunities. An important decision of the House of Lords was due in November. The Prime Minister said that Mr. Prior should lay down what the law was to be, without too much attention to the prospective Lords decision. This might well not come through in November. Mr. Prior pointed to the risk of criticism if the Government was pre-empting this decision. The Prime Minister said the Government was entitled to lay down what it wanted for the Parliament to consider. Mr. Prior said that would not disarm the likely criticism. The drafting would be easy, but the passage of the Bill would be difficult. The Lord Chancellor had confirmed that the Lords decision could not be expected before November. The Prime Minister thought this made it likely that there would be no decision before Christmas.

Mr. Prior drew attention to the Donovan rulings. The Prime Minister pointed out that some of his extensions of immunity had been overturned by later decisions. This underlined the stronger case for laying down the law. Mr. Prior commented that he agreed, but was searching for the best way of putting this into effect.

23 August 1979

Ind. PS

CONFIDENTIAL

4/ICOW PRIME ~~MINISTER~~

Here are the DE comments on the TUC correspondence, which is attached. X is the point which comes over most strongly in Len Murray's letter.

NJS

MR HARDMAN

cc Miss Durning
Mr Wilson
Mr D B Smith
Mr Tucker
Mr Hillier

NO 10 AND THE TUC RESPONSE TO THE INDUSTRIAL RELATIONS WORKING PAPERS

I understand that No 10 are sending to the PM in Lusaka Mr Murray's letter of 30 July and the S of S's response of 31 July and have asked whether there is any point in particular to which they should draw the PM's attention.

2. I think that they could usefully make three points to her:

(a) the good thing is the TUC's acceptance of the invitation to talk on 22 August despite voices raised against. We should be able to prolong these discussions into September so that the TUC Congress is not presented with a final Government position to attack.

X (b) not unexpectedly, the proposal which attracts most TUC fire is that to remove immunity in respect of direct inducement of breaches of commercial contracts (third paragraph of Mr Murray's letter). As the working paper recognised, this proposal goes beyond picketing to general union immunities and it is the main plank of the TUC claim that the proposals are not limited but represent a major incursion into basic union rights. It is noteworthy that the second paragraph of Mr Murray's letter links this to other Government action and reviews as evidence of a "wider programme" of assault on unions.

(c) the General Council's position and detailed comments on the Government's proposals are being widely circulated by the TUC to member unions. The document will now therefore provide a platform

/of

CONFIDENTIAL

of informed criticism, endorsed by the General Council, of the Government's proposals on which the unions can close ranks. We can now expect union opposition to build up to a crescendo at Congress and to be carried on beyond in a sustained opposition propaganda campaign of the kind at which the TUC are skilful. The S of S's reply was therefore sent off immediately and publicised in order not to allow the canard of a creeping assault on basic union rights to remain unchallenged.

pp D J DERX

3 August 1979

COVERING CONFIDENTIAL

Ind Pol.

8 ST. JAMES'S SQUARE LONDON SWIY 4JB
Telephone Direct Line 01-214 6025
Switchboard 01-214 6000

N Sanders Esq
Private Secretary
10 Downing Street
LONDON SW1

2 August 1979

Dear Nick,

As requested, I enclose some comments prepared by our officials on salient points concerning the TUC response to the Industrial Relations Working Papers.

Yours sincerely

ANDREW HARDMAN
Private Secretary

Prime Minister.

Agree
2 VIII

FOLUS Ø32/Ø1

OO LUSAKA

GR 11ØØ
CONFIDENTIAL
FM FCO Ø117Ø7Z AUG 79
TO IMMEDIATE LUSAKA
TELEGRAM NUMBER 591 OF 1 AUGUST
FOLLOWING FOR WHITMORE (PRIME MINISTER'S PARY)
FROM SANDERS (NO 1Ø).
YOU ASKED ABOUT THE EXCHANGE OF LETTERS BETWEEN THE T U C AND MR PRIOR. WE SHALL BE SENDING OUT A COMPLETE SET OF THESE PAPERS IN FRIDAY'S BOX, BUT YOU MIGHT LIKE TO HAVE THE TEXT OF THE LETTERS CONCERNED IN ADVANCE. THE T U C COMMENTARY IS TOO LONG TO BE SENT CONVENIENTLY.
FOLLOWING IS THE TEXT OF LEN MURRAY'S LETTER OF 3Ø JULY.
QUOTE THANK YOU FOR YOUR LETTER OF JULY 4 AND ITS ACCOMPANYING WORKING PAPERS ON THE GOVERNMENT'S PROPOSED INDUSTRIAL RELATIONS LEGISLATION IN THE AREAS OF PICKETING, THE CLOSED SHOP, AND FINANCE FOR BALLOTS.
THESE HAVE NOW BEEN FULLY CONSIDERED BY THE GENERAL COUNCIL AND I ATTACH A DOCUMENT WHICH SETS OUT THE T U C'S VIEWS. THE GENERAL COUNCIL REACTED VERY STRONGLY AND REJECT THE CLAIM THAT THE PROPOSALS ARE 'LIMITED'. THE PROPOSALS, IF ENACTED, WOULD BE A MAJOR INCURSION INTO THE EXISTING BASIC RIGHTS OF WORKERS AND THEIR TRADE UNIONS. MOREOVER, THEY APPEAR TO BE PART OF A WIDER PROGRAMME BEING FOLLOWED BY THE GOVERNMENT IN THE FIELD OF INDUSTRIAL RELATIONS LAW. THE GOVERNMENT ARE ALREADY ALTERING THE PROVISION ON UNFAIR DISMISSAL AND REDUNDANCY CONSULTATION AND WE KNOW THAT THE GOVERNMENT ARE ALSO EXAMINING, SEPARATELY FROM THE PROPOSALS IN THE WORKING PAPERS, UNION 'IMMUNITIES' IN TRADE DISPUTES AND ALSO PROVISIONS IN THE EMPLOYMENT PROTECTION ACT.
THE GOVERNMENT'S PROPOSALS IN THE PICKETING PAPER WOULD INTRODUCE FURTHER MAJOR CONSTRAINTS IN CIVIL LAW IN ADDITION TO THE EXISTING CIVIL AND CRIMINAL LAW PROVISIONS. EVEN MORE IMPORTANT, THE PROPOSALS IN THIS PAPER GO MUCH WIDER THAN 'PICKETING' AND COULD SIGNIFICANTLY WEAKEN THE GENERAL FRAMEWORK OF WORKERS' AND UNIONS' RIGHTS IN TRADE DISPUTES TO THE EXTENT OF MAKING THEM LIABLE WHEN INDUSTRIAL ACTION INDUCES BREACHES OF COMMERCIAL CONTRACTS, AS IT FREQUENTLY DOES.
THE PROPOSALS IN THE PAPER ON THE 'CLOSED SHOP' COULD DISRUPT LONGSTANDING UNION MEMBERSHIP AGREEMENTS BETWEEN EMPLOYERS AND UNIONS AND CAUSE INDUSTRIAL RELATIONS DIFFICULTIES IN COMPANIES AND INDUSTRIES WHERE THE PRESENT ARRANGEMENTS HAVE OPERATED SATISFACTORILY AND WHERE THERE IS NO WISH BY THE PARTIES TO THE AGREEMENTS TO HAVE THEM CHANGED. AS YOU KNOW, AN INDEPENDENT REVIEW COMMITTEE WAS ESTABLISHED IN MAY 1976 AND SINCE THEN HAS DEALT WITH APPEALS FROM INDIVIDUALS WHO HAVE BEEN DISMISSED FROM THEIR JOBS, OR TO WHOM NOTICE OF DISMISSAL HAS BEEN GIVEN, AS A RESULT OF BEING EXPELLED FROM, OR HAVING BEEN REFUSED ADMISSION TO, A UNION WHEN TRADE UNION MEMBERSHIP IS A CONDITION OF EMPLOYMENT.
THE GENERAL COUNCIL ACCEPT YOUR INVITATION TO MEET THEM AND AT THE MEETING WHICH WILL TAKE PLACE ON AUGUST 22 AT 3 P M THEY WILL BE EXPRESSING THEIR OPPOSITION TO THESE PROPOSALS AND SEEKING TO PERSUADE YOU THAT THE LEGISLATIVE INTERFERENCE FORESHADOWED IN THE WORKING PAPERS IS NOT THE WAY TO PROMOTE GOOD INDUSTRIAL RELATIONS.
WE BELIEVE THAT FURTHER IMPROVEMENTS IN INDUSTRIAL RELATIONS CAN BEST BE BROUGHT ABOUT BY CONTINUED ACTION WHICH HAS THE SUPPORT OF WORKERS, UNIONS AND MANAGEMENTS. THE T U C HAS A KEY ROLE IN THIS AND, AS YOU KNOW, HAS ISSUED GUIDES ON NEGOTIATING PROCEDURES, THE CONDUCT OF DISPUTES, AND UNION ORGANISATION. PROGRESS BY THESE METHODS COULD BE SET BACK BY THE LEGISLATION OUTLINED IN THE GOVERNMENT'S WORKING PAPERS UNQUOTE.
THE FOLLOWING IS THE TEXT OF MR PRIOR'S REPLY OF 31 JULY
QUOTE THANK YOU FOR YOUR LETTER OF 3Ø JULY CONVEYING THE GENERAL COUNCIL'S VIEWS ON THE WORKING PAPERS THAT I SENT TO YOU ON 4 JULY SETTING OUT THE GOVERNMENT'S PROPOSALS FOR LEGISLATION ON PICKETING, THE CLOSED SHOP AND FINANCIAL AID FOR POSTAL BALLOTS BY TRADE UNIONS.
I UNDERSTAND THAT THE GENERAL COUNCIL FEEL STRONGLY ABOUT THESE MATTERS, BUT I MUST SAY THAT I AM SURPRISED THAT THEY SHOULD REGARD THESE PROPOSALS AS OTHER THEN LIMITED COMPARED WITH THE LEGISLATION ON INDUSTRIAL RELATIONS CARRIED BY PREVIOUS ADMINISTRATIONS OF EITHER PARTY, AND NOTABLY BY THE LAST LABOUR GOVERNMENT. IT IS QUITE TRUE THAT THE GOVERNMENT IS ALSO REVIEWING THOSE PROVISION OF THE EMPLOYMENT PROTECTION ACT WHICH WE BELIEVE ACTUALLY PREVENT THE CREATION OF JOBS AND THAT WE ARE LOOKING TOO AT UNION IMMUNITIES, PARTICULARLY IN REGARD TO SECONDARY ACTION WHICH CAN SERIOUSLY AFFECT EMPLOYERS AND EMPLOYEES NOT DIRECTLY INVOLVED IN A DISPUTE. BUT THIS IS NO MORE THAN THE GOVERNMENT MADE PLAIN WAS THEIR INTENTION IN THE MANIFESTO ON WHICH WE WERE ELECTED. THEY ARE, AS YOU SAY, PART OF A WIDER APPROACH WHICH WE BELIEVE IS ESSENTIAL TO GET THIS

MR PRIOR. WE SHALL BE SENDING OUT A COMPLETE SET OF PAPERS
IN FRIDAY'S BOX, BUT YOU MIGHT LIKE TO HAVE THE TEXT OF THE
LETTERS CONCERNED IN ADVANCE. THE T U C COMMENTARY IS TOO LONG
TO BE SENT CONVENIENTLY.
FOLLOWING IS THE TEXT OF LEN MURRAY'S LETTER OF 30 JULY.
QUOTE THANK YOU FOR YOUR LETTER OF JULY 4 AND ITS ACCOMPANYING
WORKING PAPERS ON THE GOVERNMENT'S PROPOSED INDUSTRIAL RELATIONS
LEGISLATION IN THE AREAS OF PICKETING, THE CLOSED SHOP, AND FINANCE
FOR BALLOTS.
THESE HAVE NOW BEEN FULLY CONSIDERED BY THE GENERAL COUNCIL
AND I ATTACH A DOCUMENT WHICH SETS OUT THE T U C'S VIEWS. THE
GENERAL COUNCIL REACTED VERY STRONGLY AND REJECT THE CLAIM THAT THE
PROPOSALS ARE 'LIMITED'. THE PROPOSALS, IF ENACTED, WOULD BE
A MAJOR INCURSION INTO THE EXISTING BASIC RIGHTS OF WORKERS AND
THEIR TRADE UNIONS. MOREOVER, THEY APPEAR TO BE PART OF A WIDER
PROGRAMME BEING FOLLOWED BY THE GOVERNMENT IN THE FIELD OF
INDUSTRIAL RELATIONS LAW. THE GOVERNMENT ARE ALREADY ALTERING THE
PROVISION ON UNFAIR DISMISSAL AND REDUNDANCY CONSULTATION AND
WE KNOW THAT THE GOVERNMENT ARE ALSO EXAMINING, SEPARATELY FROM
THE PROPOSALS IN THE WORKING PAPERS, UNION 'IMMUNITIES' IN TRADE
DISPUTES AND ALSO PROVISIONS IN THE EMPLOYMENT PROTECTION
ACT.
THE GOVERNMENT'S PROPOSALS IN THE PICKETING PAPER WOULD INTRODUCE
FURTHER MAJOR CONSTRAINTS IN CIVIL LAW IN ADDITION TO THE EXISTING
CIVIL AND CRIMINAL LAW PROVISIONS. EVEN MORE IMPORTANT, THE PRO-
POSALS IN THIS PAPER GO MUCH WIDER THAN 'PICKETING' AND COULD
SIGNIFICANTLY WEAKEN THE GENERAL FRAMEWORK OF WORKERS' AND
UNIONS' RIGHTS IN TRADE DISPUTES TO THE EXTENT OF MAKING THEM
LIABLE WHEN INDUSTRIAL ACTION INDUCES BREACHES OF COMMERCIAL
CONTRACTS, AS IT FREQUENTLY DOES.
THE PROPOSALS IN THE PAPER ON THE 'CLOSED SHOP' COULD DISRUPT
LONGSTANDING UNION MEMBERSHIP AGREEMENTS BETWEEN EMPLOYERS AND
UNIONS AND CAUSE INDUSTRIAL RELATIONS DIFFICULTIES IN COMPANIES
AND INDUSTRIES WHERE THE PRESENT ARRANGEMENTS HAVE OPERATED
SATISFACTORILY AND WHERE THERE IS NO WISH BY THE PARTIES TO
THE AGREEMENTS TO HAVE THEM CHANGED. AS YOU KNOW, AN INDEPENDENT
REVIEW COMMITTEE WAS ESTABLISHED IN MAY 1976 AND SINCE THEN
HAS DEALT WITH APPEALS FROM INDIVIDUALS WHO HAVE BEEN DISMISSED
FROM THEIR JOBS, OR TO WHOM NOTICE OF DISMISSAL HAS BEEN GIVEN,
AS A RESULT OF BEING EXPELLED FROM, OR HAVING BEEN REFUSED
ADMISSION TO, A UNION WHEN TRADE UNION MEMBERSHIP IS A CONDITION
OF EMPLOYMENT.
THE GENERAL COUNCIL ACCEPT YOUR INVITATION TO MEET THEM AND AT
THE MEETING WHICH WILL TAKE PLACE ON AUGUST 22 AT 3 P M THEY WILL
BE EXPRESSING THEIR OPPOSITION TO THESE PROPOSALS AND SEEKING TO
PERSUADE YOU THAT THE LEGISLATIVE INTERFERENCE FORESHADOWED IN
THE WORKING PAPERS IS NOT THE WAY TO PROMOTE GOOD INDUSTRIAL
RELATIONS.
WE BELIEVE THAT FURTHER IMPROVEMENTS IN INDUSTRIAL RELATIONS CAN
BEST BE BROUGHT ABOUT BY CONTINUED ACTION WHICH HAS THE SUPPORT OF
WORKERS, UNIONS AND MANAGEMENTS. THE T U C HAS A KEY ROLE IN THIS
AND, AS YOU KNOW, HAS ISSUED GUIDES ON NEGOTIATING PROCEDURES,
THE CONDUCT OF DISPUTES, AND UNION ORGANISATION. PROGRESS BY
THESE METHODS COULD BE SET BACK BY THE LEGISLATION OUTLINED
IN THE GOVERNMENT'S WORKING PAPERS UNQUOTE.
THE FOLLOWING IS THE TEXT OF MR PRIOR'S REPLY OF 31 JULY
QUOTE THANK YOU FOR YOUR LETTER OF 30 JULY CONVEYING THE GENERAL
COUNCIL'S VIEWS ON THE WORKING PAPERS THAT I SENT TO YOU ON 4
JULY SETTING OUT THE GOVERNMENT'S PROPOSALS FOR LEGISLATION
ON PICKETING, THE CLOSED SHOP AND FINANCIAL AID FOR POSTAL BALLOTS
BY TRADE UNIONS.
I UNDERSTAND THAT THE GENERAL COUNCIL FEEL STRONGLY ABOUT THESE
MATTERS, BUT I MUST SAY THAT I AM SURPRISED THAT THEY SHOULD
REGARD THESE PROPOSALS AS OTHER THEN LIMITED COMPARED WITH
THE LEGISLATION ON INDUSTRIAL RELATIONS CARRIED BY PREVIOUS
ADMINISTRATIONS OF EITHER PARTY, AND NOTABLY BY THE LAST
LABOUR GOVERNMENT. IT IS QUITE TRUE THAT THE GOVERNMENT IS
ALSO REVIEWING THOSE PROVISION OF THE EMPLOYMENT PROTECTION
ACT WHICH WE BELIEVE ACTUALLY PREVENT THE CREATION OF JOBS AND THAT
WE ARE LOOKING TOO AT UNION IMMUNITIES, PARTICULARLY IN REGARD
TO SECONDARY ACTION WHICH CAN SERIOUSLY AFFECT EMPLOYERS AND
EMPLOYEES NOT DIRECTLY INVOLVED IN A DISPUTE. BUT THIS IS NO MORE
THAN THE GOVERNMENT MADE PLAIN WAS THEIR INTENTION IN THE
MANIFESTO ON WHICH WE WERE ELECTED. THEY ARE, AS YOU SAY, PART
OF A WIDER APPROACH WHICH WE BELIEVE IS ESSENTIAL TO GET THIS
COUNTRY MOVING AGAIN WITH A BETTER BALANCED FRAMEWORK OF LEGAL
RIGHTS AND OBLIGATIONS WITHIN WHICH UNIONS CAN OPERATE EFFECTIVELY
AND RESPONSIBLY. AND WE SHALL CONSULT FULLY ON THESE MATTERS AS WE
ESTABLISH JUST WHAT IT SEEMS RIGHT TO DO.
I SHALL EXAMINE VERY CAREFULLY THE COMMENTS ON THE GOVERNMENT'S
PROPOSALS CONTAINED IN THE PAPER ENCLOSED WITH YOUR LETTER. I DO,
HOWEVER, WANT TO MAKE PLAIN IMMEDIATELY THAT THE GOVERNMENT DO
NOT SEE THOSE PROPOSALS AS CONSTITUTING A MAJOR INCURSION
INTO THE BASIC RIGHTS OF TRADE UNIONS. THEY WILL, IF ENACTED,
UNDOUBTEDLY LIMIT THE CAPABILITY OF PEOPLE TO EMPLOY PICKETING
AND EXTEND CLOSED SHIPS IN WAYS WHICH HAVE GIVEN RISE TO WIDESPREAD
PUBLIC CONCERN. THERE WOULD BE NO POINT IN PUTTING FORWARD THE
PROPOSALS IF THEY DID NOT. BUT THE GOVERNMENT DO NOT ACCEPT THAT
THEY REPRESENT A MAJOR INCURSION INTO BASIC TRADE UNION RIGHTS.
THEY ARE INTENDED TO BE DIRECTED AT PARTICULAR PROBLEMS THAT NEED TO
BE REMEDIED.
I LOOK FORWARD TO DISCUSSING THESE MATTERS AND CLARIFYING THE
GOVERNMENT'S PROPOSALS IN THE LIGHT OF THE GENERAL COUNCIL'S
COMMENTS AT THE MEETING WHICH HAS NOW BEEN ARRANGED FOR 3 P M
ON 22 AUGUST. UNQUOTE
BOTH OF THESE LETTERS HAVE BEEN RELEASED TO THE PRESS.

CARRINGTON

Ind Pol

8 ST. JAMES'S SQUARE LONDON SW1Y 4JB
Telephone Direct Line 01-214 6025
Switchboard 01-214 6000

Rt Hon Lionel Murray OBE
General Secretary
Trades Union Congress
Congress House
Great Russell Street
LONDON WC1B 3LS

31 July 1979

Dear Lionel

Thank you for your letter of 30 July conveying the General Council's views on the working papers that I sent to you on 4 July setting out the Government's proposals for legislation on picketing, the closed shop and financial aid for postal ballots by trade unions.

I understand that the General Council feel strongly about these matters, but I must say that I am surprised that they should regard these proposals as other than limited compared with the legislation on industrial relations carried by previous Administrations of either Party, and notably by the last Labour Government. It is quite true that the Government is also reviewing those provisions of the Employment Protection Act which we believe actually prevent the creation of jobs and that we are looking too at union immunities, particularly in regard to secondary action which can seriously affect employers and employees not directly involved in a dispute. But this is no more than the Government made plain was their intention in the Manifesto on which we were elected. They are, as you say, part of a wider approach which we believe is essential to get this country moving again with a better balanced framework of legal rights and obligations within which unions can operate effectively and responsibly. And we shall consult fully on these matters as we establish just what it seems right to do.

I shall examine very carefully the comments on the Government's proposals contained in the paper enclosed with your letter. I do, however, want to make plain immediately that the Government do not see those proposals as constituting a major incursion into the basic rights of trade unions. They will, if enacted, undoubtedly limit the capability of people to employ picketing and extend closed shops in ways which have given rise to widespread public concern. There would be no point in putting forward the proposals if they did not. But the Government do not accept that they represent a major incursion into basic trade union rights. They are intended to be directed at particular problems that need to be remedied.

I look forward to discussing these matters and clarifying the Government's proposals in the light of the General Council's comments

at the meeting which has now been arranged for 3pm on 22 August. /4
That meeting will take place at the Department's new premises at
Caxton House in Tothill Street to which by then we shall have moved
from the present address.

ADVICE INFORMATION

Mr Taylor
Ms Durning
Mr Wilson
Mr Shepherd
Mr Fair
Mr Hardman
Mr Anderson
Mr Seaman
Mr D B Smith
Mr Wake
Mr Emmett
Mr Derx
Mr Galbraith
Mr Hillier
Mr D Lewis
Mr C Tucker
Mr Billen
Mr McClelland
Mr Rooney
Mr Robin

Mr Derx

and/or draft reply by

TRADES UNION CONGRESS

CONGRESS HOUSE · GREAT RUSSELL STREET · LONDON WC1
Telephone 01-636 4030 *Telegrams* TRADUNIC LONDON WC1

YOUR REFERENCE

OUR REFERENCE LM/RG/SA

DEPARTMENT Secretariat

The Rt. Hon. James Prior, M.P.,
Secretary of State for Employment,
Department of Employment,
8 St. James's Square,
London, S.W.1.

July 30, 1979.

Dear Mr. Prior,

Proposed Industrial Relations Legislation

Thank you for your letter of July 4 and its accompanying working papers on the Government's proposed industrial relations legislation in the areas of picketing, the closed shop, and finance for ballots.

These have now been fully considered by the General Council and I attach a document which sets out the TUC's views. The General Council reacted very strongly and reject the claim that the proposals are 'limited'. The proposals, if enacted, would be a major incursion into the existing basic rights of workers and their trade unions. Moreover, they appear to be part of a wider programme being followed by the Government in the field of industrial relations law. The Government are already altering the provisions on unfair dismissal and redundancy consultation and we know that the Government are also examining, separately from the proposals in the working papers, union 'immunities' in trade disputes and also provisions in the Employment Protection Act.

The Government's proposals in the picketing paper would introduce further major constraints in civil law in addition to the existing civil and criminal law provisions. Even more important, the proposals in this paper go much wider than 'picketing' and could significantly weaken the general framework of workers' and unions' rights in trade disputes to the extent of making them liable when industrial action induces breaches of commercial contracts, as it frequently does.

The proposals in the paper on the 'closed shop' could disrupt longstanding union membership agreements between employers and unions and cause industrial relations difficulties in companies and industries where the present arrangements have

Contd ...

operated satisfactorily and where there is no wish by the parties to the agreements to have them changed. As you know, an Independent Review Committee was established in May 1976 and since then has dealt with appeals from individuals who have been dismissed from their jobs, or to whom notice of dismissal has been given, as a result of being expelled from, or having been refused admission to, a union when trade union membership is a condition of employment.

The General Council accept your invitation to meet them and at the meeting which will take place on August 22 at 3 p.m. they will be expressing their opposition to these proposals and seeking to persuade you that the legislative interference foreshadowed in the working papers is not the way to promote good industrial relations.

We believe that further improvements in industrial relations can best be brought about by continued action which has the support of workers, unions and managements. The TUC has a key role in this and, as you know, has issued Guides on Negotiating Procedures, the Conduct of Disputes, and Union Organisation. Progress by these methods could be set back by the legislation outlined in the Government's working papers.

Yours sincerely,

Len Murray

General Secretary.

TRADES UNION CONGRESS

COMMENTS ON THE PROPOSED INDUSTRIAL RELATIONS LEGISLATION

1 This document comments generally on the Government's proposals, and then comments in detail on points in the three working papers.

I GENERAL COMMENTS

2 With regard to the Government's stated aim (to enable trade unions to play their indispensable role in furthering the interests of their members responsibly and representatively) the implementation of these proposals would not have this effect but the opposite one. The proposals are irrelevant to the basic issues of improving industrial relations and promoting improvements in productivity, real earnings and job and income security. Worse, they would make it more difficult to achieve progress on these issues because they would introduce highly contentious laws into industrial relations - laws which could be exploited, as was the Industrial Relations Act 1971, by unscrupulous employers and eccentric individuals seeking to disrupt established customary arrangements and to inflame feelings in already difficult disputes.

3 The Government claim the proposed changes are "limited". They may indeed be limited in relation to the 170-section Industrial Relations Act, but particular proposals have far-reaching implications (see below). Moreover it is important to note that they represent only one part of a wider programme that the Government have in mind with regard to industrial relations legislation. Already, the Government are increasing the qualifying period of unfair dismissal from 26 to 52 weeks and are reducing the period for consultation and notification in advance of redundancy from 60 to 30 days in respect of redundancies of less than 100 employees. Moreover para 12 of the working paper on picketing makes clear that the Government are engaged in a review of the law on trade union immunities. It seems that the Government intends to introduce amendments to the Employment Protection Act, including changing Schedule 11. The Government may be disclosing its intentions quietly and in stages but the Movement cannot regard the proposed changes as "limited". Indeed, the implications for trade unions and industrial relations are immense.

4 The Government apparently hopes that voluntary action to deal with the problems associated with picketing and the closed shop will continue along the lines of the proposed legislative changes. But an increased role for the law would affect the role that trade unions would be prepared to play. In particular, a changed legal framework would

make it necessary for the TUC to issue new guidance to affiliated unions, particularly on the conduct of disputes and union organisation.

II THE WORKING PAPERS

PICKETING

5 In order to justify their proposals to change the law on picketing, the Government say that there has been a tendency to use picketing to bring pressure to bear on companies not directly involved in the dispute, that picketing has become more effective, and that there are indications of an increasing use of intimidation (paras 3 and 4). The importance of voluntary guidance is stressed (para 5).

6 The Government propose (para 6-8) to limit the right to picket lawfully to

(i) those who are party to the trade dispute which occasions the picketing, and

(ii) to the picketing which they carry out at their own place of work.

7 To picket outside those limits would not be a criminal offence (para 6) but one approach suggested (para 10) is that anyone who picketed outside the limits would not be protected if that picketing induced breaches of contract. It is also suggested that the immunity conferred by section 13 of the Trade Union and Labour Relations Act on all industrial action might be amended so that the immunity the section confers is limited to breaches of contracts of employment (para 11).

8 The proposed legislation would provide a power for the Employment Secretary to draw up a code covering all aspects of picketing and for this to be submitted to Parliament. He would only make use of this power in the absence of voluntary action which satisfies the Government. It is also suggested that one possibility might be for ACAS to draw up such a Code, subject to Government approval (paras 13-14).

Comments

9 The General Council have encouraged affiliated unions to give advice to their officials and members about the law and the effective organisation of picketing. The General Council also sought, unsuccessfully, to persuade the Labour Government to give trade unionists the legal right to communicate effectively with persons in vehicles. Indeed

while the Government complains about picketing having become more effective, there is no doubt that the increased use of motor vehicles has made it less effective in many circumstances.

10 The Government clearly consider that action by the TUC and unions is not sufficient to control picketing nor do they acknowledge the problems of pickets communicating with persons in vehicles. Moreover, the Government's assertion of an increasing intimidation on picket lines needs to be challenged. The fact is that the vast majority of pickets are conducted wholly peaceably: in the past, just as now, there have only been isolated incidents where violence has occurred and this has never been condoned by unions.

11 The existing legal constraints on pickets are considerable with the police having powers to deal with pickets because of crimes of obstruction and pickets could be liable at civil law for nuisance - two legal wrongdoings which can cover a wide range of circumstances.

12 It is not wholly clear whether the two legislative approaches on picketing suggested in paras 10 and 11 are alternatives or additional to each other. The opening sentences of para 11 give the impression they are alternatives but para 12 gives the clearer impression that the Government have in mind to introduce both approaches.

13 In the first approach - described in para 10 - they are seeking to allow employers to sue pickets, deemed to be acting unlawfully under the proposal, for inducing breaches of contract.

14 This proposal is intended to prevent a union giving full support to a group of members in dispute. Usually the presence of union members not employed at the workplace where the dispute is taking place is designed to show solidarity give encouragement and boost the morale of the members on strike, and provided such outsiders accept instructions from the person in charge of the picket line, difficulties rarely occur. Now it is proposed that union members showing such solidarity would be acting unlawfully. Besides being objectionable in principle, the proposal raises many practical problems including the following:

(i) the proposals use the term "picketing" but section 15 of the 1974 Trade Union and Labour Relations Act (which is quoted in para 7 of the working paper) does not mention picketing at all. Picketing is not a legal term. In law there is a right in Section 15 to attend at or near a place for the purpose only of peaceful information or persuasion. It is this right to attend at or near a workplace which the Government is proposing to

light and attendance - the only legal right there is - is not explained. It is not clear, for example, whether a group of workers 500 yards from the factory where the dispute arises would be acting lawfully or not or how near they would need to get before it became unlawful. Presumably the Government have it in mind to leave this to the Courts and, if so, the whole area of picketing will become even more uncertain than it is now;

(ii) the next question is who is 'party' to the dispute. Some disputes have many parties and many places of work. In the Trade Union and Labour Relations Act (Section 29(b)), it is made expressly clear that workers employed by an employer not party to the dispute can be "parties". But the working paper implies that in future only workers at one place of work will be regarded as "parties". It is also not clear whether a group of workers who have been dismissed and are no longer employees of the employer would be acting lawfully if they picketed;

(iii) what is a "place of work". In National Insurance decisions it has been held that a large site owned by one company counts as one place of work. The working paper seems to imply that if one plant on a multi-plant site were to be owned by a different company - even if it was an associated company or subsidiary - then that would be a separate place of work which could not be picketed by workers from the other plants. And it is certainly clear from the working paper that if, for example, workers from Ford Halewood picketed Ford Dagenham it would be unlawful;

(iv) although the working paper states that it would be for the employer concerned to initiate legal action, it appears that it would also be possible for suppliers and customers of the employer in dispute to bring actions against all or any of the pickets for inducing breach of contract and seek injunctions and possibly damages;

(v) full-time officers or any other officers of the union visiting a picket line would be particularly vulnerable to the imposition of injunctions and being sued for damages because they are likely to be better known. And employers would be encouraged to pick them out, no doubt believing that the union would indemnify officers for payment of costs incurred in any legal action including any damages.

15 The second approach - described in para 11 - would involve limiting 'immunity' to inducing breaches of contracts of employment (ie not commercial contracts) not simply in

relation to picketing but covering all industrial action. Ostensibly this proposal is directed at other forms of secondary action (eg blacking) as well as picketing and it is said that the effect of this would be to reduce the extent to which S13 of the Trade Union and Labour Relations Act protects interference with commercial contracts.

16 This is a very dangerous proposal. The effect of the Government legislating on this basis would make unlawful not just secondary action (a term which is in any case very difficult to define), but also primary action where it interferes with a commercial contract (as it is likely to do in most cases). The Trade Union and Labour Relations (Amendment) Act gives trade unionists protection for actions in tort for inducing breach of contract in contemplation or furtherance of a trade dispute. From the Trade Disputes Act 1906 to the 1960s protection in trade disputes against interference with employment contracts seemed to be sufficient to establish trade union rights. But the judges in the 1960s developed a new liability for interference with commercial contracts. It is difficult to conceive of circumstances in which workers would retain the right to strike or take other industrial action against their own employer, or his customer, supplier or other related party without incurring legal liability if liability for interference with commercial contracts was resurrected. If the Government make this change in the law, they will have pre-empted their review of trade disputes 'immunities' because there would be little effective protection left for trade unionists.

17 The final proposal is for a code of practice on picketing. Unlike guidance provided by the TUC or by an affiliated union which is designed to be applied flexibly with regard to particular circumstances, a code which is to be taken into account by courts would undoubtedly place further restrictions on picketing in addition to the existing extensive range of criminal and civil offences and the proposed new civil offences. For ACAS to be given this task would have implications for the continuation of the TUC's strong commitment to, and support for, the Service.

THE CLOSED SHOP

18 The working paper on the 'closed shop' presents proposals not only on the closed shop but on arbitrary exclusion or expulsion from a trade union. These are separate issues and are summarised and considered separately below.

19 The Government states that there has been widespread public concern on the 'closed shop' issue and that the UK legislation is to be tested before the European Commission

on Human Rights (para 2). The Government recognise that employers and unions have long had practical reasons for entering into such agreements but aim to ensure that closed shops are only established with the wholehearted support of the workers concerned and that there is a remedy for abuses of individual rights.

20 At present, the Employment Protection (Consolidation) Act 1978 allows an employer to dismiss fairly an employee who refuses to be or become a member of a trade union under a union membership agreement. There is one exception - where the employee can prove that he or she genuinely objects on the grounds of religious belief to belonging to any trade union whatsover, in which case the dismissal is automatically unfair.

21 The Government proposes (para 7) to widen this exception to include:

(a) existing employees at the 'operative date' of the union membership agreement who are not members of the union concerned; and

(b) those with a deeply held personal conviction to being a member of any trade union whatsoever; or perhaps to those who object on grounds of deeply held personal conviction to being a member of a particular trade union or those who object on reasonable grounds to being a member of a particular union as in the 1974 Act (this last provision was deleted by the Labour Government in the 1976 Act).

22 In applications for unfair dismissal in 'closed shop' situations it is suggested that employers (but not applicants) could be able to join unions as co-defendants so that compensation could be apportioned between the employer and the trade union as the tribunal thought reasonable (para 9). A new 'closed shop' agreement would only provide an employer with a defence against unfair dismissal where it had been introduced following a secret ballot in which an overwhelming majority had voted in favour (para 10). Detailed guidance on the ballots and on the introduction of closed shops would be contained in a Code of Practice which could be drawn up by ACAS or by the Secretary of State (paras 11 and 12). The Code might also contain provisions for reviewing existing agreements (paras 11 and 12).

Comments

23 The first category of workers who would obtain unfair dismissal compensation if dismissed as a result of a union membership agreement would be existing employees who did not want to join the union. A large number of union membership agreements (eg Post Office) already exclude some (eg those with long service) or all existing employees. But to turn what is sensible in particular situations into a general legal rule would create the following difficulties:

(i) some circumstances would make it virtually impossible for a union to establish an effective union membership agreement, for example, in areas of employment with a low turnover of labour (conversely in areas of employment with high labour turnover, it would be difficult for unions to obtain an 'overwhelming majority' for an agreement in a vote by secret ballot - see para 24 below);

(ii) the protection for existing employees would cover those who insisted upon belonging to, or maintaining activity on behalf of, a different union from that or those signatory to the UMA. This could be disruptive of collective bargaining arrangements.

24 The second category of workers who would be able to claim unfair dismissal compensation would be those with a deeply held personal conviction to being a member of any union whatsoever. A number of practical questions arise as follows:

(i) would a deeply held personal conviction that the union subscription rates were too high count as an argument for compensation for dismissal?

(ii) would a 'political' dislike of unions be sufficient to warrant compensation for dismissal?

25 If the conviction was to be widened to those who object to being a 'member of a particular union' this would encourage persons to refuse to belong to a signatory union and to join another. The effect, again, would be to disrupt established bargaining arrangements.

26 A further obstacle to establishing a union membership agreement is proposed. The Government propose that a new agreement must have the support of an overwhelming majority of the workers involved voting for it by secret ballot. The details of this proposal would be contained in a code of practice which could also cover the circumstances in which applications could be made to review existing agreements. The following practical questions arise

(i) why is an overwhelming, and not a simple, majority of those voting required before an agreement could be concluded?

(ii) who would determine the scope of the bargaining unit, who would count the votes and would there be any right for individuals, unions and employers to challenge the conduct of the ballots?

27 The cumulative effect of all these provisions, if they were widely observed, would be to make it very difficult for unions to establish effective new membership agreements. The need for a ballot and the scale of the exclusions would be such as to make the whole exercise pointless in many circumstances. Areas of employment like retail distribution and textiles where membership agreements are sometimes regarded by employers and unions as the only way to protect bargaining arrangements could be particularly affected if employers were to insist on carrying out the intention of these proposals.

28 It is suggested that the code could contain a provision allowing for existing agreements to be reviewed. While there is no evidence that significant numbers of workers are dissatisfied with existing compulsory membership arrangements, it can be predicted that this proposal would give opportunities for dissatisfied individuals and groups to disrupt organisational and bargaining arrangements.

29 On past experience it can also be predicted that although these provisions may be widely ignored in industry there will be occasional and no doubt well-publicised cases where individual non-unionists insist on their legal rights and other workers refuse to work with them. The other area of possible flash-point is where individuals apply to have an agreement terminated. There is every prospect in these circumstances that this proposed legislation would, like the Industrial Relations Act, make small local issues become large industrial relations problems with serious and far-reaching consequences.

Arbitrary Exclusion or Expulsion

30 The Government proposes to introduce a right for any person, whether in a closed shop or not and whether in employment or not, not to be arbitrarily or unreasonably excluded or expelled from union membership (para 13). The suggested test would possibly be similar to the "unreasonableness" test on employers in the unfair dismissal provisions and would not be "just on the basis of particular union rules". An alternative might be to lay down detailed criteria. The Government proposes that the aggrieved person should apply to the High Court (para 15).

Comments

31 The issue was extensively discussed during the drafting of the Trade Union and Labour Relations Act 1974. At that time the General Council firmly opposed the inclusion of these provisions on grounds that most unions had extensive appeals machinery to deal with these matters and the General Council strongly objected to the term "arbitrary" in this context. The TUC had no objection to individuals continuing to have recourse to the ordinary Courts if they were determined to pursue a grievance against a union, but it

did not favour a system which would facilitate and encourage disaffected individuals to initiate cases.

32 At present a member under common law can take a union to Court on the ground that the union's rules have not been adhered to and/or the principles of natural justice have not been observed. However, it is questionable whether there is any existing provision for redress in cases of exclusion (ie refusal of admission) as distinct from expulsion. ("A person who is eligible for membership has no legal or equitable right to be admitted even if membership of an association is essential before he can earn his living in his trade or occupation" - Citrine's Trade Union Law; although Lord Denning would say that this proposition is no longer the law).

33 There are a number of practical problems with the Government's proposals. For instance, what would be the position of individuals seeking promotion or transfer within a company to a department or section where there is a 'closed shop?' What account would be taken of professional or technical standards? What account would be taken of the suitability of the applicant to work with other union members without causing industrial strife? Would 'oversupply' of labour be a justifiable reason for refusing admission to a union in certain circumstances?

34 More importantly, however, it would be anomalous that, while an individual worker has no redress against an employer who refuses to engage him because he is a union member or for any other reason, a non-unionist should have the right of action against a union.

35 There is a reference in para 15 to the "long standing principle of common law that a man should not be prevented from practising his trade or selling his labour". It is doubtful if in fact there is any such long standing principle. This particular view had been discredited until revived by Lord Denning in the last two decades. Trade unionists generally hold to a different concept of the right to work namely that of the right of workers to be able to obtain employment on terms agreed with the employer.

36 In sum, this proposal would give the judges a free hand to decide which union rules were arbitrary or unreasonable and which were not. The TUC could not agree that judges are sufficiently qualified to give reasonable and practical decisions on these matters.

SUPPORT FROM PUBLIC FUNDS FOR UNION BALLOTS

37 This working paper proposes legislation to remove major financial constraints on unions holding important ballots. The scheme would initially cover elections to full-time office or union governing bodies, changes to union rules and the calling and ending of strikes (para 4). A trade union could seek reimbursement of at least the cost of

using the cheapest postal method and at the discretion of the Certification Officer of the cost of using the first class post (para 5). Views are sought on whether public funds should be available to cover the administrative costs of postal ballots (para 6) or the costs of secret ballots at the workplace (para 7). The Certification Officer would be the public official responsible for administering the scheme.

Comments

38 Affiliated unions employ a wide range of voting systems in relation to elections, rule changes and the calling and ending of industrial action, including postal ballots and secret ballots at the workplace. Only these last two methods might qualify for State aid.

39 Unions would have a choice whether to apply for public funds. But if they do so, they must recognise that financial help will not be given from public sources without public accountability. This would have implications for union autonomy if - as appears possible - it led to the Certification Officer developing procedures (which might need to be incorporated in unions' rules) and also supervising aspects of the ballots. Individuals would no doubt have the right to challenge the union and/or the Certification Officer in the courts if they considered that the conduct of the ballot did not comply with the statutory requirements. These issues need to be clarified, and affiliated unions would need to recognise very clearly the implications for their autonomy of accepting money from public sources.

- - - - - - - - -

July 25 1979

FILE Ind. Pol. cc D/E CO LCO PCO LOD HO FCO Tsy D/I CSD MAFF D/T D/E Chief Sec, Tsy FB

10 DOWNING STREET

From the Private Secretary

9 July 1979

The Prime Minister was grateful for your Secretary of State's minute of 4 July with which he enclosed three working papers on picketing, the closed shop and funds for union ballots. She has noted that these papers are to be released to the press today.

I am sending copies of this letter to the Private Secretaries to the other members of E Committee, the Lord Chancellor, the Paymaster General, the Solicitor General and Sir John Hunt.

J. P. LANKESTER

Ian Fair, Esq.,
Department of Employment.

c.c. Chief Sec.
D/N
D/Trade
WO
SO
D/E
D/I
Solicitor General
CWO
CO

CONFIDENTIAL

FILE

10 DOWNING STREET

From the Private Secretary

9 July, 1979.

Amendment by Order of the Employment Protection Act

The Prime Minister has considered your Secretary of State's minute of 3 July on the above subject, and his further minute of 5 July. She has also read the minute of 4 July from the Secretary of State for Industry.

The Prime Minister had wondered whether it might not be possible to discriminate between large and small businesses in respect of the qualifying period for complaints of unfair dismissal; but in the light of the points set out by Mr. Prior in his minute of 5 July, she accepts that this would not be a good idea. More generally, she is content that Mr. Prior should go ahead and lay the Orders in the terms of his earlier minute.

I am sending copies of this letter to the Private Secretaries to members of E(EA) Committee, the Chief Whip, the Solicitor General, and Sir John Hunt (Cabinet Office).

T. P. LANKESTER

I.A.W. Fair, Esq.,
Department of Employment.

CONFIDENTIAL

CONFIDENTIAL

8 ST. JAMES'S SQUARE LONDON SW1Y 4JB
Telephone Direct Line 01-214 6025
Switchboard 01-214 6000

12461?

J Buckley Esq
Private Secretary to the
Lord President of the Council
Civil Service Department
Whitehall
LONDON SW1

6 July 1979

Dear Jim

As requested today, I enclose herewith copies of the letters sent by Jim Prior to Lionel Murray and Sir John Methven covering the working papers on industrial relations reforms.

I am copying this letter to Tim Lankester and the Private Secretaries of those who received Jim Prior's minute of 4 July to the Prime Minister.

Yours sincerely

ANDREW HARDMAN
Private Secretary

8 ST. JAMES'S SQUARE LONDON SW1Y 4JB
Telephone Direct Line 01-214 6025
Switchboard 01-214 6000

Sir John Methven
Director General
Confederation of British
Industry
21 Tothill Street
LONDON SW1H 9LP

4 July 1979

Dear John

The Queen's Speech on 15 May announced the Government's intention to bring forward this session legislation to amend the law on picketing and the closed shop and to provide financial aid for postal ballots by trade unions. In the following Debate on the Address the Prime Minister reaffirmed our Manifesto commitments on these matters. Since then I have had informal discussions with you, Mr Whittall, Mr DeVille and Mr Dixon and your President, Sir John Greenborough, has sent me the CBI's proposals for immediate amendments to industrial relations law which include proposals for changes in the law both on picketing and the closed shop.

As a basis for consultations I thought it would be helpful if I set out in some detail the Government's thinking on the actual legislative changes needed to give effect to the Manifesto commitments on picketing, the closed shop and union ballots. I now enclose for this purpose a working paper on each of the three subjects.

The required changes in the law are limited, but they are vitally important. They are all directed to matters which have given rise to widespread public concern and on which there is general assent to the need for change. I should, however, like to emphasise that the fact that some changes in legislation need to be made in no way diminishes the need for voluntary action to deal with the problems associated with picketing and the closed shop. Both unions and employer organisations have an important role to play in seeing that their members understand and follow good practice in these matters.

The Government will need to start taking decisions in the course of September and I should therefore like to start discussions with the CBI as soon as may be convenient. Might I suggest an initial meeting with you in the course of this month to explore the Government's proposals as set out in the working papers in relation to those of the CBI. I will be in touch with you later about the proposals on other matters in the paper your President sent to me.

479

8 ST. JAMES'S SQUARE LONDON SW1Y 4J
Telephone Direct Line 01-214 6025
Switchboard 01-214 6000

Rt Hon Lionel Murray OBE
General Secretary
Trades Union Congress
Congress House
Great Russell Street
LONDON
WC1B 3LS

4 July 1979

Dear Lionel

The Queen's Speech on 15 May announced the Government's intention to bring forward this session legislation to amend the law on picketing and the closed shop and to provide financial aid for postal ballots by trade unions. In the following Debate on the Address the Prime Minister reaffirmed our Manifesto commitments on these matters. In the course since then of informal discussions with you, Mr Urwin and Mr Graham I have outlined our approach and explained that it is our intention to introduce legislation later this year, after full consultation on the changes that we think it necessary to make.

My discussions with you and your colleagues have so far been of a general nature and I undertook when we met on 27 June to set down in some detail, as a basis for formal consultation, the Government's thinking on the actual legislative changes needed. I now enclose for this purpose a working paper on each of the three subjects.

The Government's general aim in making these changes in the law is to enable trade unions, in pursuit of our shared objectives of increased productivity and prosperity for this country, to play their indispensable role in furthering the interests of their members responsibly and representatively. The required changes in the law are limited, but they are vitally important. They are all directed to matters which have given to rise to widespread public concern and on which there is general assent to the need for change. I should, however, like to emphasise that the fact that some changes in legislation need to be made in no way diminishes the need for voluntary action to deal with the problems associated with picketing and the closed shop. Both unions and employer organisations have an important role to play in seeing that their members understand and follow good practice in these matters.

The Government will need to start taking decisions in the course of September and should therefore like to begin discussing the proposals in these working papers with you and your colleagues as soon as your Employment Policy and Organisation Committee has considered the papers.

PRIME MINISTER

AMENDMENT BY ORDER OF THE EMPLOYMENT PROTECTION ACTS

I agree with the proposal in the Secretary of State for Employment's minute of 3 July.

I am sending copies of this minute to the Solicitor General, Chief Whip, members of E(EA) Committee and Sir John Hunt.

WJB

JOHN BIFFEN
6 July 1979

CONFIDENTIAL

cc Mr Wolfson
Mr Hodgson

Prime Minister 1

You asked if we could have a different rule (104 wks rather than 52) for small firms. This further minute from Mr Prior argues (at X) strongly against; Sir K Joseph is also opposed to discrimination

PRIME MINISTER

AMENDMENT BY ORDER OF THE EMPLOYMENT PROTECTION ACT

Are you content for Mr. Prior to proceed on the basis of his minute (Flag C)?

TL
6/7

I fully agree with Keith Joseph on the need to help small employers over employment legislation, particularly unfair dismissal, but I am strongly opposed to his suggestion that at this point of time I should lay an Order extending the qualifying period for complaints of unfair dismissal from 26 to 104 weeks.

I have not consulted on this basis. The TUC in strongly opposing my proposal for a change to 52 weeks have used reasoned argument. I am most anxious to keep things this way for the consultations with them on the industrial relations legislation. If I were now without further consultation to change the period to 104 weeks in the face of the comments received (see below) it would be deeply resented and could well jeopardise the main consultations.

A change to 104 weeks cannot in my opinion be justified on the basis of the weight of the views received. Some employer bodies, notably the British Institute of Management and the Institute of Personnel Management have not asked for any change at all in the present general level of 26 weeks; and even small firms' organisations are divided, the Association of Independent Businessmen accepting an extension to 52 weeks, the CBI's preferred level.

But, most importantly, so far as small employers are concerned, changes in the qualifying period do not go to the root of the problem. Very understandably small employers are afraid of industrial tribunals and strongly dislike having to appear before them. Even if the period were to be extended to 104 weeks this fear and dislike will persist. Our aim must be to help small employers to learn to live with the industrial tribunal system and this is the main thrust of the package of measures I shall be putting to EA Committee on 17 July. It includes for instance, removing the onus of proof from employers and requiring industrial tribunals in unfair dismissal cases to take into account the

circumstances (ie the resources and size) of the firms. These and other proposals I shall be making will be of considerable assistance to small employers.

I notice that Keith does not suggest special treatment for the small firm by way of a longer qualifying period. I am sure he is right. It would create a "second tier" of employees with inferior rights. It is impossible to justify a firm employing say 19 employees having the right to apply different standards to its employees compared with a firm of 20 employees; and it is against reason to build in an incentive for employers to keep below a certain figure when the justification for our proposals is to increase employment - all this quite apart from the problems of definition and evasion which would be involved.

I propose I should now go ahead and lay the Orders in the terms of my minute to you of 3 July. There is no reason why later - say in a year's time - if we should decide a longer period than 52 weeks is needed I should not then lay a further Order to this effect.

I am copying this minute to the recipients of Keith Joseph's.

J P
5 July 1979

CONFIDENTIAL A.

PRIME MINISTER

AMENDMENT BY ORDER OF THE EMPLOYMENT PROTECTION ACTS

I have seen Jim Prior's minute of 3 July reporting on his consultations on the changes to the Employment Protection Acts which he intends making by Order.

I note that whilst there was general support from the CBI to extend the qualifying period for complaints of unfair dismissal to 52 weeks, several organisations representing smaller businesses favoured an extension to 104 weeks. But in the light of the reaction of all those consulted, including the strongly adverse reaction of the TUC, Jim Prior feels confirmed in his view that 52 weeks would be the appropriate.

As you know it has been my view that the longer period was the more appropriate ~~period~~, and David Mitchell has pointed out to me that the extension to 52 weeks only would come as a considerable disappointment to the small business community, who will feel that the change is an insufficient indication of the Government's determination to get the burden of legislation off their backs. I agree with him, and would make the following points:

i the main brunt of the legislation falls on small firms. Though I and others have suggested doing something special for them, I recognise that there are dangers of distorting the market and creating fresh rigidities in the labour supply by providing a special regime of three or two years for small firms under a certain size. The ideal solution would certainly be to

/treat ...

CONFIDENTIAL

treat small and large firms in the same way, and since so much of our emphasis is on aiding the small firm, there is a strong case for extending the period to 104 weeks for all;

ii there are intrinsic reasons in favour of 104 weeks for large firms as well as small. The fact that 60% of potential applicants would be affected is some indication of the size of the problems for companies. And although the effects of the legislation on recruitment have sometimes been described as comparatively small, it is a matter for concern that there should be any effect on the labour market. The change should also go a little further in restoring the balance of power between employer and employee that we are seeking.

iii if the change is not made in the Order it will be difficult to increase the period soon thereafter, particularly if the main legislation were to be brought forward for introduction before the end of the year; the impact of the change, which is psychological as well as practical, particularly for small firms, would be lost.

I realise that it might appear difficult to go ahead on the basis of 104 weeks having consulted on the basis of 52. But we are going into these consultations meaningfully, and it should not be impossible to change our view as a result of what we hear though I understand the political difficulties of doing so.

/I ...

CONFIDENTIAL

Jim

I would hope that ~~he~~ will consider his view in the light of the points I have made, and extend the qualifying period to 104 weeks for all firms in the Order he proposes laying shortly.

I am copying this to Jim Prior and other members of E(EA) Committee, the Chief Whip, the Solicitor General and Sir John Hunt.

KJ

K J

4 July 1979

Department of Industry
Ashdown House

Prime Minister CC Mr Wolfson

These papers have gone to the TUC and CBI. They will go to the press on Monday. (The paper on picketing would have been clearer if it had spelt out the meaning of the existing legislation).

cc Mr Wolfson
Mr Hoskyns

(I agree - the structure of the 2 papers is different. The closed shop is better. JP)

PRIME MINISTER

Following the discussion of my proposals for legislation on picketing, the closed shop and funds for union ballots at E Committee on 19 June, I have prepared working papers on each of these subjects as a basis for formal consultations. Copies of these papers and of my covering letters to the TUC and CBI are attached.

The working papers set out in detail the proposals agreed by E and will enable me to carry forward the discussions I have already had with the TUC and CBI and also to seek the views of a wide range of other organisations, both of employers and employees.

I am hoping to conclude consultations on these subjects in time to report to E Committee with detailed proposals for legislation before the end of September and have made this clear in the covering letter. This will allow 2-3 months for consultations.

I am sending copies of the papers to the TUC and CBI today. I intend to send copies to other organisations on Monday 9 July. Because of the inevitability of press leaks, I propose to release the working papers to the press on 9 July with a brief notice pointing out that they are part of the consultative process and that the proposals they contain are in line with our Manifesto commitments.

I am sending copies of this minute and its enclosures to other members of E Committee, the Lord Chancellor, the Paymaster General, the Solicitor-General and Sir John Hunt.

J.P.

JP

4 July 1979

WORKING PAPER FOR CONSULTATIONS ON PROPOSED INDUSTRIAL RELATIONS LEGISLATION

CLOSED SHOP

Introduction

1 The Government's Manifesto affirmed that the law on the closed shop must be changed and set out the nature of the changes required:-

- existing employees and those with personal conviction must be adequately protected, and if they lost their jobs as a result of a closed shop they must be entitled to ample compensation;

- all agreements for a closed shop must be drawn up in line with the best practice followed at present and only if an overwhelming majority of the workers involved vote for it by secret ballot;

- there should therefore be a statutory code under Section 6 of the 1975 Employment Protection Act to give guidance on best pratice ;

- people arbitrarily excluded or expelled from any union must be given the right of appeal to a court of law.

2 These commitments reflect the widespread public conern at some features of the closed shop which have led both the CBI and TUC to offer guidance to their members on the subject, and to the testing of the UK legislation before the European Commission on Human Rights. The changes proposed, while crucial, are limited. The Government recognise that although closed shop agreements limit individual freedom employers and unions have long had practical reasons for entering into such agreements. The aim is therefore to ensure that closed shops are established only with the wholehearted support of the workers covered and that there is a remedy for abuses of individual rights.

The Present Law

3 Both statute and the common law are involved. The main statutory provisions relevant to the closed shop are S 58(3) of the Employment Protection (Consolidation) Act 1978, and Section 30 of the Trade Union and Labour Relations Act 1974 as amended by the 1976 Act. Under these provisions the dismissal of an employee for not being a member of a union, in compliance with a union membership agreement, is to be regarded as fair unless the employee concerned genuinely objects on grounds of religious belief to being a member of any union; and a union membership agreement is defined to cover an agreement or arrangement which has the effect of requiring the relevant employee to be or become a member of the relevant union(s).

4 The remedies available under the common law to a union member who is expelled, or an applicant for union membership who is excluded, are limited. If a union expels a member for reasons which are not provided for in its rules, or in any way that contravenes the principles of natural justice, this is actionable, but where the application of the rules is otherwise unreasonable the position of the member is doubtful. The legal position of the applicant for union membership who is excluded is even less certain.

5 At present there is no legal constraint - either statutory or under the common law - on the way in which a closed shop agreement is introduced. There is therefore no protection for existing non-union employees, and no requirement that a closed shop agreement should be approved by those who will be affected by this major change in their terms and conditions of employment. Furthermore the sole statutory exemption in cases of dismissal is restricted to those with specifically religious objections to union membership.

6 The following proposals aim to rectify these deficiencies.

7 It is proposed to extend the protection against dismissal for non-membership of a union in a closed shop - a protection now limited to those with genuine religious belief. The new categories of employees who would be entitled to compensation if dismissed in these circumstances would be:-

(a) existing employees - ie those in the employment of the employer at the time of the operative date of the closed shop agreement and not members of the union(s) concerned;

(b) those with deeply held personal conviction - on this the question arises whether the protection should follow the existing "religious belief" provision and so apply only to a person who genuinely objects on grounds of deeply held personal conviction to being a member of any trade union whatsoever, or whether it should be widened to those who object on grounds of deeply held personal conviction to being a member of a particular union or those who object on reasonable grounds to being a member of a particular union as in the 1974 Act, (Schedule 1 para 6(5)).

Joinder

9 The normal remedies for unfair dismissal under the Employment Protection (Consolidation) Act 1978 would be available for dismissal in these situations. Because, in the cases of dismissal in closed shops, union pressure may cause the dismissal, there would seem a strong case for enabling the employer, if he chooses, to join a union in any case brought against him. It would then be open to the tribunal in such cases to apportion any compensation payable between employer and union, as it thought appropriate. This process of joinder should, it is thought, only be available to the employer in the case and not to the applicant.

Overwhelming support before closed shop agreements introduced

10 The Government have been considering how to give effect to the requirement that new agreements for a closed shop must be drawn up in accordance with best practice, and only if an overwhelming majority of the workers involved voted for it by secret ballot. It is thought that this might best be done by providing, in primary legislation, that a new union membership agreement (UMA) could only furnish an employer with a defence against unfair dismissal where it had been introduced following a secret ballot of those of whom it was to apply,

in which an overwhelming majority had voted in favour of the UMA. The statutory Code of Practice (see para 11) could cover such detailed matters as decisions as to the constituency, what percentage of the vote or workforce would constitute overwhelming support for a proposed closed shop, and who would be responsible for arranging and conducting the ballot. Views on these and other matters concerning the ballot are sought before the Government make their decisions.

Code of Practice

11 As well as detailed guidance on the ballot, the Government envisage that a statutory Code would give practical advice, based on current best practice, on introducing and applying closed shops, perhaps including the holding of periodic reviews of the support for current agreements. The Code would have status in law in that it could be taken into account in court proceedings. Views on what should be covered in the Code are invited.

12 The question then arises who should produce the Code. One possibility would be for ACAS to draw up a Code, subject to Government approval. In any case it is intended to amend Section 6 of the Employment Protection Act 1975 to give a power for the Secretary of State to produce a Code.

Arbitrary Exclusion or Expulsion

13 The Government propose that this new right should be analogous to Section 5 of the 1974 Act (repealed by the 1976 Amendment Act). It would apply to any worker, whether in a closed shop or not or whether in employment or not, who is arbitrarily or unreasonably excluded or expelled from union membership. Questions obviously arise about the operation of such a provision, including the basis for assessing appropriate compensation in some cases, and the Government wish to discuss these.

14 In determining what should be regarded as "arbitrary" or "unreasonable" in this context the test might be similar to that which S 57(3) of the Employment Protection (Consolidation) Act 1978

establishes for unfair dismissal. This would require the action of the union to be judged according to the substantial merits of the particular case and not just on the basis of particular union rules. An alternative approach might be to lay down detailed criteria.

15 The Government propose that the adjudicating body for this new right should be the High Court: there would be a strong affinity between the basis of the new right and the long standing principle of the common law that a man should not be prevented from practising his trade or selling his labour.

Voluntary procedures

16 The provision of this statutory right would not conflict with voluntary procedures for handling these types of problems. It will be clearly valuable to individuals and unions that such procedures should continue to be available where parties avail themselves of them. The more effective voluntary procedures are made the greater the chance that these cases could be satisfactorily dealt with without recourse to the law.

Conclusion

17 The Government would welcome views on the matters set out in this paper.

WORKING PAPER FOR CONSULTATIONS ON PROPOSED INDUSTRIAL RELATIONS LEGISLATION

PICKETING

The Manifesto commitment

1 The Government are committed to introducing early legislation to amend the law on picketing. The Government believe that the function of the law in the case of picketing as in the case of other forms of industrial action is to describe with clarity the rights, immunities and liabilities of those who take part. In the words of the Manifesto:

> "Workers involved in a dispute have a right to try peacefully to persuade others to support them by picketing but we believe that right should be limited to those in dispute picketing at their own place of work ... We shall ensure that the protection of the law is available to those not concerned in the dispute but who at present can suffer severely from secondary action (picketing, blacking and blockading). This means an immediate review of the existing law on immunities in the light of recent decisions, followed by such an amendment as may be appropriate of the 1976 legislation in this field. We shall also make any further changes that are necessary so that a citizen's right to work and go about his or her lawful business free from intimidation or obstruction is guaranteed".

2. This paper outlines for consultation specific proposals on the legislative means of giving effect to the Manifesto commitments on picketing.

The Background to the Government's Proposals

3. The Government's commitment to amend the law on picketing reflects the widespread public concern at recent developments in the use of picketing as a weapon in disputes. In the last few years there has been a greater tendency to use picketing to bring pressure to bear on companies not directly involved in disputes. The effect has been to put at risk the livelihood of working people who have no dispute with their employer, and to damage enterprises which have no dispute with their employees. In some cases the community as a whole has suffered considerable hardship.

4. These developments in the use of picketing are the result partly of easier communication and transport, which has made it possible for pickets to travel much longer distances than in the past; and partly of a greater degree of organisation of picketing, which is sometimes the work of unofficial groups rather than official union leaders. The growth and greater formalisation of the closed shop since 1974 has reinforced the effectiveness of picketing as a form of industrial action. There are indications of an increasing use of intimidation on picket lines, whether directly through the threat of physical violence or indirectly through the threat of loss of union membership, and, as a consequence, of jobs. The disputes of last winter showed how far these developments had gone and the need for early action to limit them.

The Importance of Voluntary Guidance

5. These developments pose a direct threat to the tradition of peaceful picketing in this country. The TUC and some of the trade

unions concerned felt it necessary to issue their own guidance on the conduct of industrial disputes earlier this year, and the Government believe that there is and will continue to be an important role for voluntary guidance of this kind. Nevertheless, the Government are firmly of the view that voluntary guidance alone will not ensure that effective limits are set to the use of picketing in industrial disputes. It is necessary to supplement voluntary guidance with a new legislative definition of the position in law of those who take part in picketing.

The Government's Proposals

6. In drawing up proposals for consultation the Government has been mindful of the need not to create sources of conflict gratuitously, and not to place an impossible burden on the police. The police already have powers to limit the number of pickets at any one site and to deal with obstruction, violence, threatening behaviour and breaches of the peace. It is not therefore proposed that picketing outside redefined limits should be made a criminal offence.

7. Instead it is proposed that the redefinition of the limits of lawful picketing should be achieved by an amendment of S.15 of the Trade Union and Labour Relations Act 1974. This section now provides that:

> "It shall be lawful for one or more persons in contemplation or furtherance of a trade dispute to attend at or near -
> (a) a place where another person works or carries on business; or
> (b) any other place where another person happens to be, not being a place where he resides,
> for the purpose only of peacefully obtaining or communicating

information, or peacefully persuading any person to work or abstain from working".

8. The Government's proposal is that this section be amended so that its application is restricted:

(i) to those who are party to the trade dispute which occasions the picketing, and

(ii) to the picketing which they carry out at their own place of work.

9. However that by itself would not provide sufficiently effective limitation. Some change in S.13 of the 1974 Act as amended in 1976 is also necessary.

10. One approach would be to amend S13 so as to limit <u>in respect of picketing</u> the immunity conferred by this section to persons who picket within the redefined limits of S.15. This would mean that anyone who picketed outside the limits laid down in the amended S.15 would not be protected by S.13 if that picketing induced breaches of contract. It would then be for the employer concerned to initiate action when he thought that picketing was unlawful and damaging his firm's operations.

11. The approach described in para 10 involves distinguishing between picketing and other forms of industrial action. Another approach would be to limit the immunity conferred by S.13 in respect of <u>all</u> forms of industrial action. In practice picketing of employers, for example, with whom the pickets are not in dispute usually involves interference

with commercial contracts, and the same is true of other forms of so called "secondary" action (eg blacking). A further possibility, therefore, would be to amend S.13 so that it reverts to the wording of the 1974 Act, so that the immunity it confers is limited to inducing breaches of contracts of employment. The effect of this would be to reduce the extent to which S.13 protects interference with commercial contracts.

12. Any changes in S.13 of the 1974 Act will need to be considered in the context of the Government's current review of the existing law on trade union immunities. However the Government wish to discuss their belief that amendments to S.13 of the kind described in paras 10 and 11 would, in conjunction with the amendment of S.15 described in para 8, lead to an effective limitation of picketing in line with its Manifesto commitments.

Code

13. Finally the Government propose that legislation should provide a power for the Secretary of State himself to draw up a Code covering all aspects of picketing. The Code would have status in law in that it could be taken into account in court proceedings. As a document approved by Parliament it could be expected to have considerable moral force, as well as helping to bring about a more consistent interpretation of the law by police and magistrates. One possibility would be for the Code to be drawn up by ACAS, subject to Government approval.

14. The Secretary of State would, however, intend to make use of the power to draw up a Code only in the absence of comprehensive and

effective voluntary guidance.

Conclusion

15. The Government would welcome views on the proposals set out in this paper.

WORKING PAPER FOR CONSULTATIONS ON PROPOSED INDUSTRIAL RELATIONS LEGISLATION

SUPPORT FROM PUBLIC FUNDS FOR UNION BALLOTS

1 The Government have indicated in the Manifesto their intention to give every encouragement to the wider use of secret ballots for decision-making throughout the trade union movement and, to this end, to provide public funds for postal ballots for union elections and other important issues.

2 There is wide public support for more extensive use of secret ballots in unions, and growing recognition within the union movement itself that secret ballots on important matters are desirable. Ballots produce greater membership involvement in decision-making, and give every trade union member the opportunity to record his or her decision without others watching and taking note. It is not practicable for every decision, whatever the circumstances, to be taken after a secret ballot of the membership and unions themselves must decide when ballots are appropriate. But the purpose of the forthcoming legislation will be to remove major financial constraints on unions from holding important ballots, and this should enable unions increasingly to employ secret ballots on important issues.

Matters to be covered by the Scheme

3 It is suggested that the Scheme should cover, initially:

- elections to full time trade union officer and to the executive or other governing body of an independent trade union;

- matters involving changes in union rules;

- the calling or ending of strikes.

4 The Government would welcome views on this list. Is it, for instance, sufficiently comprehensive? One possibility would be to frame the legislation to enable the Secretary of State to extend by Order the matters covered.

Postal Ballots

5 The Government propose that the legislation should be framed to enable a trade union to seek reimbursement of the reasonable postal costs of conducting a secret ballot on one or more of the matters listed above. This would enable unions to claim reimbursement of at least the cost of using the cheapest postal method and, at the discretion of the Certification Officer (CO) (see paragraph 8), of the cost of using first-class post.

6 There is the question whether it is practicable or necessary to provide public funds for the reimbursement of the associated administrative costs of postal ballots (for example, the fees of an external organisation administering the ballot). The Government would welcome views on whether it would be desirable to seek to do this and, if so, what non-postal costs should be reimbursed and whether these costs should be reimbursed in whole or in part.

It would also seem necessary to have safeguards to ensure that extravagant expenditure would not attract reimbursement. One approach, if any administrative costs are to qualify under the Scheme, might be to put a duty on the CO to be satisfied that the costs for which reimbursement is claimed have been reasonably incurred.

Non-Postal Ballots

7 Some unions conduct - or in the future may find it appropriate to conduct - secret ballots at the workplace. This method may involve administrative costs comparable to or greater than those associated with postal ballots. An important issue to be resolved is whether public funds should be made available for secret ballots of this kind as well as for postal ballots. This does, of course, raise the same issues of the proportion of the costs to be reimbursed and

the need to avoid extravagant expenditure referred to in paragraph 6. But it also raises questions about the proper conduct of non-postal ballots and especially about what assurance there might be of the secrecy of such ballots - an assurance more readily provided by the postal method. The reimbursement of costs of non-postal ballots might call for special safeguards on this matter.

Administration of the Scheme

8 In the Government's view, the CO would be the most appropriate person to administer the Scheme. Administration should be kept as simple as possible and reimbursement of the appropriate costs would be made if the relevant expenditure were certified by the authorised trade union officer as having been incurred through the holding of a secret ballot coming within the terms of the Scheme. The union would be required to submit copies of ballot papers, paid-up accounts and other information the CO might require to satisfy himself that the relevant expenditure was reasonably incurred and that the secrecy of the ballot was properly secured.

10 No ballot would qualify under the Scheme if it was held contrary to union rules. Nor is it envisaged that there would be any appeal from the CO if he refused reimbursement in whole or in part on the groundsthat the ballot was not secret, did not otherwise fall within the terms of the scheme, or the expenditure had not been reasonably incurred. A complainant would, of course, be able to go to the High Court if he felt that the CO had exercised his discretion unreasonably.

Conclusion

11 The Government would welcome views on the matters referred to in this paper.

Ind. Pol. ~~Original~~ GR DSG

cc DM

10 DOWNING STREET

THE PRIME MINISTER

4 July 1979

Dear Tim,

Thank you for your letter of 19 June concerning the case of the three railwaymen, Messrs. James, Webster and Young, due to be heard before the European Commission of Human Rights on 9 July.

The Government will wish the Commission to be aware of the very different view it takes on the closed shop compared to its predecessor and we have decided this will best be done by our attendance at the oral hearing fixed for 9 July. Ian Percival will put the Government's position. We hope that after this short hearing the Commission will reach its decision without further delay.

Yours sincerely

Margaret Thatcher

The Right Honourable The Viscount de L'Isle, V.C., K.G., G.C.M.G., G.C.V.O.

It would be difficult at this stage to consider a cut on 104 weeks for everyone - although I would prefer it, but this is not the point). Is it possible to have a different rule for small businesses employing less than say 100 people?

Prime Minister

Do you agree the Prior's proposals - which you agreed in principle earlier subject to consultation on the 18-21 year olds (see Flag B)? But Sir K. Joseph (Flag A) is still pressing for 104 weeks for the unfair dismissal limit.

PRIME MINISTER

AMENDMENT BY ORDER OF THE EMPLOYMENT PROTECTION ACTS

I minuted you on 7 June about this and your Private Secretary replied on 11 June. TL 4/7

I have now, as agreed, consulted the TUC, CBI and other organisations, mainly of smaller employers, on the two changes to the Employment Protection Acts which I intend to make by Order. The changes I proposed were to extend the qualifying period for complaints of unfair dismissal from 26 to 52 weeks, with the possibility also of a further extension to 104 weeks in the case of those aged under 18, and to reduce the notification and consultation period required on redundancies of under 100 people from 60 days to 30 days. I have also, as we agreed, informed Parliament of the consultations by answer to a Parliamentary Question.

The proposed changes were welcomed by employers' organisations, particularly those representing smaller businesses. While several of this latter group favoured an extension of the qualifying period for complaints of unfair dismissal to 104 weeks, other organisations, notably the CBI, supported the proposed period of 52 weeks. In the light of the views of the CBI and the strong objections which the proposals encountered from the TUC I am confirmed in my view that 52 weeks would be the appropriate length for the qualifying period.

The majority of replies made no comment on the suggestion of a qualifying period of 104 weeks for those aged under 18. However, while it was favoured by some organisations of smaller businesses, the CBI expressed the fear that the proposal would be seen as

discriminating against younger workers and it was opposed by, among others, the Engineering Employers Federation. Moreover, my Department has little evidence that such an extension would improve the employment prospects of young people. I do not propose therefore, to pursue the proposal for a longer qualifying period for the under-18s in the context of the two Orders, but will give it more detailed consideration in the main review of the Employment Protection legislation which is currently underway.

I intend therefore to proceed on the basis of an extension of the qualifying period for complaints of unfair dismissal to 52 weeks and a reduction in the notification and consultation period on redundancies of under 100 from 60 to 30 days. The Orders will be laid before Parliament within the next two weeks and should become operative on 1 October 1979.

I am copying this minute to the members of E(EA) Committee, the Chief Whip, the Solicitor General and Sir John Hunt.

J P
3 July 1979

AR

Ind Pol

V

8 ST. JAMES'S SQUARE LONDON SW1Y 4JB
Telephone Direct Line 01-214 6025
Switchboard 01-214 6000

The Rt Hon John Nott MP
Secretary of State for Trade
Department of Trade
1 Victoria Street
LONDON
SW1

29 June 1979

Dear John

AMENDMENT BY ORDER OF THE EMPLOYMENT PROTECTION ACTS

Thank you for your letter of 15 June with some thoughts on the proposed amendments to the Employment Protection Acts.

I quite take the point that we should do what we can to help small firms in the application of the legislation, provided that we are not creating a group of second class employees. One compromise proposal to meet these two objectives, which Patrick Mayhew has put forward, is that small firms might be exempted for, say, the first two years after they start to trade. This is an interesting idea which we are exploring. Since this question is a somewhat complicated one and we have not consulted the two sides of industry on it, I do not think it would be right to include it in the Order extending the qualifying period generally. I am therefore proposing to include this and any other provisions in favour of small firms on which we may agree in the forthcoming consultations on the main amending legislation. I shall be putting my proposals to E(EA) Committee very shortly.

Procedure at industrial tribunals is a matter which is also on our list of proposals for amendment. As you say, an extension of the qualifying period for unfair dismissal to 52 weeks should help to limit the number of unmeritorious cases that are brought.

I am copying this letter to the Prime Minister, to all members of the E(EA) Committee, the Chief Whip, the Solicitor General and Sir John Hunt.

Yours ever

Jim

Ind Policy

CONFIDENTIAL

Ref A09800

PRIME MINISTER

THE APPROACH TO INDUSTRIAL RELATIONS
E(79) 11

BACKGROUND

When the Committee had its first discussion on Pay (E(79) 2nd Meeting) you had just seen the CPRS Paper subsequently circulated as E(79) 8. You were impressed by this, and particularly asked that the Secretary of State for Employment should bring forward proposals for 'Redressing the Balance of Power' covering the points made in the CPRS Paper, as well as his more detailed proposals for implementing the manifesto programme on picketing, closed shop and secret ballots.

2. This paper is the result. It seeks no specific decisions but together with the CPRS paper provides a basis for a wide-ranging "second reading" discussion. There are two fundamental issues -

(a) Trade union organisation: By common consent our trade union system, despite its power, is inefficient. We have far too many unions, they overlap and compete for membership, they often represent particular sectional interests within the labour force (ie the craft unions) and they make industrial bargaining much more difficult, time-consuming and ineffective than it could be (see German experience with a few big industrial unions). Many trade union leaders would agree that reform is needed. But the present system involves an inbuilt web of individual and sectional interests which put a brake on change (the co-existence of the NUR and ASLEF is a relatively simple example. They spend at least as much time fighting each other as they do in forwarding their members' interests. The public pays). Can reform come from within? How can it be stimulated? What role should the Government play? Would a new internal study help to clarify thinking?

(b) Trade union immunities: For historical reasons, notably deriving from the accident of the close association of most trade unions with the Labour Party, our unions enjoy an unparalleled degree of legal privilege. Power without responsibility. The history of 1970-74 points to the dangers of a head-on assault. And many managements prefer to suffer the consequences of the present system than to be exposed to the fallout of a renewed confrontation. The Secretary of State for Employment favours a "softly, softly" approach with change limited to essentials and following extensive consultation. He is the responsible Minister and his views must carry considerable weight. But whatever the public stance, is more fundamental contingency planning also needed against a second winter of discontent?

3. In addition to discussing these broad issues the Committee may also wish to discuss three specific points referred to in the Secretary of State's paper. These are -

(a) Trade union recognition (paragraph 9 of E(79) 11): S. 11 to 16 of the Employment Protection Act 1975 provide a statutory procedure for handling trade union claims for recognition. The CBI favour repeal of these sections and ACAS itself would not be opposed to losing the function. There are likely to be TUC objections which could imperil the useful conciliation role of ACAS. The Secretary of State for Employment suggests opening consultations on these provisions without a prior commitment to action.

(b) Schedule 11 of the Employment Protection Act and the "fair wages" resolution (paragraph 11 of E(79) 11): In practice Schedule 11 has proved in the last year or so to be an instrument for enforcing "comparability" by law in wide areas of the private sector and some in the public sector (the National Freight Corporation, for example, was forced by it last winter to follow the inflationary road haulage settlement). The case for Schedule 11 and the fair wages resolution can be argued both ways but the Secretary of State for Employment proposes to consult the CBI and TUC about a narrowing of the definition of eligible claims.

(c) Supplementary benefit for strikers' families (paragraph 12 of E(79) 11): The Secretary of State for Employment suggests putting the trade unions on notice that the Government will consider introducing legislation limiting the availability of supplementary benefit if the trade unions themselves do not increase strike pay to a level which would have a similar effect. He suggests that tactically it would be better to leave this issue on one side until after the Trades Union Congress in the autumn. The CPRS paper also deals with this issue. Again is there useful contingency planning which could be undertaken? You might ask the Secretary of State for Social Services (who has been invited for this item) to comment.

HANDLING

4. Given the "gradual" nature of the Secretary of State's approach you may want to start yourself by emphasising the importance of this subject even though the process of altering attitudes and changing the balance of power is bound to take time and may encounter considerable resistance from the unions (though not from the public at large). The Government cannot rely on the immediate changes to be made this autumn to help very much in the present pay round. They are both too small scale and too late for that. But a start must be made and the momentum then maintained.

5. You might then ask the Secretary of State for Employment to introduce his Paper, and seek general views from other members of the Committee, starting with the Chancellor of the Exchequer, and bringing in in particular the Secretary of State for Industry, the Home Secretary (on the powers of the police and enforcement of the present law: though these points arise in more detail on the second Paper) and the Solicitor General.

6. In particular, you might ensure that any Ministers who have points to be taken into account in the proposed review of policy (paragraph 13) should make them now, so that the Secretary of State for Employment can take them into account in bringing fresh proposals before the Committee later in the year.

CONCLUSIONS

7. All that is necessary at this stage is to note the present paper, to invite the Secretary of State for Employment to bring forward his proposals in due course (taking account in so doing of any points made in discussion) and to commission any additional work which may appear desirable in the light of the discussion.

JOHN HUNT

18 June 1979

CONFIDENTIAL

Ref. A09795

PRIME MINISTER

Industrial Relations Legislation

(E(79) 10)

BACKGROUND

The general background should have been covered in discussion of Item 1. This paper deals with the three specific and immediate proposals set out in the Manifesto (pages 9-11).

2. The present Government's policy was largely worked out when in Opposition, and the issues for consideration at this meeting are mainly ones of detail. You have already discussed the main points with the Secretary of State. However, there has been informal consultation with the CBI and the TUC, and the Solicitor General has been closely concerned and there is quite a lot to discuss.

3. There is also a problem of timetable. The Secretary of State intends to introduce the Bill in November, with the hope of reaching Committee stage before Christmas. This fits in with the Legislative programme which Cabinet approved last week. But there is little time for more formal consultations with the TUC or the CBI. The Department of Employment believes it is important that these should begin as soon as possible, to avoid giving the TUC any excuse to complain that they were not properly consulted. It would therefore be useful to get agreement at this meeting if possible, so that the subject can be brought back to the Committee or Cabinet (before the Recess) if there are any uncompleted loose ends.

HANDLING

4. You might take the three main parts of the Secretary of State's proposals, and end with a short discussion of tactics.

(a) Picketing. These proposals are much the most important and raise difficult issues of implementation. Again, you might take them in series, asking the Secretary of State for Employment to introduce each point, followed by the Solicitor General.

The picketing proposals divide into two: those concerning trade union immunity, and those concerning individuals.

Under trade union immunity, the three main points are:

(i) Civil or criminal liability?

(ii) Tort or not?

(iii) The exact restriction of picketing: the formula proposed is set out in paragraph 4 of Annex I, and comes quite close to that in the "Code of Conduct" negotiated between the TUC and the past Labour Government. (This makes it harder for the TUC to resist it).

On individuals, (paragraph 6 of Annex) the proposal is to postpone action until the Courts have decided on a current case in the autumn.

(b) Closed shop. There is little possibility of getting agreement with the TUC on this. The most that can be done is to present it in a way that is not deliberately provocative.

In this connection, the status of the proposed "Code of Practice" is important. It is suggested that it should have the same force as the Highway Code i.e. not statutorily enforceable as such, but a factor for the Courts to take into account in deciding cases. The Solicitor General has accepted this suggestion, but you might see whether the Lord Chancellor accepts it on wider constitutional grounds.

(c) Balloting. The proposal is not to make balloting compulsory, but merely to facilitate it. This is of course a Manifesto commitment. You will want the Chief Secretary's views on the cost to public funds of these proposals.

(d) Tactics. You may then want a more general discussion on tactics for handling consultation, and publicity about it. There have already been informal soundings. How does the Secretary of State for Employment propose to structure the more formal discussions? How much time will he give the TUC? Will he seek to reach a deal with them before the TUC conference? What happens if the conference records an adverse vote on these proposals? Is he prepared to negotiate? Is he prepared

to publish a consultative document, given that the proposals will almost certainly leak anyway? The Paymaster General's views on these points will be important.

CONCLUSIONS

5. You might aim to record general support for the detailed proposals set out in the Secretary of State's paper, subject to any reservation agreed during the meeting. You might then invite the Secretary of State to open consultations with the TUC and CBI on his proposals, and to report the results to the Committee, either before or immediately after the Summer Recess, so as to secure policy approval for the drafting of a Bill which would then be considered by Legislation Committee and introduced early in November.

(John Hunt)

18th June, 1979

DEPARTMENT OF TRADE 1 VICTORIA STREET LONDON SW1H 0ET Telephone 01-215 7877

CONFIDENTIAL

From the Secretary of State

PR 14/6

The Rt Hon James Prior MP
Secretary of State for Employment
8 St James's Square
London SW1

15 June 1979

Dear Secretary of State

AMENDMENT BY ORDER OF THE EMPLOYMENT PROTECTION ACT

May I inject the following thoughts for your consideration during the consultation period on the proposed amendments to the Employment Protection Act?

I think your approach to the TUC strikes the right note. There is clearly no point in provoking an outcry from the TUC, but I hope we will be able to make some exceptions to the 52 week qualifying period for unfair dismissal e.g. 104 weeks for those aged under 18. In particular, I hope you could meet Keith Joseph's concern for very small firms: this could be arranged initially by favouring them in the Order with an extension to 104 weeks. I accept we should not, in principle, wish to create a two-tier society, but I think we can usefully make further exemptions for small firms in the long term.

In considering concessions to small companies we should avoid where possible a confusing variety of thresholds in different fields which will bewilder rather than assist the small businessman. I will shortly be bringing forward proposals, as part of legislation to implement an EEC Directive on company accounts adopted last year, for the definition in company law of a proprietary company. Proprietary companies will be exempted from some of the present disclosure requirements of the Companies Acts, and perhaps from audit, and will be defined as those independent private companies which do not

contd/.....

exceed 2 of the following 3 criteria, laid down in the Directive:

50 employees
£1.3 million turnover
£650,000 balance sheet total

It may be helpful to bear these figures in mind in drawing up proposals for exempting small firms from some of the provisions of employment legislation.

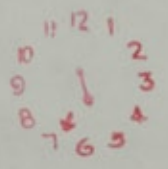
I also agree with Keith Joseph that we should examine the procedures of Industrial Tribunals. We need to take action to alleviate concern, justified or not, about these Tribunals. Extending the qualifying period for unfair dismissal from 26 to 52 weeks may, on the evidence of the Presidents of the Tribunals, do much to eliminate the "nuisance" cases brought.

Copies of this letter go to the Prime Minister, E(EA) colleagues, the Chief Whip, the Solicitor General and Sir John Hunt.

Yours sincerely

John Nott

pp JOHN NOTT
(approved by the Secretary of State and signed in his absence)



CONFIDENTIAL

10 DOWNING STREET

From the Private Secretary

11 June 1979

The Prime Minister has read your Secretary of State's minute of 5 June about the SLADE inquiry. She is content for him to go ahead as soon as possible with setting this up with the terms of reference set out in his earlier minute of 22 May.

T. P. LANKESTER

I. A. W. Fair, Esq.,
Department of Employment.

CONFIDENTIAL

Y SWYDDFA GYMREIG
GWYDYR HOUSE
WHITEHALL LONDON SW1A 2ER
Tel. 01-233 3000 (Switsfwrdd)
01-233 6106 (Llinell Union)
Oddi wrth Ysgrifennydd Gwladol Cymru

WELSH OFFICE
GWYDYR HOUSE
WHITEHALL LONDON SW1A 2ER
Tel. 01-233 3000 (Switchboard)
01-233 6106 (Direct Line)
From The Secretary of State for Wales

The Rt Hon Nicholas Edwards MP

Dear Jim

11 June 1979

AMENDMENT BY ORDER OF THE EMPLOYMENT PROTECTION ACT

You wrote to the Prime Minister and colleagues on 7 June seeking agreement to extending the qualifying period for unfair dismissal complaints to 52 weeks and reducing the period of notification of redundancies of less than 100 employees to 30 days.

I agree with your proposals. These changes should help to remove some of the inhibitions employers, especially small ones, feel they face in recruiting additional workers under the existing rules and may well give a boost to recruitment.

I am copying this to the Prime Minister, Members of E(EA), the Chief Whip, the Solicitor General and to Sir John Hunt.

Yours ever

Nick

The Rt Hon James Prior MP
Secretary of State for Employment
St James's Square
LONDON SW1Y 4LL

CONFIDENTIAL

VLB

cc D/I CST
DoE CWO
SO LOD
WO CO
D/T KC Nick Sanders
D/N

10 DOWNING STREET

From the Private Secretary

11 June 1979

Amendment by Order of the Employment Protection Act

The Prime Minister has considered your Secretary of State's minute of 7 June about the two changes in employment legislation which he has in mind to make by order - namely, extension of the qualifying period for complaints of unfair dismissal and the reduction in the notification and consultation period required on redundancies of less than one hundred people. Subject to the views of colleagues, the Prime Minister is content with Mr. Prior's proposals; and agrees that he should now write to the T.U.C. and the C.B.I.. The Prime Minister has also noted that Mr. Prior intends to inform Parliament of these consultations by answer to a Parliamentary Question.

I am sending copies of this letter to Private Secretaries to members of E(EA) Committee, to the Chief Whip, the Solicitor General and to Sir John Hunt.

T. P. LANKESTER

Ian Fair, Esq.,
Department of Employment.

CONFIDENTIAL

VLB

DEPARTMENT OF INDUSTRY
ASHDOWN HOUSE
123 VICTORIA STREET
LONDON SW1E 6RB
TELEPHONE DIRECT LINE 01-212 3301
SWITCHBOARD 01-212 7676

Secretary of State for Industry

The Rt Hon James Prior MP
Secretary of State for Employment
8 St James's Square
London SW1

7 June 1979

Dear Jim.

I have read with interest the correspondence between you and the Prime Minister about your proposals for dealing with the Employment Protection Acts, and note that you will be bringing to E(EA) Committee shortly the two items that can be dealt with by Order. I have noted the Prime Minister's preference for extending the qualifying period for the unfair dismissal provisions to 104 weeks rather than 52. I can see advantages in the longer period also, but I realise there will be argument on both sides which no doubt your paper will deploy.

I note also that, in preparation for your later Bill, you have put in hand a review of other provisions with particular regard to lightening the burden on employers, especially small businesses. No doubt we shall have the opportunity of injecting our ideas into this review, but at this stage I would like to mention some points to which I pay special importance, some relating particularly to small firms.

First, irrespective of what is decided for the generality of firms as to the qualifying period for the unfair dismissal provisions, I would hope that it can be raised to three years for small firms, employing fewer than, say, 20. If that can be done in the Order, so much the better. The period of qualification for redundancy payments should in my view be the same, that is to say increased from two to three years, and the consequent effects on employers' contributions to the Redundancy Fund examined. Additionally I would hope that such firms could be absolved from the requirement to restitute jobs of pregnant women.

Secondly, I hope that the procedures of the industrial tribunals will be closely examined. I believe that tribunals should take account of all the circumstances attending a dismissal and not just those which provoked it. The case for reversing the onus on the employer to prove that the reason for dismissal was 'fair' is, I believe, a strong one, and I hope also that the case for extending the power to award costs against the employee will be favourably examined. Furthermore, there should be sufficient obstacles against bringing unnecessary cases before the tribunal, and this is particularly important in the case of small firms. I would favour a requirement for a conciliation officer to certify that there is a prima facie case to be considered, before it can be brought.

/In a

In a different context, I hope that the case can be examined for exempting very small firms, those employing less than five, from some of the provisions of the health and safety legislation. Perhaps our officials could examine this.

Reverting to the employment protection legislation, I hope that the review will also consider what can be done, outside the legislation to assist small firms. I am told that the idea of a simplified Code of Practice for small firms has been mooted with ACAS in the past, and I hope that idea can be resurrected. Indeed ACAS might be more sympathetic with the interests of small firms if it had small firms representation itself.

The list is an indication of those suggestions on which I place special importance. It is by no means exclusive and I am sure the review will suggest others.

I am copying this letter to the Prime Minister, all members of E(EA) Committee, the Chief Whip, the Solicitor General and to Sir John Hunt.

Yours ever,

Ken.

CONFIDENTIAL

cc Mr Whitfield
Mr Hoskyns

Prime Minister
You approved the general lines of this when you met Mr Prior yesterday (record at Flag B).
Agree, subject to colleagues' views?

B 1

PRIME MINISTER

Yes OK.

AMENDMENT BY ORDER OF THE EMPLOYMENT PROTECTION ACT

TL 7/6

You asked that E(EA) Committee should consider the two changes in employment legislation which I have it in mind to make by Order (Private Secretary letter of 16 May). These are to extend the qualifying period for complaints of unfair dismissal and to reduce from 60 to 30 days the notification and consultation period required on redundancies of less than 100 people.

Flag A

Both these changes would be well received by small employers, and I am anxious to make the Orders as soon as possible, especially as they bear on employment. At the same time, I am concerned not to provoke TUC resentment about what might be regarded as insufficient time for consultation on these the first of our proposed changes in employment and industrial relations legislation. However I had the opportunity yesterday evening to sound out informally Mr Murray and Mr Urwin, the Chairman of the TUC's Employment Policy Committee. I gained a clear impression that on relatively straightforward issues such as these (while the TUC would oppose the changes) they would be unlikely to object forcibly to the time given for consultation provided I could write to them in good time for the June meetings of their Employment Policy Committee and General Council so that they could respond before the end of the month. This would allow us time to take a final decision and make the two Orders before the summer Recess so that they could come into operation shortly thereafter.

Before I write to the TUC, there is the one question of policy to settle, namely, whether to extend the qualifying period to 52 weeks or, as you thought, to 104 weeks. I am convinced that the latter would be going much too far in redressing the balance in favour of the employer: it would deprive 60% of potential applicants of their rights not to be unfairly dismissed and would certainly lead to a

head-on collision with the TUC. Enlightened employer opinion also generally regards a year as sufficient. However I will suggest that we should extend the qualifying period for young people under the age of, say, 18 to 104 weeks in order to give further encouragement to their recruitment, though I would not regrard this as a sticking point if it provokes strong TUC reaction. I have also considered making a similar special extension for those taken on as trainees whatever their age. But such a change would create great problems of definition and operation and would probably force us to delay the introduction of the order, which would be most undesirable. These and other aspects of the two proposals are considered in more detail in the note attached.

Provided you and colleagues agree, I would like to be able to write to the TUC - and of course the CBI - on 11 June in order to keep to the timetable which I propose. I should at the same time inform Parliament of these consultations by answer to a Parliamentary Question.

I am copying this minute to all the members of E(EA) Committee, to the Chief Whip, the Solicitor General and to Sir John Hunt.

JP

7 June 1979

AMENDMENT BY ORDER OF THE EMPLOYMENT PROTECTION ACTS

Note by the Secretary of State for Employment

We have a Manifesto commitment to amend laws such as the Employment Protection Act where they damage smaller businesses - and larger ones too - and actually prevent the creation of jobs. I have set in hand a review of the Employment Protection Act provisions with a view to making any necessary changes, after due consultation, in amending legislation later this session. For these I envisage a second Bill (in addition to that dealing with changes to the law on picketing, the closed shop and union ballots) to be introduced in March-April, which is unlikely to be enacted much before the end of the session.

2. But there are two amendments which would ease the burden on employers, especially in smaller businesses, and which can be made by Order. The first - and more important - change would be to extend the qualifying period of service for complaints of unfair dismissal. The other change would be to reduce the notification and consultation period required on redundancies of less than one hundred people.

EXTENSION OF THE QUALIFYING PERIOD OF SERVICE

3. The unfair dismissal provisions of the Industrial Relations Act 1971 specified a qualifying period of 104 weeks. It was then envisaged that this period would be reduced when industrial tribunals were ready to undertake more cases. In 1974 the Labour Government first reduced the period to 52 weeks and then to the present 26 weeks, on the grounds that this represented a reasonable "settling in" period for employers to assess suitability before the employee enjoyed protection against unfair dismissal. Over the last two years some 25% of unfair dismissal applications were made by employees with between 26 and 52 weeks' service; and some 60% by those with between 26 and 104 weeks' service. The proportions of complaints upheld and dismissed by tribunals do not vary significantly with the length of service nor are young people disproportionately represented (only 7% of applications come from employees aged under 20).

/4. In

4. In favour of increasing the qualifying period small employers in particular argue that:

(a) 26 weeks is inadequate for them to assess suitability, particularly when the costs of ensuring compliance with the unfair dismissal provisions and defending complaints are heavy in management time and money. The CBI estimate that the average case which gets to a tribunal costs the employer between £400 and £1,000.

(b) consequently, the provisions inhibit recruitment and a longer qualifying period would enable them to take on more employees, particularly short term. The evidence of surveys on behalf of my Department is inconclusive as to whether these provisions are significant in the recruitment decisions of most employers. Nor has it proved possible to assess the effect on the level of unemployment of past changes in the qualifying period. Surveys by employers organisations do, however, suggest that many employers, particularly small employers, are reluctant to recruit through fear of the legislation.

(c) the Presidents of the Industrial Tribunals advise that a high proportion of the hopeless claims which are at present a source of so much trouble and annoyance to employers are brought by claimants who have been dismissed very shortly after the expiry of the present 26 week limit.

5. To increase the qualifying period would save public expenditure and staff. An increase to 52 weeks is likely to save 140 staff and about £1½m. An increase to 104 weeks would approximately double these figures.

6. The arguments against such action are that:

/(a) it would

6. The arguments against such action are that:

(a) it would significantly diminish one of the most important of the new employee rights and will be strongly opposed by the Opposition and the trade unions;

(b) dismissal on grounds of incompetence, misconduct or redundancy is not "unfair" under present law. So employers with reasons justifying dismissal and who proceed with it reasonably should have nothing to fear and it is desirable that others should amend their practice in the interest of managerial efficiency.

The weakness of these arguments, in my belief, is that many employers, particularly small ones, do not think about the legislation in a rational way at all; and an extension of the period would be likely significantly to affect their morale and give a positive boost to recruitment and hence to economic activity.

7. I therefore favour increasing the period to 52 weeks. To return to the original 104 weeks would deprive 60% of potential applicants of their rights and would lead to a head on collision with the TUC. Nor do I believe that an extension to 104 weeks for a limited class of employees, such as trainees or young people under 18, would be wise. It would not necessarily encourage employers to take on more people, given the proposed extension to 52 weeks, and to create a second-class of employee would be undesirable and I am sure unacceptable to the TUC. The CBI and other employers organisations maintain that a year is long enough for an employer to make up his mind on an employee and that

/period seems

period seems to me defensible. The Presidents of the ITs see merit, from their specialised point of view, in increasing the period to 52 weeks but not in going to 104.

PERIOD OF REDUNDANCY NOTICE

8. An employer proposing redundancies is required to consult appropriate recognised trade unions and to notify me within a specified minimum period. Consultation for even a single redundancy must begin at the earliest opportunity and both the consultation and notification must take place at least 60 days in advance of the first dismissal where between 10 and 99 employees are involved. By contrast, the EEC Directive on collective redundancies does not lay down any period for consultation and requires only 30 days advance notice to the competent public authority.

9. The timescale of operations of many smaller firms is short and they may genuinely have no reasons to suppose more than 30 days beforehand that redundancies will be necessary at a particular time. The 60 day notice requirement therefore represents a potential cost of many small firms, since they may either have to delay redundancies beyond the date when they would otherwise be declared or risk a protective award or penalty. A recent survey has shown that in fact nearly 50% of all firms declaring redundancies of less than 100 have failed to give the 60 days notice.

10. I find the case for a reduction in advance notice of redundancies less cogent than that for reducing the period of service for unfair

dismissals. The trade unions are insistent on adequate notice of redundancies and any reduction in the period of notice will meet with their opposition. On the other hand, to come down to 30 days would still keep us in line with the EEC Directive and would undoubtedly be welcomed as a useful relief by employers; and I am minded to propose it. (Any savings in staff and public expenditure would be negligible).

CONFIDENTIAL

cc: Master Set of Records
Govt. Machine, Lord Hay 79
Special Political Advisers

10 DOWNING STREET

From the Principal Private Secretary

7 June 1979

Dear Ian.

This is to record the main items discussed, and the conclusions reached, at your Secretary of State's meeting with the Prime Minister on Wednesday evening at 10 Downing Street.

Mr. Prior told the Prime Minister that Sir John Methven had expressed some concern to him about the possibility that the Government might make too substantial an increase in VAT "in one go". Mr. Prior said he had passed this on to the Chancellor and the Prime Minister noted what he said.

Mr. Prior reported his recent conversation with Mr. Murray about the two Orders which he wished to make under the Employment Protection Act which the TUC would not find welcome but which he thought, if handled expeditiously, could be referred to them for consultation without creating a major row. The Prime Minister agreed with your Secretary of State's suggestion that he should circulate forthwith to colleagues on E(EA) Committee, to clear out of Committee urgently, the proposals, which he would want to put to the TUC and other bodies concerned, for consultation, for amending the "60-day" and "26-week" provisions in the existing legislation. This would enable him, if colleagues agreed, to inform the TUC in time for them to have the matter considered by their Employment Policy and Organisation Committee and the General Council during the course of this month. On the substance of the proposals, after considerable discussion, the Prime Minister agreed that Mr. Prior should propose the substitution of 30 days for 60 days and the substitution of 52 weeks for 26 weeks, with an extension to two years for those under the age of 18. Mr. Prior should press this special provision for the under-18s on the merits of the case for improving the employment prospects of young people by so doing, but it was agreed that it might ultimately be necessary to concede this point. The Prime Minister also asked Mr. Prior to look urgently at the question whether the extension to two years could also be applied to employment which was being taken up solely for the purposes of training or work experience. Finally, the Prime Minister emphasised the importance of consulting others, including the Small Businesses Council, simultaneously with the TUC.

/On industrial

CONFIDENTIAL

On industrial relations legislation, Mr. Prior said that he would be bringing proposals to E Committee on Tuesday 19 June: both he and the Prime Minister would have preferred this to be sooner if possible. He said that he would be making proposals going further than the Manifesto commitments in order to have a negotiating position in which he could make concessions while leaving his basic position intact. The Prime Minister recognised the force of this but insisted that the Government's ultimate position must be not less than that set out in the Election Manifesto. She recalled that she had made this perfectly clear to Mr. Murray. Mr. Prior suggested, and the Prime Minister agreed, that the Solicitor General ought to come to E Committee for this discussion; the Prime Minister did not, however, wish Departmental Junior Ministers to attend.

Mr. Prior made some suggestions on personnel matters to the Prime Minister and, in particular, he raised the question whether it would be appropriate for him to have the services of a part-time consultant who would be employed in the industrial relations division of Shell. The Prime Minister did not dissent from this proposition, although she referred to the difficulty about access to papers, and we await a substantive proposal on it.

I am copying this letter to Sir John Hunt.

Yours ever.

Ken Stowe.

Ian Fair, Esq.,
Department of Employment.

CONFIDENTIAL

Prime Minister 2

To note. (You approved Mr Prior's proposals for consultation).

PRIME MINISTER

SLADE INQUIRY

6/6

Since your Private Secretary wrote to mine on 23 May, Patrick Mayhew has been having informal consultations with the unions and employers' associations principally affected by our proposed inquiry.

I am writing to let you know that these consultations have now been completed. Although they went quite well, there remains some prospect that SLADE and the NGA will refuse to co-operate with the inquiry. I am doubtful if this will help to improve their public image and remain hopeful that they will see co-operation as being in their best interest. I would certainly expect the TUC to share this view. The inquiry will however have no powers to require their co-operation and would if necessary go ahead without them.

I have spoken to Andrew Leggatt who has agreed to undertake the inquiry for us. I now intend therefore to go ahead as soon as possible with setting it up, with the terms of reference set out in my minute of 22 May.

J P
5 June 1979

CONFIDENTIAL

cc DOE
SO
WO
D/T
D/N
CH SEC, HMT
CO

23 May 1979

Slade Enquiry

The Prime Minister was grateful for your Secretary of State's minute of 22 May on the above subject, and is content that he should proceed on the lines proposed.

I am sending copies of this letter to the Private Secretaries to the members of E(EA) and to Martin Vile (Cabinet Office).

T.P. LANKESTER

Ian Fair, Esq.,
Department of Employment.

CONFIDENTIAL

PRIME MINISTER

SLADE ENQUIRY

As I told you on Friday I intend to appoint this enquiry under my general powers, to be conducted by an independent person with simple and comprehensive terms of reference which, subject to consultations with the parties, would be on the following lines:

"To enquire into recent industrial relations developments, including in particular union recruitment activities, in the art work, advertising and associated industries; and to report".

The enquiry would thus encompass not only the activities of Slade but also the similar tactics employed by the National Graphical Association.

2. The aim of the enquiry will be to establish the facts, including whether Slade has indeed abandoned its "blacking" tactics as it claimed in March. I envisage the enquiry taking two or three months and I hope that its findings will assist in our review of trade union immunities.

3. Of the names I mentioned who might undertake the enquiry, you expressed a preference for ~~Peter~~ ANDREW Leggatt, who is a distinguished QC with a good deal of arbitration experience, and I shall be taking further soundings with him in mind. Patrick Mayhew agrees that Peter Leggatt would be a good choice.

4. Following our talk I have discussed these proposals with John Methven who has confirmed that the CBI will be content with them. I shall be seeing Len Murray very soon to try to secure his support also and shall then pursue the other necessary consultations of employers and unions directly concerned. We may expect some union opposition to the enquiry, but I hope that they will agree to cooperate.

5. I aim to have completed the consultations and be ready to set up the enquiry within the next two or three weeks.

6. I am copying this minute for information to colleagues in E(EA) and to Sir John Hunt.

J P

22 May 1979

CONFIDENTIAL

c. (DEM)
HO
FCO
HMT
DI
LPO
MAFF
DTDE
DENGY
HMT(C/S)
CDL
CWO
LOD
CO

10 DOWNING STREET

From the Private Secretary

16 May 1979

INDUSTRIAL RELATIONS LEGISLATION

The Prime Minister has now had an opportunity to consider your Secretary of State's minute of 14 May in which he sets out how he intends to handle the Government's proposals on industrial relations legislation.

The Prime Minister is glad to know that Mr. Prior intends to get ahead straightaway with setting up the inquiry into SLADE's methods of recruitment and blacking pickets. She is also glad to see that the possibility of making certain changes in employment legislation by Order is being examined. One of the changes which Mr. Prior mentions is an extension of the qualifying period of service before claims of unfair dismissal can be made from 26 - 52 weeks. The Prime Minister's view is that the qualifying period should be extended to 104 weeks. She believes that such an extension is necessary to deal with the problem of young people who all too easily put in claims for unfair dismissal. She also believes that the existing provision is far too burdensome on small firms, and that a very substantial change is therefore needed. However, she would like this change, and also the other change - the reduction from 60 - 30 days for the notice required for redundancies of less than 100 people - which Mr. Prior has in mind, to be considered by E(EA) Committee.

As regards the Manifesto commitments to reform the law on the closed shop and picketing, and to encourage the use of secret ballots, the Prime Minister takes the point that it will be necessary to have meaningful consultations. But she does not want the legislation to be too much delayed. She is in no doubt that the Government would be heavily criticised both by the CBI and by small firms generally if secondary picketing were to appear again on a major scale and there were no Bill on this and other trade union matters before Parliament. She would therefore like your Secretary of State to ensure that a Bill is published not later than November with a view to getting it into Committee before Christmas.

Mr. Prior also mentioned certain other changes in the employment protection Acts on which he may wish to introduce primary legislation, as well as certain other matters - including the terms of reference of ACAS - on which legislation may be needed. The Prime Minister's view is that it would be preferable to cover these further matters

/in a second,

CONFIDENTIAL

VCB

in a second, later Bill, or even possibly in a succession of small Bills; rather than cover them in a single trade union Bill.

see Appts file

Changes in the terms of reference of ACAS have of course already come up in the context of your Secretary of State's proposal to extend Mr. Mortimer's term as Chairman of ACAS to 1981. The Prime Minister has made it clear that she is unwilling to authorise an extension of Mr. Mortimer's term unless he is willing to give an assurance that he would be willing to work under new terms of reference. Ken Stowe has already suggested to you that Mr. Prior should draft a letter to Mr. Mortimer which would set out as precisely as possible the changes which he envisages in the terms of reference and functioning of ACAS; that he should circulate that draft to Ministerial colleagues most closely concerned (the Prime Minister, the Chancellor of the Exchequer and the Secretaries of State for Industry and Trade), and get their agreement to its terms; that he should then call in Mr. Mortimer and show him the letter to see whether, if it were sent, he would readily accept it; and that if Mr. Mortimer gave a satisfactory assurance, then he (Mr. Prior) should seek the Prime Minister's approval to send the letter and, at the same time, offer to extend Mr. Mortimer's period of office to January 1981. If Mr. Mortimer indicated when shown the letter, that he could not work under those terms of reference, then your Secretary of State would need to think of alternative Chairmen for appointment from September 1979 and put a proposal forward to the Prime Minister urgently.

The Prime Minister has now endorsed Ken Stowe's suggestion of handling the proposed extension of Mr. Mortimer's appointment, and would be grateful if your Secretary of State would proceed on the lines set out above.

I am sending copies of this letter to the Private Secretaries to Members of E Committee, to the Chancellor of the Duchy, the Chief Whip, the Solicitor General and to Sir John Hunt.

T. P. LANKESTER

I.A.W. Fair, Esq.,
Department of Employment.

cc Mr. Wolfson
Mr. Hoskyns
Mr. Ryder

Ind
Pol

Mr. Lankester
Mr. Pattison

NOTE FOR THE RECORD

The Secretary of State for Employment spoke to the Prime Minister at the Eve of Parliament Dinner last night about the proposed extension of Mr. Mortimer's term as Chairman of ACAS to 1981. He told me afterwards that the Prime Minister reaffirmed that she was not prepared to agree to this extension without seeing in writing what changes were envisaged in the terms of reference of ACAS or without Mr. Mortimer undertaking in writing to operate under those revised terms. Mr. Prior emphasised to me that it was quite vital, given the bigger issues relating to industrial relations which the Government wished to tackle, that they should keep a good relationship with Mr. Mortimer and ACAS; and he said he was sure that Mr. Mortimer would do all that was wanted.

I discussed the matter further this morning with Mr. Wolfson and Mr. Prior's Private Secretary, Mr. Ian Fair. To the latter I made it clear that the Prime Minister had again refused authority to offer Mr. Mortimer an extension of his appointment and suggested that we should try to meet the Prime Minister's wishes rather than pursue a further row. To this end I proposed that Mr. Prior should draft a letter to Mr. Mortimer which would set out as precisely as possible the changes which he envisaged in the terms of reference and functioning of ACAS on which the Government would be legislating later this year; that he should circulate that draft to colleagues most closely concerned (Treasury, Industry, Trade) and the Prime Minister, and get their agreement to its terms; that he should then call in Mr. Mortimer and show him the letter to see whether, if it were sent, he would readily accept it and give a positive assurance to work under these terms of reference; and that if Mr. Mortimer gave such an assurance, then he should seek the Prime Minister's approval to send the letter and, at the same time, offer to extend Mr. Mortimer's period of office to January 1981. If Mr. Mortimer indicated, when shown the letter, that he could not work under those terms of reference, then Mr. Prior would need to think of alternative Chairmen for appointment from September 1979 and put these proposals forward to the Prime Minister urgently. Mr. Fair said that he would talk to Mr. Prior and encourage him to proceed on these lines.

Copy in Appts. filing.

K.R.S.

15 May 1979

cc Mr Wolfson
Mr Ryder
Mr James

PRIME MINISTER

I have not yet sent Mr Prior a copy of your remarks tomorrow. X overleaf will displease you

PRIME MINISTER

Shall we set an October deadline? MS 14/8

I thought that in advance of the Debate on the Address I should let you know how I have it in mind to handle our proposals for industrial relations legislation. In my view it is absolutely crucial to our whole Administration to get this right.

(1) I propose straight away to get ahead with setting up the inquiry into SLADE's methods of recruitment and blacking tactics. I am also having (2) examined as a matter of urgency the possibility of making one or two straightforward changes in employment legislation by Order. Two possibilities are the extension of the qualifying period of service before claims of unfair dismissal can be made for 26 to 52 weeks, and a reduction from 60 to 30 days of the notice required for redundancies of less than 100 people. Both these changes would be well received by small employers, though it would be essential to consult the CBI and TUC before coming to a final decision.

6 weeks? 2 years? This decision should be related to calendar

Turning to the Manifesto commitments to reform the law on the closed shop, picketing, possibly also trade union immunities and to encourage the use of secret ballots, clearly we want to keep down to a minimum the time during which legislation on these matters is before Parliament. But it would be fatal to follow the 1970 pattern and rush things too much. We must live up to our promises to consult. We must have long enough to get the legislation through.

It may be suggested that legislation should be in force before next winter's possible crop of disputes. But our proposed changes in the law will not alter things overnight. It is far more important to minimise opposition as far as we can and to finish up with legislation that sticks. That would be a vital landmark.

I have spoken to Mr Murray and am hopeful that the TUC if properly handled will not reject our proposals outright but will enter into meaningful consultations with us. John Methven has also cautioned me against precipitate action.

He will be the first to complain if Monday Night Club starts again. MS

I am planning to bring proposals before colleagues as quickly as possible so that I can then start informal consultations with the CBI and TUC. It is best that these should still be in progress at the time of the TUC Congress in September.

Working on this basis I should be able to publish a Bill before the end of the year. Please try to get it published by Nov. We ought to get it in committee before Xmas.

Finally, to revert to the Employment Protection Acts, over and above what is may be possible to do by Order I have asked for a review of the provisions to be set in hand with particular regard to lightening the burden on employers, especially small businesses. Beyond that there are other matters like the union recognition provisions and the terms of reference of ACAS. I would like to defer for a while the decision whether these might be covered in the trade union Bill or whether we should have to leave them for a second, later Bill.

I am copying this minute to our colleagues on the Economic Strategy Committee, to the Chancellor of the Duchy, the Chief Whip, the Solicitor General and to Sir John Hunt.

Suggest second later Bill.

J P
14 May 1979

CONFIDENTIAL

10 DOWNING STREET

From the Principal Private Secretary

SIR JOHN HUNT

You minuted the Prime Minister on ~~5 May~~ about the industrial relations issues and the desirability of the Prime Minister making contact with Mr. Murray, the NEDC 6 and/or the TUC General Council. The Prime Minister has noted the desirability of such contact. She considered whether to invite Mr. Murray to the dinner for Chancellor Schmidt on Thursday evening but decided against this in the event since their first meeting ought to take place in more carefully prepared surroundings. I have left it with the Secretary of State for Employment that he will get in touch with the Prime Minister shortly to suggest a meeting between both of them and Mr. Murray.

K.R.S.

8 May 1979

Can we see letter L.M. accepts Thursday dinner first?

CONFIDENTIAL

1.

RM. A09482 mr

Prime Minister.
I have discussed the issues raised in this with Adam Ridley and Mr. Prior. The latter will probably be minuting you to suggest that you and he shld. see Mr. Murray privately very soon, perhaps next week

PRIME MINISTER

Spoke P.M. — L.M. may be coming to dinner.

My first set of briefs for you covered pay but not industrial relations as such. This was because no immediate decisions are called for and because it seemed right to give the new Secretary of State for Employment a chance to take stock on how best to carry out the Manifesto commitments on -

(i) Changes in the law on picketing.

(ii) An immediate review of trade union immunities.

(iii) The financial treatment of strikers and their families.

You will however want him to bring fairly early papers to Cabinet or the appropriate economic Committee in order to maintain the momentum - this is par excellence the sort of field where Departmental briefing, however well-intentioned, tends to point out the difficulties rather than to find solutions. The Secretary of State will therefore need his colleagues' continuing support and encouragement.

2. You will however need to decide quickly whether you should yourself take an early opportunity to see the TUC (and of course the CBI): or whether you should leave initial contacts with the TUC to the Secretary of State for Employment and (perhaps in the Budget context) the Chancellor of the Exchequer.

3. The arguments are nicely balanced. In favour of seeing the TUC are:-

(a) You want to make certain changes in the way industrial relations are conducted but you are not seeking confrontation. Similarly the TUC, despite its support for the previous Government, has made clear that it will be ready to work with yours. The more there can be agreement about the area for trade union reform (even if not about the method), the better it will be.

(b) There may be an expectation of an early meeting: and if it does not take place the TUC, or the Press, may subsequently make capital out of this.

4. On the other hand could you confine a meeting to establishing the right "atmospherics" and avoid getting into discussion of substance, or even a negotiation, on matters where the Government is not yet ready? And might

there be some risk of a difficult situation arising if the TUC asked you to put the idea of legislation on trade union reform temporarily in cold storage to see whether they could make satisfactory voluntary arrangements?

5. I am sure that a meeting with the TUC General Council at this stage would be wrong. It is too large and cumbersome a body, and it always seeks to agree among itself on a negotiating position in advance. And all sorts of questions would get raised on wider Government policies e.g. in relation to public expenditure.

6. I think there are three options:-

(i) Leave it to the Secretary of State for Employment and the Chancellor of the Exchequer at this stage.

(ii) See Len Murray: say that you hope to have good working relations with the TUC on matters of legitimate concern to them: but that Ministers inevitably need time to take stock: and leave it at that.

(iii) Have a dinner with some of your colleagues for the NEDC 6.

It is also being suggested that he be invited to join you with Herr Schmidt next week.

On balance, and despite the risks, I would be inclined to discard course (i). There is however a variant which might combine courses (ii) and (iii) and possibly have attractions for you. This would be to get Ken Stowe to ring Len Murray and say:-

(a) You want to have good working relationships with the TUC on matters of proper concern to them, but he will understand that the Government is not in a position yet to discuss its Manifesto commitments in any detail. Nevertheless you would like to establish an initial contact.

(b) One possibility would be for him to come in for an introductory talk. Another would be for you to give an early small dinner for the NEDC 6 on the understanding that this would be a "get to know" rather than a negotiating occasion. Has he any views on how best to get relations off to a good start?

7. Once you have decided how to handle the question of an initial contact with the TUC, the question of seeing the CBI (which will be much more straightforward) can be considered separately.

JOHN HUNT

5th May, 1979

END

Filmed at the National Archives (TNA) in London

February 2010