PREM 19/262

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Part 3

Confidential Filing

Industrial Relations Legislation (covering Picketing the Closed Shop, Union Ballots, Recruitment Activities, and Immunities).

The Employment Bill.

INDUSTRIAL POLICY

Part 1 : May 1979

Part 3 : February 1980

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~6-2-80~~							
~~8.2.80~~							
~~13.2.80~~							
14.2.80.							
ends							

PREM 19/262

Useful Documents in attached folder

1. House of Lords : Dupont Steels Ltd + others
   v Sirs and Others

2. Employment Bill

3. Trade Union and Labour Relations (Amendment) Act 197

4. Trade Union and Labour Relations Act 1974

5. Employment Protection Act 1975

6. Joint Statement by the TUC and the Government Feb. 1979.

PART 3 ends:-

CC(80) 6th Concs Item 1 (Extract) 14.2.80

PART 4 begins:-

S/S Emp to PM + atts 14.2.80

TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

Reference	Date
E(80) 3rd Meeting, Minutes	06/02/80
Limited Circulation Annexe, E(80) 3rd Meeting, Mins	06/02/80
MISC 35(80) 1	07/02/80
MISC 35(80) 1st Meeting, Minutes	08/02/80
E(80) 10	11/02/80
E(80) 12	11/02/80
E(80) 4th Meeting, Minutes	13/02/80
CC(80) 6th Conclusions, Item 1 (Extract)	14/02/80

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 D Wayland Date 6 May 2010

PREM Records Team

Published Papers

The following published paper(s) enclosed on this file have been removed and destroyed. Copies may be found elsewhere in The National Archives.

House of Commons Hansard Columns 621-634	26/02/76 Business of the House
House of Commons Hansard Columns 45-66	08/03/76 Agricultural Tenancies

Signed D Wayland Date 6 May 2020

PREM Records Team

Confederation of British Industry

From the President:

Sir John Greenborough KBE

21 Tothill Street
London SW1H 9LP
Telephone 01-930 6711
Telex 21332
Telegrams
Cobustry London SW1

13th February 1980

Dear Prime Minister,

I know that you and your colleagues are urgently considering what action should be taken to strengthen the Employment Bill following recent judgements in the House of Lords. In this consideration I am sure you will wish to take into account the views of trade and industry. I therefore thought it might be helpful if I wrote briefly to you to set out CBI's position, a position we have consistently held.

I attach a copy of CBI's commentary on the Employment Bill which, following wide discussion with the membership, was forwarded to the Secretary of State for Employment towards the end of last month. Following the most recent judgement of the House of Lords in the case of the private steel employers, the position was last week reviewed by the CBI Employment Policy Committee, the President's Committee and the Jarratt Steering Group. The very strong view at all these meetings was that our original advice should stand; that there was an urgent need to place some immediate limitation on union immunity to induce action in furtherance of a trade dispute (as the Court of Appeal sought to do in the McShane case); but that the highly complex issue of how far and how immunity to induce all forms of secondary or sympathetic action should be limited required more study and should not be attempted during the passage of the Employment Bill. I need hardly add that it was this view which Sir John Methven, who was present at two of the meetings, wholeheartedly supported and sought to reflect in his article in the Sunday Telegraph this weekend.

I know how immensely difficult it is to decide the right course and timing of action in this field. I would only say that CBI policy has been developed after an extremely wide consultation process and I believe fairly reflects the majority view of CBI members.

Yours sincerely

John Greenborough

Enc.

The Rt Hon Margaret Thatcher MP
Prime Minister
10 Downing Street
London SW1

P.S. I am sending a copy of this letter to Jim Prior.

L 71 80

CONFEDERATION OF BRITISH INDUSTRY

COMMENTARY ON THE EMPLOYMENT BILL

1 CBI welcomes the Government's Employment Bill, which we believe to be an important step forward in tackling some of the abuses of the law which have been seen in recent years and which have been so damaging to business and to the country at large. We think that it should help improve industrial relations and thus job prospects and the hopes for economic recovery. We have valued the opportunity to be consulted during the preparation of the Bill, and are pleased that many of the recommendations we made have been accepted.

2 There is no matter of broad principle in the Bill with which we would take issue. However, there are some points which we feel are not adequately dealt with, and some omissions which we would like to see remedied. These points are considered in detail below.

Finance for union ballots

3 In general CBI supports the objectives of clause 1 of the Bill on the provision of funds for trade union ballots. We would prefer to see clause 1(2) drafted rather more narrowly, so that payments would be available only where the main purpose of the question to be voted on falls within the purposes set out in clause 1 (3).

4 More importantly, however, we are concerned that the purposes listed in clause 1(3) do not include ballots on the acceptance or rejection of major wage offers, although

there is provision for ballots on the calling or ending of industrial action. We think that if ballots on the acceptability of an offer are not included, there is a danger that, simply in order to obtain financial support for the ballots, trade unions might frame the question in the context of a decision on whether to take industrial action.

We would of course wish to be consulted on the details of the scheme which is to be established under clause 1(1).

Codes of Practice

5 We note with approval that the Secretary of State is to have power to issue statutory Codes of Practice on industrial relations matters, and look forward to being consulted during their preparation.

Unreasonable exclusion or expulsion from a trade union

6 We agree with the Government that employees subject to a union membership agreement should have the right not to be arbitrarily or unreasonably excluded from a trade union. However, we would strongly recommend that as a matter of principle this protection should be extended to all employees whether or not subject to such an agreement.

The Closed Shop

7 There is widespread opposition in British industry to the principle of the closed shop. However, CBI recognises that the closed shop is an established feature of industrial relations practice in some areas of employment, and we do nto therefore feel that the time has yet come to make union membership agreements unenforceable. Nonetheless we are most concerned that the law should provide comprehensive safeguards to protect the rights of the individual.

8 During the consultation which preceded the Bill we made a number of recommendations on how this protection might be achieved.

We are glad to note that the Government has accepted almost all of them. However, the Bill does not include a protection for employees against the unreasonable operation of a closed shop. We think that employees are entitled to be protected not only in respect of unfair dismissal on account of a closed shop but also in respect of discriminatory action on that account not amounting to dismissal during their period of employment.

9 It is recognised that much of this protection will be given by the provisions of the Code of Practice on the closed shop, but we would like to see some explicit reference made to the Code in the Bill in order to reinforce its provisions. In addition, we think that clause 13 should be extended to prevent action short of dismissal being taken not only against conscientious objectors to union membership but also against the other categories of employee referred to in clause 6(2), the existing employees and those covered by a new union membership agreement which has not been supported by the requisite majority in a ballot.

10 The safeguards to which we have referred above will go much of the way to protecting the rights of an individual under a new closed shop agreement. However, we believe that the legislation should also provide that a term in the contract of employment requiring union membership as the result of a new closed shop agreement should be void and unenforceable unless the agreement has been approved in a ballot by the statutory majority.

11 We suggested during the consultation that 85% of those entitled to vote should constitute a suitable majority in a ballot on a new closed shop agreement. While we would not insist on that figure, we would be very concerned if the 80% majority at present proposed were to be reduced.

Joinder

12 While endorsing entirely the principle behind clause 9 of the Bill that a trade union which has exercised pressure on an employer to dismiss an employee unfairly should have to contribute to the employee's compensation, CBI does not approve of the procedure envisaged by the clause. It should be for the tribunal to apportion liability for compensation between the parties directly rather than to require the employer to claim from the union its contribution towards the award.

Union labour only practices

13 In our reply to the Government's working paper on the closed shop we asked that action should be taken against the practice of requiring, sometimes as a term of contract, that the employees of a contractor or supplier should be trade union members. CBI is totally opposed to this practice which has a damaging effect in particular on smaller businesses. We would welcome a declaratory provision that any contractual term stipulating union membership should be regarded as void and unenforceable.

Maternity

14 Although in principle we support the Bill's provisions on written notices to the employer in connection with maternity rights, we think that making different requirements in respect of maternity pay and of maternity absence introduces quite unnecessary further complexity into the legislation. The requirement to give notice in writing before maternity absence begins should apply to the right to maternity pay as well as to the right to return, and we suggest that clause 10 of the Bill should be amended to this effect.

15 On clause 11, CBI is disappointed that the suggestion has not been taken up that the exemption from the duty to re-engage an employee after maternity absence should apply to small establishments as well as to small firms. We would ask the Government to re-consider this point.

16 CBI continues to take the view that responsibility for the actual payment of maternity pay should be transferred from the employer to the state.

Guarantee pay

17 CBI supports the change in the guarantee payment periods proposed in clause 12 of the Bill. However, we think that it is important that a clause should be added to the Bill exempting employers from the obligation to make guarantee payments where the failure to provide work results from an extraneous trade dispute.

Picketing

18 CBI welcomes the limitation on picketing set out in clause 14. But in line with our earlier advice we would urge the Government to include an additional limitation restricting lawful picketing to the parties in dispute. Without this provision it will still be possible for employees and union officials quite unconnected with the dispute to picket lawfully provided that they picket their own workplaces or, in the case of union officials, accompany the employees at those workplaces.

19 In addition, we recommend that the definition of trade union official should be limited to full-time permanent officials of the trade union. Temporary officials or those not involved in the dispute, e.g. shop stewards or safety representatives from another establishment, should not be entitled to picket.

20 In our earlier representations to Government we discussed the possibility of introducing a procedure for obtaining an injunction against "the act of picketing". Although we understand that there are certain difficulties in the proposal we think that if these could be overcome such a provision would prevent the proposed law from being circumvented by changing the people on picket duty.

Immunities

21 We wholeheartedly support the Government in its intention to leave major reform of the law on trade union immunities until it has completed its review of the subject. However, we agree with the removal of immunities in the narrow circumstances set out

in clause 15 in connection with industrial action taken with the purpose of compelling union membership in the manner to which attention was drawn in the Leggatt Report. Additionally, CBI proposes that a further narrow amendment should be made to the Bill incorporating the objective test of 'furtherance' of a trade dispute approved by the Court of Appeal but over-turned by the House of Lords in the case of Express Newspapers v MacShane.

Dismissal of strikers

22 We would ask the Government to re-consider the omission from the Bill of a provision to modify the present law on the dismissal of strikers. As we have said before, the present interpretation of section 62 is most unsatisfactory and has weakened the employer's ability to stand up to strikes. It should be provided that in considering the fairness of such a dismissal the test of discriminatory action should apply only to those involved in industrial action at the time of dismissal.

ACAS terms of reference

23 In our previous recommendations to Government we expressed the view that the present terms of reference of ACAS acted as an obstacle to the Service's impartiality. We advised that the reference to 'encouraging the extension of collective bargaining' should be removed from section 1(2) of the Employment Protection Act 1975. We would welcome an amendment to the Bill to this effect.

Social Affairs Directorate
AGH/JK
January 1980

United Biscuits

01-560 3131

SYON LANE
ISLEWORTH
MIDDLESEX

The Rt.Hon. Mrs. Margaret Thatcher, MP,
10 Downing Street,
London S.W.1

13th February 1980

Dear Margaret.

Thank you for your letter and for taking the time and trouble to set out your views so fully.

I totally support your strategy for dealing with trade union power ; it is only the tactics which I question.

If Diplock throws doubt on the effectiveness of the present proposals for limiting picketing, then they must of course be amended accordingly. To go further and confine blacking to primary action and ban sympathy strikes altogether would, in union eyes, be seen as a fundamental threat to their movement.

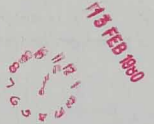
In my experience, one tends to under-estimate the frictional cost of change. In this legislation I believe that the frictional cost fo change would be too high. It seems to me that to tackle the problem in two steps - supposing the second step should prove to be necessary - would be the wiser course.

As I said in my last letter, many people whom I respect share my view, and Marcus Sieff expressly told me to mention his name in this connection.

Let me conclude by saying that this must be a particularly difficult decision, and whatever your Government decides will have my total support.

Yours

Hector.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CONFIDENTIAL

PRIME MINISTER

What follows is a Speaking Note, in case you want to tell the Cabinet the outcome of yesterday's discussion on trade union immunities etc:-

1. Cabinet may like to know that E Committee reached agreement yesterday on the next steps on strengthening the Employment Bill. I might remind the Cabinet that Ministers have already agreed to very severe restrictions on the right of picketing. All of us would ideally have liked, particularly in light of what is happening in the steel strike, to ban secondary action altogether. But we have to have regard to what is possible; and we do not want to destroy the chances of getting trade union acquiescence in the measures we propose, once enacted, even if they are bound to object to them in the Bill.

2. We have therefore agreed to publish, next week, a working paper, for consultation with the unions and the employers. This will contain proposals which will broadly restore the law to the state we thought it was in last year - before the House of Lords Judgments in the McShane case swung the balance too far in favour of the unions. In fact, our proposals will go beyond that, tightening the law in some respects, and making it clearer in others. In the working paper we shall present it positively, in terms of restoring the right of the individual to protect himself, and his employees, from undue interference by trade unions with whom he is not in dispute.

3. At the same time, we shall make it clear that these proposals are not necessarily our final solution: if these measures do not produce the improvements we are looking for, we shall have to consider further measures. We might promise a green paper later in the year on wider aspects of trade union immunities.

4. When the consultation process is over, in about four weeks, the Secretary of State will bring forward fresh proposals for new clauses to be added to the Employment Bill. The Parliamentary tactics for handling these are going to require some care, and the Chief Whip and the Leader of the House areworking

closely on these. Meanwhile, I hope all Ministers will take every opportunity, in public speeches and in private encounters, to give full support to the Secretary of State for Employment in the proposals which he will be bringing forward.

RJA

(Robert Armstrong)

The Secretary of State for Employment will be circulating to colleagues on E the revised draft of the consultative document, before the weekend, for clearance by correspondence.

13th February 1980

Original returned to J. Hoskyns. 13 February 1980

IME MINISTER

EMPLOYMENT BILL

The attached letter from Len Neal is self-explanatory. Too late for this time round, but it's important that we get the next stage moving. That will have to mean enough of a teach-in on the fundamental principles at issue, so that colleagues can agree on the moral, as well as the economic and legal objectives. That sort of agreement and understanding won't come at E Committee meetings.

We will also need to maintain pressure to ensure that Green Papers emerge, and this means a multi-department group to examine the options. We are taking steps to ensure (I hope) that the reference to the Green Paper in the summer is recorded in the E minutes.* I am at present assuming that, by early summer, the tune will have changed and arguments will be coming forward that it is too early to produce a Green Paper, that the new Act must be tested first, that raising controversial issues in a Green Paper would be provocative to the unions just when we are winning their goodwill etc. Unless we are very careful, the whole game will be played over again, with the more dove-like colleagues coming, totally confused, to a last-minute meeting in a year or so's time, ready to be manoeuvred into agreeing to do nothing.

The count-down for avoiding that starts now.

Similarly, contingency planning must start soon for the fairly likely eventuality that legal enforceability of the present Bill turns out to be difficult.

JOHN HOSKYNS

* I now understand the Minutes say "this year", so it's already starting.

Centre for Policy Studies

8 Wilfred Street · London SW1E 6PL · Telephone 01-828 1176 Cables: Centrepol London

The Rt. Hon. James Prior, M.P.
Secretary of State,
Department of Employment,
Caxton House,
Tothill Street,
London SW1

12th February 1980

Dear Secretary of State,

Below I list some suggested changes for the Employment Bill.

1. Ballots on strike action and election of officers should be obligatory.

2. In the case of Subsection 3(a) relating to industrial action should be worded by the Certification Officer.

3. Because of differences in the constitutional arrangements of trade unions, Subsection 3 (b) should refer specifically to the sovereign body or to the chief decision-making body of a trade union.

4. Subsection 3(b) should be amended to allow the use of public funds for postal votes only; all other ballots to be financed by the trade unions; this to be explained in the preamble.

5. Past experience suggests that codes of practice often produce undesirable side-effects, often involving complicated procedural problems, and for this reason may be more harmful than beneficial. It is therefore suggested that Section 2 Subsection 8 should be omitted from the Bill.

6. In Section 9 (contribution in respect of compensation), line 33 should be revised so that the words "or employee" are inserted between the words "the employer" and "may require the person".

7. In Section 6(3) - 58(1) delete lines 16-20, delete the words after the phrase "class of the employer", and substitute the words "if 80% of the workforce have already applied to join the trade union".

8. Section 14 (restrictions on legal liability), that section of the Bill should be deleted and replaced by a new section which would create an offence of unlawful picketing. An offence will be committed by any person who knowingly organises or participates in a picket or exhorts and incites or aids and abets any person to do so,

in breach of the requirements for a lawful picket. There should be a maximum fine of £300 and 200 hours community service for a first offence and six months in prison for subsequent offence (i.e. an offence committed after conviction of an offence). Vehicles knowingly used for transporting persons for unlawful picketing should be liable to forfeiture. Conviction should count as an automatic five-year disqualification from any union office, from the right to organise or participate in pickets, and should provide grounds for fair dismissal from employment.

9. A trade union calling the official strike should be responsible for appointing a 'picket organiser'. A picket will be unlawful if:-

a) No picket organiser has registered with the police and issued armbands.

b) The registered picket organiser is not eligible to organise a picket by virtue of being neither a local union official or employee at the premises with two years service, or by having been convicted of any criminal offences (except minor motoring offences) within the previous five years.

c) The authorised pickets or some of them are likewise disqualified by virtue of conviction.

d) There are more than six pickets at any one access point.

e) The pickets are not wearing armbands issued by the police.

f) Threats are uttered by any of the authorised pickets to non-strikers or any person is obstructed or forcibly detained or intimidated.

g) It occurs at premises other than those of the workplace at which the pickets worked prior to the dispute.

h) Any violence is used by any of the authorised pickets to any non-striker or if any offensive weapon is carried.

i) It concerns a dispute other than a trade dispute between those involved at the premises to be picketed.

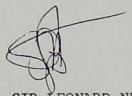
The Rt. Hon James Prior, M.P. 12th February 1980

10. Any person who, not being a picket organiser or authorised picket, nevertheless joins a picket-line, poses as an authorised picket, or purports to picket, will commit an offence.

11. Any person attempting to intercept non-strikers on their way to work or participating in a demonstration concerning any dispute within 500 yards of any access point to the premises under picket will be deemed to be picketing.

With regards,

Yours sincerely,



SIR LEONARD NEAL

Dictated by Sir Leonard Neal and signed in his absence

13 February 1980

PRIME MINISTER

JIM PRIOR'S PROPOSALS ARE INADEQUATE

I feel that our note last night did not sufficiently stress the inadequacy of Jim Prior's proposals, whether option 3, or option 5, or the two combined in paragraph 21.

The reason why his proposals are not good enough is that they accept as right and natural the very thing we find indefensible - the concept that a first supplier or first customer should not be immune. Why should the bad luck of having a contractual relationship expose a company to potential bankruptcy against trade unionists and a trade union both immune? It really is time we considered the innocent bystander, instead of simply trying to reduce slightly the unions' armoury of weapons for imposing unconditional surrender - for that is what it amounts to.

There is a huge difference between options 1, 2, 4 on the one side, which are really trying to alter the balance (though we have reservations about option 4, on the attached sheet) and Jim Prior's options 3 and 5, which simply add a few frills to the status quo.

Options 3 and 5 do not fulfil the Manifesto commitment in its reference to "those not concerned in the dispute but who at present can suffer severely from secondary action . . .".

JOHN HOSKYNS

THIS IS LESS URGENT 13 February 1980

COMMENT ON OPTION 4 (PARAGRAPH 17(ii)

The concept of "material support" is dubious.

It can only really apply when there is a partial strike. If the strike is total, it is difficult (though not quite impossible, I suppose) for another employer to give material support by filling contracts.

But surely the way to make a partial strike effective is for other employees at the factory to take (primary) strike action in sympathy? But that would involve sacrifice - they would have to be prepared to lose their pay, in order to help their fellow workers.

The proposal in option 4 is, in effect, that it should be possible to back up partial (ie minimum cost) strike action by cost-free secondary blacking, so that it can cripple as effectively as if it were a total strike. And it is worse than that. The immune secondary action, by preventing, for example, the arrival of some key component like an exhaust pipe*, could mean that the rest of the work force is laid off, with lay-off pay or unemployment benefit.

It might be objected that it is not reasonable to expect other workers at the employer in dispute to lose earnings in order to help their fellow workers win their partial strike. But surely that is what sympathy strikes are for? After all, ISTC ordered without a ballot, sympathy strikes in BISPA companies!

The more one thinks about the problem, the clearer it becomes that secondary action is simply wrong, in terms of natural justice.

* Any alternative supplier could presumably be blacked in a similar way.

Personal.

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From The Secretary of State for Wales

13 February.

Sent by hand P.M. 13/2

Dear Prime Minister,

I am writing this note because I think it better to raise this point now rather than in Cabinet tomorrow. I understand that discussions have been taking place in 'E' Committee about Trade Union legislation; but no papers have been circulated even on the most restricted basis to members of the Cabinet who do not serve on that Committee. I have no information about what alternatives are being considered, and have had no opportunity to form a view about them.

I am sure you will agree that it would place members of the Cabinet in a very difficult position if they should be asked to form

a view either having seen the relevant papers.

I hope, therefore, that if the matter is to be raised in Cabinet tomorrow – and in any case before final decisions are taken on the vital issue – that those of you who do not serve on 'E' will be sent papers.

Yours ever

Nick

12 February 1980

W Lankester

PRIME MINISTER

EMPLOYMENT BILL - E

1. Manifesto Commitment: "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 . . ."

2. Before discussing the options set out in the Secretary of State's paper, you might briefly remind the Committee of our objectives:

   (a) to fulfil the Manifesto commitment;

   (b) to provide a new law which clearly defines Parliament's intentions, avoiding excessive judicial discretion or uncertainty;

   (c) to provide a law which is capable of enforcement with minimum opportunity for martyrdom or ineffectiveness;

   (d) to lay the basis now for the next moves in trade union reform.

3. The Manifesto commitment is capable of more than one interpretation. To us, it plainly states that those not concerned in the dispute should be protected by law. However, others could point out that picketing, blacking and blockading are explicitly mentioned, while secondary or sympathetic strike action is not.

4. We think it would be useful for the first part of the discussion to focus on the kinds of practices that must be made unlawful, while identifying others which are either more justifiable or practically impossible to stop. The main types of secondary action are:

   (a) picketing, on which a clear decision has been taken;

   (b) sympathetic striking, where those taking strike action are at least depriving themselves of their main source of income;

   (c) blacking, which is essentially selective action not normally requiring a financial sacrifice by those who perform it;

   (d) blockading, which amounts to a combination of picketing and blacking, usually intended to heighten the effect of a strike by preventing the movement of goods.

5. We suggest that the objective should be to restrict immunity for blacking and blockading in the same way as we are already doing for picketing. However, sympathetic striking, raises two important issues:

(a) Do we want to be accused of restricting the right to strike?

(b) Will restrictions be enforceable?

6. One of the key issues Ministers must decide is whether to attempt restrictions on sympathetic striking. Where a group of workers freely decide to take sympathetic strike action, the only remedy for their employer at present is to dismiss them. If immunity for secondary action is removed, it would become possible for him to seek an injunction restraining a union - or a named unofficial organiser - from calling for sympathetic action. But if the strike has strong support among the work force, the only basis for an effective injunction would be the removal of the section 14 immunity, combined with a declaration that trade unions were responsible for all the actions of their members. This would be more extreme than any of the measures so far proposed. It must therefore be recognised from the outset that "spontaneous" sympathetic striking cannot be prevented. Arguably, this applies to genuinely "spontaneous" secondary picketing or blacking as well.

Options

7. Accepting these limitations and the objectives above, we think there are two effective choices:

(a) remove all immunities for secondary action (option 1, probably best achieved by the Solicitor General's approach described at option 2); or

(b) no general immunity for secondary action, with specified exceptions (option 4).

8. If colleagues are attracted by the Solicitor General's approach, it is important to establish that it would work in practice. The Solicitor General says, at paragraph 11 of the paper, that there would still be wide-ranging immunity where there was no actionable interference with

commercial contracts. No example of this is given. Could the Solicitor General provide one? If a union called a strike at a supplier or competitor, would it be able to argue that it was only seeking to interfere with the contract of employment? Could the employer be sure of a remedy, even though his commercial contracts were only indirectly affected?

9. If colleagues want to make some exceptions to a general withdrawal of immunity, John Nott's approach (option 4) provides the framework. We think the first exception he suggests, 17(i), is a justifiable exception. But the meaning of 17(ii) is less clear and much less justifiable. What would constitute "material support"? Would selling anything to the employer in dispute amount to material support? This would be much too wide an exception. Presumably the exception would also extend to all other companies who were contributors to the CBI's strike fund in cases where this was involved.

10. We see some attraction in the exception suggested at 17(iii), which coincides with the Manifesto commitment to protect those not involved in the dispute.

11. If colleagues do not want to outlaw sympathetic striking in general, we see advantages in 17(iv). We believe a democratic check on secondary strike action would limit it to cases where the work force felt so strongly that it would be impossible to prevent in any event. The principle of balloting members is readily explicable. It would lay the foundation for further reforms - particularly secret ballots for membership elections and for primary strikes too.

12. Finally, if colleagues want to build on Jim Prior's proposals, the combination of options 3 and 5 - described at paragraph 21 - would be making the best of a bad job. It might even be possible to toughen the Prior approach up still further by adding to the tests described at paragraph 19.

Enforcement

13. The official paper discusses the problem of enforcement very superficially. If section 14 were repealed, it would obviously be

necessary to align the immunities for individuals and trade unions in future. This would leave employers with a choice of target according to the circumstances. We suggest you invite the Solicitor General to say more about two aspects of enforcement:

(a) How confident can we be that - as he suggests at paragraph 15 of his note - courts will consider fines and/or sequestration more effective than imprisonment?

(b) If an injunction is granted against one trade union official, how far is it transferable to others who may take his place? In particular, when an injunction was recently granted against the ISTC, did it also apply to the NUB (who promptly said they would organise the pickets instead)? While the Solicitor General may be able to reassure colleagues about the position when union officials are involved, it must be very difficult to extend an injunction from one group of unofficial individuals to another - especially in circumstances where there are large numbers of people ready to take the place of others.

Consultative Paper: Tactics

14. Whatever colleagues decide tomorrow about the Government's preferred route, a decision is also needed on what options should be displayed in a consultative paper. There is a strong case for including options which go further than the Government intends. In particular, if colleagues decide against amending section 14, this issue could nevertheless be raised on the consultative paper, so that the basis is laid for putting the unions on notice that section 14 may need to be changed at a later date. We also think that if a variant of option 4 is adopted, there is a case for setting out option 2 as an alternative course. Ideally, we should aim to lure some trade unionists into expressing a preference for option 4 - and for naming the categories of exceptions which they would like to see.

JOHN HOSKYNS

Secretary A. Bryant.

Prime Minister

SECRET

Ref. A01404

MR. WHITMORE

Last time E discussed the Employment Bill, the Secretary of State for the Environment suggested that Ministers should consider "the Armageddon option". The Secretary of State for Employment has spoken of possible massive resistance to stronger legislation. This note, which has not been discussed with or shown to anybody outside the Cabinet Office, attempts to consider what forms it might take and how the Government could counter it.

(i) Parliamentary opposition to the passage of legislation.

The Opposition would presumably exploit every procedural opportunity to delay the Bill. If some of the Government's own supporters were unenthusiastic, this might hold up its passage; but with a guillotine it could still be enacted before the Recess.

(ii) Union resistance during passage.

There would no doubt be large demonstrations, mass lobbies, token one-day strikes (themselves already actionable since no industrial dispute would exist) etc. But since the object would be to stop or delay the legislation, the trade union movement would presumably stop short of action which would underline the need for the legislation and strengthen public support for the Bill.

(iii) Union resistance after enactment.

A major general challenge is possible; but it seems more likely that the unions would await

(iv) A test case. Because the legislation would work by giving each employer a legal remedy, it is not easy to forecast when the first challenge would come. The Government might not be able to do much to make sure that the test case was on the most favourable ground: there is no control over maverick employers, though some informal co-operation with the CBI might be possible. It would be preferable that the first challenge should come over a sound case: it will be

important, especially if the law leaves a lot to the discretion of the courts, to ensure that the new instrument does not break in the employers' hands. If Ministers were worried about the possibility of the first test case coming on a Grunwick rather than a United Biscuits type of case, it might just be worth considering whether some procedural device like the Attorney General's fiat could be introduced into the Bill. The objection to this would be that it would introduce the Government directly into the case, and would be an interference with the plaintiff's legal rights.

(v) Defiance of a Court Order.

The normal use of the new Act will probably be an interim injunction against named individuals (or, if Section 14 is amended, against a union) requiring them to desist from some form of secondary action. Resistance could then take two forms: the named pickets could be replaced on the picket line by others; or (if officers of the union were enjoined, as in the Duport case) new officers could be elected. This latter process would take time (so Duport's tactics were probably correct) and it seems probable that even the new officers would be in contempt if they continued with the forbidden action. More probably those enjoined might continue to picket, etc. That would certainly be contempt of court, and it would then be for the officers of the court (the tipstaffs) to enforce the judgment. The police would no doubt provide cover, but could intervene only if there were a breach of the peace.

(vi) Mounting resistance.

Two reactions would then be possible. Either there could be massive defiance of the police, as at Saltley (the turning point in the miners' strike of 1972, whose significance was certainly not lost on Arthur Scargill), and it would then be for the Chief Constable concerned, in the knowledge of any guidance which the Home Secretary might give him, to decide whether to withdraw. Or the self-appointed martyrs might go to jail.

(vii) Escalation.

Things might then go either way. A head-on collision with the police, leading to violence, could produce similar episodes all over the country. Or it might provoke a reaction. It would all depend very much on whether trade union leaders (with the unwanted help of the CPGB and others) had managed to generate a strong current of support in the movement, or whether the Government succeeded in turning the opposition to the new measures to their advantage, and holding the support of the mass of moderate opinion. But the risk of an upsurge of violence is there. Jailing martyrs is, on the whole, less likely to provoke immediate violence; but might more easily provoke some kind of official trade union reaction.

(viii) Organised resistance.

The TUC might feel forced to organise a response to the jailing of martyrs, or to police action. Or there could be a 'spontaneous' outburst like the 'Stop the Act' campaign in 1971. Such a response might take at least two forms: a series of individual protest strikes, or a general strike. The first would probably not constitute 'industrial disputes' within the meaning of the present Section 29, but clearly there would be little point in seeking legal remedies, in a situation in which the law was already being challenged. The second, while perhaps less likely, is the TUC's ultimate threat. It is a matter of judgment whether, in the end, they would be prepared to use their deterrent. In either case, there would be a mounting risk of serious disorder, confrontation with the police, etc. In a war of nerves of that kind, the Government would need to have a clear idea of how far it was prepared to go and what escape routes were open to it (short of complete withdrawal of the Act). It is not clear what these might be.

(ix) A referendum might seem an attractive way of enabling the voice of moderate opinion to find decisive expression. But it would be an uncertain card to play: it would take at best some weeks to organise, the campaign would be full of traps and troubles for the Government, and (as successive French Presidents have found) the result might not be welcome when it came, because those opposed to the legislation would have done their best to make the issue one of general confidence in the Government.

P.L. Wright

pp (Robert Armstrong)

12th February, 1980

CONFIDENTIAL

Ref. A01400

PRIME MINISTER

Immunities for Secondary Industrial Action

(E(80) 10 and 12)

BACKGROUND

Last week's meeting failed to reach agreement on the options to be set out in the Consultation Document which Mr. Prior wishes to publish. The Committee asked him to arrange for officials to produce a note on these options. E(80) 10 is the result. Officials concerned consulted their Ministers (including the Solicitor General and the Secretary of State for Trade) and then prepared the paper. You saw it over the weekend; it was revised (mainly as a matter reordering) yesterday. It is confined, in the main, to Section 13; Section 14 is touched on only in the context of 'enforcement'. The note you also commissioned on the 1971 experience has been circulated as a separate paper. There is also a further paper by the Solicitor General, prepared after a talk which he had with the Lord Chancellor over the weekend, circulated under his minute of 11th February to the Secretary of State for Employment. Part 2 of this paper amounts to endorsing officials' description of Options 3 and 5, and setting out again his own proposal (Option 2). Part 3 suggests that repealing or amending Section 14 of TULRA would not be helpful.

Also a note from the Lord Chancellor

IL.

HANDLING

2. Whatever the outcome of this morning's discussion, you will probably need to refer the issues to Cabinet on Thursday; conclusions at this meeting need not be final. Moreover, what we are talking about now is the contents of the Consultation Document. There is no need for the Government to take up a final position on any of these points unless it wishes to.

3. A compromise solution might have three components:

(i) Action on strikers and supplementary benefit (discussed at a separate meeting yesterday): a reasonably effective package of measures here would strengthen the Government's hand in presenting the Employment Bill changes to its own supporters.

(ii) A clear public indication that these changes are not necessarily the end of the road: paragraph 12 of the existing draft of the working paper says that 'although this limited action is what the Government consider at this stage to be appropriate, their review of trade union immunities will continue'. This does not specifically mention Section 14, but it contains a clear hint.

(iii) The toughest possible choice among the options listed in the present paper. While it may be agreed to drop Option 1 (a complete ban on secondary action) it might just be possible to persuade Mr. Prior to list the others as options, although he will probably try to avoid mentioning any but his own two preferred courses (Options 3 and 5).

4. Tactically, it may therefore be best to take the Committee through the options listed in the paper, one by one:

Option 1. This was included mainly as a bench-mark. It seems unlikely that Ministers would wish to mention it in any public document, save perhaps as a 'limiting case'. The likely adverse reactions from the trade unions are such that it might not be advisable to mention this even as a theoretical option - especially if Ministers do not regard it as feasible in practice.

Option 2. The Solicitor General originally put forward this proposal at E. Officials have tried to clarify it in drafting their paper, but you need to look at paragraph 8(b) of his own separate note as well. This approach sounds attractively simple. But it would be a mistake for Ministers to underestimate its severity - and therefore the likely reaction to it. The clue is in the second of the two provisos. No union engages in secondary action unless it wants to put pressure on the primary disputant. To do so means cutting off his supplies, or interfering with the flow of his finished product. Either of these, almost always, must involve a breach of a commercial contract; and such action would not be immune. So the Solicitor General's solution is, on its own, drastic. It might nonetheless be the basis of a solution, if it could be modified, e.g. by bringing in some further provisos, like those listed illustratively in Option 4, which might make it slightly less drastic. If the Committee seems attracted, you might try this route. The variant identified in paragraph 13 is even more restrictive than Option 2 itself.

Option 3. This is one of the two courses proposed by Mr. Prior. It gets back very close to the pre-'McShane' position, but it does so by putting fairly specific limits in the Statute, leaving relatively little (though still something) to the discretion of the courts. Paragraph 7 of the Solicitor General's note comments in more detail.

Option 4. Mr. Nott was not very specific at E last week about his suggestions, but this section has been prepared after consultation with him. This option starts by banning all secondary action, and then erects a series of exceptions (the Solicitor General's Option 2 achieves the same result, by affording a legal remedy in all cases except where specific provisos are erected). Once a limited number of exceptions was written into the Bill there would be great pressure to enlarge them: this can be regarded as a disadvantage, or as an advantage, if one regards it as a safety valve. It would also be important, in the Consultative Document, to make clear that any exceptions described were only illustrative. There has not been much time to develop them as yet.

Option 5. This is probably Mr. Prior's preferred option. It has the merit of building on the interpretation which the courts were applying before McShane. But it still leaves plenty of scope to the Judges. In this it offends against Lord Scarman's dictum in the recent House of Lords decision, to which you drew attention over the weekend. Because it is, in this sense, rather different from the other options, it is now placed at the end of the list. Paragraph 8(a) of the Solicitor General's note sets out his comments.

5. Enforcement. It is only at this point that the question of enforcement against trade unions comes in. Mr. Prior remains completely opposed to any action on Section 14, at this or, probably, at any other stage. The Chancellor's position seems to be that this is the best time to move and that there will never be a better one. Mr. Prior promises all sorts of terrible consequences. These have never been fully spelt out (despite Mr. Heseltine's request at the last meeting for an 'Armageddon option'). You may in any case wish to commission some further work on methods of enforcement. Depending on the outcome of this meeting, you may want to end up with an instruction to me to arrange for

officials to do such work. I would advise this course, rather than a remit to the Home Secretary and the Contingencies Unit: this goes a lot wider than straightforward contingency planning.

6. In the version you saw at the weekend, there was a sentence in what is now paragraph 23 which read: "Injunctions apply not only to those named in them but to any who stand in their place." This sentence has been taken out. You thought that it ran counter to a dictum of Lord Diplock in the House of Lords judgment last week that "only those individuals /named in the injunction/ are bound to observe the injunction. Everyone else involved in the industrial action can carry on with impunity....". The Department of Employment lawyers have consulted the Solicitor General's staff. I understand that the Solicitor General would agree that "injunctions apply to those named in them, but persons who knowingly step in so as to do the forbidden act may also be committed for contempt." But he does not think that this point is necessary in the paper, and (since the deadline for circulation had already passed) we did not include it. Mr. Prior, however, does attach importance to this point: he believes it demonstrates the effectiveness of the 'injunctions against individuals' or Section 13 approach, and hence the lack of any real need to move on Section 14.

CONCLUSIONS

7. I hesitate to suggest firm conclusions at this stage. The three points you need to cover, if possible, are:

(i) Whether or not to refer the matter to Cabinet next day or next week.

(ii) Whether to take final Government decisions now, or settle only the contents of a Consultation Document.

(iii) Whether a compromise on the lines indicated in paragraph 3 above seems possible.

RA

(Robert Armstrong)

12th February, 1980

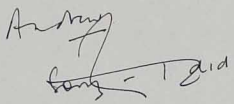
DRAFT

JOHN

cc David

TRADE UNION IMMUNITIES

I attach a rough draft of the kind of note we could put to the Prime Minister. It suggests a structure for the meeting and raises a number of questions which the papers before Ministers do not cover adequately. Perhaps we could discuss this further later.



AD.

ANDREW

12 February 1980

Tuf

Any thoughts on whether a note like this would be helpful? Or any points not covered that should be?

Buck.

12 February 1980

OUTLINE NOTE FOR PM ON TRADE UNION IMMUNITIES

1. Manifesto Commitment: "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 . . ."

2. Before discussing the options set out in the Secretary of State's paper, you might briefly remind the Committee of our objectives:

(a) to fulfil the Manifesto commitment;

(b) to provide a new law which clearly defines Parliament's intentions, avoiding excessive judicial discretion or uncertainty;

(c) to provide a law which is capable of enforcement with minimum opportunity for martyrdom or ineffectiveness;

(d) to lay the basis now for the next moves in trade union reform.

3. The Manifesto commitment is capable of more than one interpretation. To us, it plainly states that those not concerned in the dispute should be protected by law. However, others could point out that picketing, blacking and blockading are explicitly mentioned, while secondary or sympathetic strike action is not.

4. We think it would be useful for the first part of the discussion to focus on the kinds of practices that must be made unlawful, while identifying others which are either more justifiable or practically impossible to stop. The main types of secondary action are:

(a) picketing, on which a clear decision has been taken;

(b) sympathetic striking, where those taking strike action are at least depriving themselves of their main source of income;

(c) blacking, which is essentially selective action not normally requiring a financial sacrifice by those who perform it;

(d) blockading, which amounts to a combination of picketing and blacking, usually intended to heighten the effect of a strike by preventing the movement of goods.

5. We suggest that the objective should be to restrict immunity for blacking and blockading in the same way as we are already doing for picketing. However, sympathetic striking, raises two important issues:

(a) Do we want to be accused of restricting the right to strike?

(b) Will restrictions be enforceable?

6. One of the key issues Ministers must decide is whether to attempt restrictions on sympathetic striking. Where a group of workers freely decide to take sympathetic strike action, the only remedy for their employer at present is to dismiss them. If immunity for secondary action is removed, it would become possible for him to seek an injunction restraining a union - or a named unofficial organiser - from calling for sympathetic action. But if the strike has strong support among the work force, the only basis for an effective injunction would be the removal of the section 14 immunity, combined with a declaration that trade unions were responsible for all the actions of their members. This would be more extreme than any of the measures so far proposed. It must therefore be recognised from the outset that "spontaneous" sympathetic striking cannot be prevented. Arguably, this applies to genuinely "spontaneous" secondary picketing or blacking as well.

Options

7. Accepting these limitations and the objectives above, we think there are two effective choices:

(a) remove all immunities for secondary action (option 1, probably best achieved by the Solicitor General's approach described at option 2); or

(b) no general immunity for secondary action, with specified exceptions (option 4).

8. If colleagues are attracted by the Solicitor General's approach, it is important to establish that it would work in practice. The Solicitor General says, at paragraph 11 of the paper, that there would still be wide-ranging immunity where there was no actionable interference with

commercial contracts. No example of this is given. Could the Solicitor General provide one? If a union called a strike at a supplier or competitor, would it be able to argue that it was only seeking to interfere with the contract of employment? Could the employer be sure of a remedy, even though his commercial contracts were only indirectly affected?

9. If colleagues want to make some exceptions to a general withdrawal of immunity, John Nott's approach (option 4) provides the framework. We think the first exception he suggests, 17(i), is a justifiable exception. But the meaning of 17(ii) is less clear and much less justifiable. What would constitute "material support"? Would selling anything to the employer in dispute amount to material support? This would be much too wide an exception. Presumably the exception would also extend to all other companies who were contributors to the CBI's strike fund in cases where this was involved.

10. We see some attraction in the exception suggested at 17(iii), which coincides with the Manifesto commitment to protect those not involved in the dispute.

11. If Ministers do not want to outlaw sympathetic striking in general, we see advantages in 17(iv). We believe a democratic check on secondary strike action would limit it to cases where the work force felt so strongly that it would be impossible to prevent in any event. The principle of balloting members is readily explicable. It would lay the foundation for further reforms - particularly secret ballots for membership elections and for primary strikes too.

12. Finally, if colleagues want to build on Mr Prior's proposals, the combination of options 3 and 5 - described at paragraph 21 - would be making the best of a bad job. It might even be possible to toughen the Prior approach up still further by adding to the tests described at paragraph 19.

Enforcement

13. The official paper discusses the problem of enforcement very superficially. If section 14 were repealed, it would obviously be

necessary to align the immunities for individuals and trade unions in future. This would leave employers with a choice of target according to the circumstances. We suggest you invite the Solicitor General to say more about two aspects of enforcement:

(a) How confident can we be that - as he suggests at paragraph 15 of his note - courts will consider fines and/or sequestration more effective than imprisonment?

(b) If an injunction is granted against one trade union official, how far is it transferrable to others who may take his place? In particular, when an injunction was recently granted against the ISTC, did it also apply to the NUB (who promptly said they would organise the pickets instead)? While the Solicitor General may be able to reassure colleagues about the position when union officials are involved, it must be very difficult to extend an injunction from one group of unofficial individuals to another - especially in circumstances where there are large numbers of people ready to take the place of others.

Consultative Paper: Tactics

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COVERING CONFIDENTIAL

FROM THE PRIVATE SECRETARY

cf Duguid

HOUSE OF LORDS,
SW1A 0PW

12th February 1980

I.E.Fair Esq
The Private Secretary to the
Secretary of State for Employment
Department of Employment
93 Ebury Bridge Road
London S.W.1.

IMMUNITIES FOR SECONDARY INDUSTRIAL ACTION

I am enclosing a note which the Lord Chancellor has written for the meeting of E Committee tomorrow morning.

I am sending copies to the Private Secretaries of all other members of E Committee, and to the Private Secretaries to the Chancellor of the Duchy of Lancaster, the Paymaster General, the Solicitor General and Sir Robert Armstrong.

I.H.Maxwell

FROM: CONFIDENTIAL.

THE RT. HON. LORD HAILSHAM OF ST. MARYLEBONE, C.H., F.R.S., D.C.L.

HOUSE OF LORDS,
SW1A 0PW

EMPLOYMENT BILL: TRADE UNION IMMUNITIES

NOTE BY THE LORD CHANCELLOR

I have been reflecting about the Bill as it stands and our Election Manifesto and other cognate matters. I would like to put forward the following propositions:

1. As it stands the Bill already deals with picketing more or less in the terms of our Manifesto.

2. The existing law does not protect individuals (particularly for instance members of Trade Union Executives or Committees, or Officials) from liability for tort, although it protects Trade Unions. It seems to me that potential plaintiffs (*e.g.* innocent third parties) have not exploited this gap in the existing law since obstruction, nuisance, trespass and intimidation are not protected at all. I feel that the word should be put around that injunctions are available against such actions. In one of the recent cases where a McShane-type case (based on inducing a breach of contract) was involved, I am told that one of the pickets had a sledge hammer.

3. Whatever may be done about the McShane judgement I consider that "furthering" should be given an objective connotation and not the subjective connotation attached to it by the House of Lords.

4. I wonder whether it would not be a good thing to add a positive section declaring the rights of persons not party to trade disputes, and declaring interference with those rights an actionable tort (see draft No.1 in the attached annex which is simply a cockshy to illustrate what I mean). I wonder whether the picketing section (the new section 15 for the 1974 Act) might not be strengthened by adding a new sub-section in the manner suggested in the second draft in the annex which is equally only an illustration.

H of St.M

ANNEX

1. Suggested addition to the picketing provisions (additional Clause)

"Subject to the provisions of sections 14 and 15 of the 1974 Act but otherwise notwithstanding anything in this or any of the principal Acts, a person (including a body corporate) who is not a party to a Trade dispute shall be entitled to freedom to carry on his business and for that purpose to have free access to or from his place of work and to his customers, suppliers, stocks and scoures of supply, and any interference with or obstruction of such access shall be actionable in tort."

S.15 - Peaceful Picketing →

2. Additional sub-section in new Section 15 of the 1974 Act

"(1A) A person shall not be treated as attending for the purpose stated in subsection (1) above if while there (a) he is in possession of an offensive weapon or (b) he forms one of a group so numerous that by reason of its size it might cause reasonable apprehension in the minds of persons seeking lawful access to their place of work or (c) he obstructs the police or (d) he is insulting or offensive in his language or his behaviour."

Mark

Law of private Contempt.

CONFIDENTIAL

SOLICITOR GENERAL

01-405 7641 Extn

ROYAL COURTS OF JUSTICE,
LONDON, WC2A 2LL

11 February, 1980

The Rt. Hon. James Prior, MP,
Secretary of State for Employment,
Department of Employment,
Caxton House,
Tothill Street,
London, SW1.

Dear Jim

It seemed to me at the last meeting that a substantial amount of the time of the Committee was taken up with explanations of the basic questions of law which it is necessary to understand in order to follow and choose between the various options.

Accordingly after the meeting I drafted a note setting out what seem to me to be the real basics in their simplest form in the hope that that might be useful as a background to future discussions.

I enclose a copy herewith and am copying this letter and enclosure to the Prime Minister and other members of "E" Committee, the Lord Chancellor, the Lord Advocate and Sir Robert Armstrong.

Yours ever,

Ian

CONFIDENTIAL

Background note on matters of law relevant to the questions of policy now for consideration concerning Secs. 13 and 14 of T.U.L.R.A. 1974 as amended in 1976.

Part I General

1. There is an irreducible minimum of background law, without which consideration of the subjects in question may at best be confused, at worst meaningless. The following paragraphs are an attempt to set out that irreducible minimum.

2. Those who are the victims of industrial action (or their legal advisers) have to ask themselves three, cumulative, questions
   (a) have we got a cause of action; and if so
   (b) are we prevented by Sec. 13 of TULRA 1974 from suing on it; and if not so prevented
   (c) who can/should we sue?

3. The answer to (a) depends on the state (and development) of the law of tort (civil wrong) and is not affected by our proposals.

4. The answer to 2(b) lies in the combined effect of a number of factors, viz.,
   (a) If the cause of action is for anything except "interference with contractual relationships" - i.e. trespass, nuisance, intimidation - Sec. 13 has no application - it can and should be ignored.
   (b) If the cause of action is for "interference with contractual relations" then so long as the acts complained of were done "in furtherance of a trade dispute" Section 13 prevents the party from pursuing the rights which, ex hypothesi, he would otherwise have been able to pursue in the Courts.
   (c) Recent cases in the Lords have made clear that our worst fears as to the extent of that immunity (expressed repeatedly in 74 - 76) were well founded.

(d) In the first instance (i.e., in 1974) Sec. 13 was limited to "inducing breach of contract of employment". That is an advantage which trade unions have enjoyed for a very long time, which they need in some form if they are to function, and which it is not intended to limit save in the case of picketing.

(e) In 1976 the Labour Government extended the protection then given in respect of interfering with contracts of employment, to all contracts. It was as the result of this that parties who are not parties to a dispute are now in so many more cases deprived of the right to apply to the Court for protection, which is theirs at Common Law.

(f) The combined effect of the matters referred to in this paragraph is that where the "victim's" only cause of action is for "interference with contractual relations" (as is so often the case) Sec. 13 will in any of the practical circumstances we have to consider, prevent the "victim" from being able to pursue his Common Law rights.

Part II Limitation of the immunity given by Sec. 13

5. It is agreed (a) that except so far as picketing is concerned the immunity given in relation to "contracts of employment" for a very long time, shall remain, but (b) that the immunity given in relation to other contracts is too wide and must be reduced.

6. There are two main routes by which that may be done.
(a) Limiting the application of the whole Section by altering or defining the words by which the whole of Sec. 13(1) are conditioned i.e., "in furtherance of."

or (b) Deciding to what extent the immunity should extend to contracts other than contracts of employment and amending Sec. 13 to give effect to that.

7. As to the first, the "in furtherance route":-
(a) We have not yet found any formula which would offer any prospect of securing the sort of limitation desired with the sort of certainty for which one would wish.
(b) If the operation of the Section is to be limited by this route the change (or limitation) would apply to contracts of employment as well as other contracts unless specifically applied only to other contracts, with the result that
(i) if the change applied to all contracts and was significant this would represent a significant inroad into what can properly be called traditional immunities as distinct from those which have only existed since 1976.
(ii) if the change applied only to "other" contracts there would be two different tests.

8. As to the second here again there are two main lines of approach
(a) to say that if the "victim" is, though not a party to the dispute, a first supplier/customer of someone who is a party to the dispute, he shall be prevented by Sec. 13 from suing but immunity shall not extend beyond that; or
(b) to say that if the "victim" is not a party to the dispute and his action is for interference with contract(s) other than contract(s) of employment he shall not be prevented by Sec. 13 from suing;
and then in each case to add such refinements/modifications as may be considered appropriate.

9. Whether one looks at it in terms of restoring Common Law rights or limiting the privileges given to those engaging in industrial action, the second of those alternatives would of course go significantly further than the first. That would be its objective. Precisely how far would depend upon what refinements were asked for.

Part III "Making the Union funds liable"

10. That brings me to the third question. Assuming that the "victim" has a cause of action, and that he is not prevented by Sec. 13 from pursuing it, who can/should he sue?

11. I think that such a plaintiff would invariably be advised to sue the person actually doing what is complained of and any Union official who could be identified as having a part in it - whether or not he could sue the Union as well.

12. At present plaintiffs have to stop there, for Sec. 14 of TULRA is conclusive against suing the Union - so for the remainder of this part I will assume that Sec. 14 is not there and there is no statutory bar to proceedings against the Union.

13. It does not by any means follow, in my view that a plaintiff would always (i) join the Union or (ii) get an order against it - for there is little point in joining the Union unless there is a reasonable chance of getting an order against it and in order to do that the plaintiff would have to show that the action complained of was one for which the Union was vicariously liable - and in the present state of the structure of trade unions this could undoubtedly raise very many problems.

14. Such difficulty would not arise in the circumstance postulated by the Chancellor of the Exchequer - i.e. where the acts complained of are acts of the governing body of the Union. But then the question arises as to how much is in fact gained.

15. In such a case, if the members of the Executive are ordered to do something and fail to obey, the Court has three ways of punishing that contempt of Court. It may commit to prison

or it may sequestrate the assets of those in contempt until the contempt is purged, or in lieu of either of those it may impose a fine (unlimited). Thus it by no means follows as a matter of law that those who wish to get into prison will be able to do so. Plaintiffs - and Courts - may well consider the other means by way of fines and/or sequestration more effective - and it may well be unlikely that the members of the Executive would be prepared to have their assets taken, and likely therefore that they would demand reimbursement out of Union funds.

16. There are other considerations - such as that it might put a premium on unofficial action.

17. In those circumstances it may be felt

(a) that to repeal Sec. 14 would add nothing in the potentially large number of cases where "vicarious liability" would be a substantial issue; and

(b) that it is questionable whether it would in fact add much even in cases where there was no doubt on that issue; and

(c) that it is not in fact essential either for the purpose of denying defendants the pleasure of going to prison or of securing that expense may fall on Union funds.

11 February, 1980

PERSONAL AND CONFIDENTIAL

10 DOWNING STREET

THE PRIME MINISTER

11 February 1980

We spoke last evening about your letter of 6 February referring to the law relating to industrial disputes. I thought it would be best if I wrote down what I said.

I mentioned the Diplock judgement recently given in the House of Lords. I enclose a copy. It defines the law in no uncertain terms. Diplock dislikes the conclusions he reaches, but he has no option but to pronounce them correct. He said:

> "That conclusion is (as I pointed out in the MacShane case) one which is intrinsically repugnant to anyone who has spent his life in the practice of the law or the administration of justice. Sharing those instincts it was a conclusion that I myself reached with considerable reluctance, for given the existence of a trade dispute it involves granting to trade unions a power, which has no other limits than their own self-restraint, to inflict by means which are contrary to the general law, untold harm to industrial enterprises unconcerned with the particular dispute, to the employees of such enterprises, to members of the public and to the nation itself."

That is the starting point from which we must view the new proposals for legislation. Insofar as we do not effectively change the law we would be positively confirming what Lord Diplock said. We would be indicating that we are not prepared to protect the person who through no fault of his own has suffered damage at the hands of another. We should be telling the law-abiding citizen that we prefer to strengthen the powers of those who

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inflict injury rather than to help those who suffer from it. That course is not open to anyone who fought the last election on the Conservative manifesto, and it is therefore not open to me.

Now let me turn to the proposals which I understand you have discussed and approved:

(i) They do not protect firms or individuals against secondary strike action even though they are blameless. Companies can be driven bankrupt and employees lose their jobs, but they have no remedy against those who cause harm.

(ii) They do not stop secondary blacking. Indeed, they authorise it on a wide scale. Anyone who supplies or purchases from a company in dispute can have his goods blacked or boycotted. He has no remedy at common law.

(iii) Whether the proposals provide an enforceable remedy in the case of secondary picketing is difficult to judge. Department of Employment officials had advised that injunctions apply not only to those named in them, but to any who stand in their place. Nevertheless, as you will see from his judgement, Diplock advised:

> "Civil actions cannot be brought against trade unions, but against individual defendants only; and only those individuals are bound to observe the injunction. Everyone else involved in the industrial action can carry on with impunity doing that from which the individual defendants have been restrained."

I suggest that Diplock will be right because the fact that he says so makes it right.

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There is an overwhelming majority in the country (and according to surveys even a majority in the trade unions) which wants industrial action of all kinds to be limited to cases where there is a dispute between employer and employee. The majority believes that others not involved should be able to look to Parliament to make laws to protect them. So do I. Diplock said:

> "It is at least possible that Parliament when the Acts of 1974 and 1976 were passed did not anticipate that so widespread and crippling use as has in fact occurred would be made of sympathetic withdrawals of labour and of secondary blacking and picketing in support of sectional interests able to exercise 'industrial muscle'. But if this be the case it is for Parliament not for the judiciary to decide whether any changes should be made to the law as stated in the Acts and, if so, what are the precise limits that ought to be imposed upon the immunity from liability for torts committed in the course of taking industrial action."

In the same case, Lord Scarman told us how to do it:

> "And if Parliament is minded to amend the statute, I would suggest that, instead of seeking to close what my noble and learned friend Lord Wilberforce has aptly called 'open-ended expressions'(MacShane's case, p.94) such as those which have now given rise to bitter and damaging litigation (e.g., BBC v Hearn, NWL v Woods, MacShane v Daily Express), the draftsman should be bold and tackle his problems head-on. If he is to put a limitation on the immunities in section 13, let him do so my limiting the heads of tortious liability where immunity is conferred: if he is to strengthen the availability of interlocutory relief in industrial relations, let him include clear guidelines in the statute. And, if he is to limit secondary or tertiary 'blacking' or picketing, the statute must declare whose premises may, or may not, be picketed and how far the 'blacking' or picketing may extend."

That is what I am trying to do. We should draft precisely to limit the immunity to primary action and to restore common law remedies to those who suffer from secondary action, whether

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You refer to moderate trade unionists. I have countless letters from them pleading with me to strengthen their hand against the militants, telling me that is why they voted for us and that now this Government by failing to take effective action has let them down.

If we flinch from this task now, when we have public and massive trade union opinion with us, they are not likely to have much faith in us to do it next winter.

For obvious reasons I have not been able to put this view publicly yet. Judging from my correspondence, a lot of industrialists share it and would go much further. Some want a new criminal offence of "unlawful picketing". I would prefer to see what we can do through the civil law.

You quoted a saying to me. Let me counter with another famous quotation:

> "Our doubts are traitors
> And make us lose the good we oft might win
> By fearing to attempt".
>
> Shakespeare
> "Measure for Measure"

Sir Hector Laing

Round + Copeland

PM's first draft

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Sir Hector Laing

2

10 DOWNING STREET

Prime Minister

You wanted this back for the weekend.

TL

8/2

HOUSE OF LORDS

2

DUPORT STEELS LIMITED AND OTHERS (RESPONDENTS)

v.

SIRS AND OTHERS

(ON THEIR OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF THE EXECUTIVE COUNCIL OF THE IRON AND STEEL TRADES CONFEDERATION)

(APPELLANTS)

P. 17

Lord Diplock

Lord Edmund-Davies

Lord Fraser of Tullybelton

Lord Keith of Kinkel

Lord Scarman

Prima Facie

Lord Diplock argues –

(1) this case is no different from McShane – i.e. the subjective test of what "it" in furtherance of a dispute.

(2) even if it were different, the "political dispute" argument does not provide a basis. He cites Section 29(2)(b) of TULRA 1974 as implying that a ~~political~~ dispute with the government falls within the "in furtherance ..." definition.

See also last page about how to deal with immunities (Scarman)

There is a marvellous quote on page 17 which is what shows why it would desirable to go for union funds.

LORD DIPLOCK

My Lords,

As recently as 13 December 1979, this House decided in Express Newspapers Ltd. v. MacShane [1980] 2 W.L.R. 89, that upon the true interpretation of section 13(1) of the Trade Union and Labour Relations Acts 1974 and 1976, the test whether an act was "done "by a person in contemplation or furtherance of a "trade dispute" and so entitled him to immunity from a part of the common law of tort, is purely subjective: i.e., provided that the doer of the act honestly thinks at the time he does it that it may help one of the parties to a trade dispute to achieve their objectives and does it for that reason, he is protected by the section.

That conclusion as to the meaning of words that have been used by successive parliaments since the Trade Disputes Act 1906, to describe acts for which the doer is entitled to immunity from the law of tort over an area that has been much extended by the Acts of 1974 and 1976, is (as I pointed out in the MacShane case) one which is intrinsically repugnant to anyone who has spent his life in the practice of the law or the administration of justice. Sharing those instincts it was a conclusion that I myself reached with considerable reluctance, for given the existence of a trade dispute it involves granting to trade unions a power, which has no other limits than their own self-restraint, to inflict by means which are contrary to the general law, untold harm to industrial enterprises unconcerned with the particular dispute, to the employees of such enterprises, to members of the public and to the nation itself, so

/long ...

long as those control the trade union honestly believe that to do so may assist it albeit in a minor way, in achieving its objectives in the dispute.

My Lords, at a time when more and more cases involving the application of legislation which gives effect to policies that are the subject of bitter public and parliamentary controversy, it cannot be too strongly emphasised that the British constitution, though largely unwritten, is firmly based upon the separation of powers, parliament makes the laws, the judiciary interpret them. When parliament legislates to remedy what the majority of its members at the time perceive to be a defect or a lacuna in the existing law ~~xxxxxxxxxxxxxx~~ (whether it be the written law enacted by existing statutes or the unwritten common law as it has been expounded by the judges in decided cases), the role of the judiciary is confined to ascertaining from the words that parliament has approved as expressing its intention, what that intention was, and to giving effect to it. Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, unjust or even immoral. In controversial matters such as are involved in industrial relations there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable. Under our constitution it is parliament's opinion on these matters that is paramount.

 /A statute ...

A statute passed to remedy what is perceived by parliament to be a defect in the existing law may in actual operation turn out to have injurious consequences that parliament did not anticipate at the time the statute was passed; if it had, it would have made some provision in the Act to prevent them. It is at least possible that parliament when the Acts of 1974 and 1976 were passed did not anticipate that so widespread and crippling use as has in fact occurred would be made of sympathetic withdrawals of labour and of secondary blacking and picketing in support of sectional interests "industrial muscle". But if this be the case it is for parliament not for the judiciary to decide whether any changes should be made to the law as stated in the Acts, and, if so, what are the precise limits that ought to be imposed upon the immunity from liability for torts committed in the course of taking industrial action. These are matters on which there is a wide legislative choice which is likely to be influenced by the political complexion of the government and the state of public opinion at the time amending legislation is under consideration.

It endangers continued public confidence in the political impartiality of the judiciary, which is essential to the continuance of the rule of law, if judges, under the guise of interpretation, provide their own preferred amendments to statutes which experience of their operation has shown to have had consequences that members of the court before whom the matter comes consider to be injurious to the public interest. The frequency with which controversial legislation is amended by parliament itself (as witness the Act of 1974 which was amended in 1975

as well as in 1976) indicates that legislation, after it has come into operation, may fail to have the beneficial effects which parliament expected or may produce injurious results that parliament did not anticipate. But, except by private or hybrid Bills, parliament does not legislate for individual cases. Public Acts of Parliament are general in their application; they govern all cases falling within categories of which the definitions are to be found in the wording of the statute. So in relation to section 13(1) of the Acts of 1974 and 1976, for a judge (who is always dealing with an individual case) to pose himself the question: Can parliament really have intended that the acts that were done in this particular case should have the benefit of the immunity?" is to risk straying beyond his constitutional role as interpreter of the enacted law and assuming a power to decide at his own discretion whether or not to apply the general law to a particular case. The legitimate questions for a judge in his role as interpreter of the enacted law are: "How has parliament, by the words that it has used in the statute to express its intentions, defined the category of acts that are entitled to the immunity? Do the acts done in this particular case fall within that description?"

The first of these questions was answered by this House in the MacShane case in the way I have already mentioned. The principal question in this appeal is whether the Court of Appeal were right in overruling the High Court judge's finding that it was highly probable that the acts complained of in the instant case did fall within the category of acts entitled to the immunity.

before the judge and the Court of Appeal are to be found set out with customary clarity and simplicity in the judgment of the Master of the Rolls. Except that I think it necessary to transcribe in full one letter upon which the argument has mainly turned, I need do no more than re-state them here in summary form.

The British Steel Corporation ("B.S.C.") is a public authority established under the Iron and Steel Act 1975 to run the nationalised sector of the steel industry. It produces some 50 per cent of home produced steel in the United Kingdom and for that purpose employs a workforce numbering some 150,000, of whom about 95,000 are members of the trade union, the Iron and Steel Trades Confederation ("I.S.T.C."). Under the Act the Secretary of State is empowered by section 4 to give to BSC general directions as to the exercise and performance of its functions, and under Part II of the Act, sections 14 to 24, he is entitled to exercise a relatively close control over the finances of the Corporation and in particular over its borrowings. In effect, if BSC is operating at a loss, as it notoriously has been doing for some time past, the Secretary of State holds the purse strings. It is also in evidence, what is in any event a matter of public knowledge, that before the commencement of the strike by ISTC members which has given rise to the events with which this appeal is concerned, the Government announced its decision not to provide any public funds to enable BSC to meet its operating losses after 30 March 1980. Thereafter it must pay its own way and meet its operating costs, including its current wages bill out of its current earnings.

 In the latter ....

In the latter part of 1979 negotiations between ISTC and BSC on wage rates for 1980 began. Owing to the financial stringency which BSC would experience in 1980, little progress was made; and on 2 January 1980, the Executive Council of ICTS called a strike of its members employed by BSC. This is the trade dispute in furtherance of which the union claims the subsequent steps that are the subject of the instant appeal were taken.

Alongside the nationalised sector of the iron and steel industry there is a private sector. It consists of about 100 companies producing some 17½ per cent of the steel produced in the United Kingdom and employing as part of their total workforce some 15,000 who are members of ISTC. It is common ground that there was no existing trade dispute between these workers and any of their employees in the private sector.

By 17 January 1980 the Executive Council of ISTC were growing dissatisfied at the progress that the strike was making, even with the aid of some sporadic secondary picketing and sympathetic blacking of movements of steel by members of other trade unions. Accordingly they resolved to call out on strike their members employed in the private sector on 26 January unless a wage settlement with BSC had been reached by then.

On the same date notice of this resolution was sent to the Independent Steel Employers' Association which represents employers in the private sector. It is convenient to set out this letter in full because it contains a contemporary explanation by the General Secretary of ISTC of the purpose of the Executive Council in resolving upon this extension of the strike:-

/"Dear ...

"I refer to your telegram and that of "Mr. Alec Mortimer received yesterday. These "telegrams were read to the members of my "Executive Council who, after a full and "detailed discussion on the position of the "Steel Strike with the Corporation, and whilst "agreeing that there is no dispute with any "independent steel employer, were firmly of "the opinion that this dispute is becoming "politically stage-managed by the Conservative "Government.

"We feel that with not being made an offer "of any new money, that we are being singled "out for a direct Government and British Steel "Corporation attack.

"It is because of the political inter- "vention that my Executive Council feel that "we should now take the action of involving "the private sector in the public battle "against the Government attitude. Therefore "a recommendation will be confirmed next which "states as follows:-

"'That in the event of the dispute with "'the British Steel Corporation not being "'settled by Saturday, 26th January, 1980 "'instructions are being given to all of "'our members in the private steel industry "'to withdraw their labour.'

"I recognise the fact that our procedure "agreements do exist and we do not have a "dispute with you, nevertheless these points "have been made to our Executive, who have "ultimately taken this decision. I did manage "to extend the period of time before the action "will be taken. This will give us the oppor- "tunity to try and resolve the dispute.

"I would suggest that it could be very "helpful if you and all of your affiliated "organisations could write to the Government "complaining about their role in this matter "which leaves a lot to be desired. Perhaps "also pressures upon the Corporation to settle "the issue would be helpful now not only to "the B.S.C. but to the private sector."

An affidavit of Mr. Bramley, the President of ISTC, that was filed in these proceedings stated that there were other purposes too, concerned with maintaining the morale of the BSC strikers, retaining the sympathy of members of other trade unions at home and abroad who were adversely affected by the strike and avoiding confusion between steel that was to be "blacked" and steel that was not. I regard these, however, as subsidiary to the main purpose as disclosed

the shortage of steel for manufacturing industry would really begin to bite so that those manufacturers whose businesses would sustain serious losses, those workers who would lose their jobs and members of the public who would suffer hardship, would be induced to put the maximum pressure upon the Government to revoke its previous decision and to loosen the purse-strings to BSC to an extent that would provide it with a subsidy from public monies sufficient to enable it to pay to its workforce wages higher than it would be commercially possible for it to pay out of operating earnings.

Faced with this threat the sixteen companies operating in the private sector who are respondents to this appeal ("the private sector companies") issued a writ on 23rd January claiming injunctions against the three appellants who are sued in a representative capacity on behalf of themselves and all other members of the Executive Council of ISTC. The injunctions sought were against inducing the companies' employees to break their contracts of employment by coming out on strike, and against inducing any members of ISTC to interfere with the supply of steel to or from the companies' works or to picket the companies' premises.

Having given the requisite notice to ISTC under section 17(1) of the Trade Union and Labour Relations Acts 1974 and 1976 the private sector companies applied to the judge in chambers for interlocutory injunctions in terms of the writ. The application was heard in chambers on the afternoon of Friday 25th January by Kenneth Jones J. In a brief oral judgment the learned judge held that the

case was indistinguishable from the MacShane case the report of which had just been published. He rejected the only argument addressed to him on behalf of the companies on which it was sought to draw a distinction between that case and the instant case. He held that it was highly probable that the defence that the Executive Council of ITSC had acted in furtherance of a trade dispute would succeed. In the exercise of his discretion, he accordingly refused to grant any of the injunctions.

An appeal against this decision was heard by the Court of Appeal (Denning M.R., Lawton and Ackner L.JJ.] at a special sitting held on Saturday, 26th January, 1980. They reversed the judge's decision, granted the private sector companies the injunctions that they sought and, somewhat surprisingly, refused the Executive Council leave to appeal to your Lordships' House.

The decision of the Court of Appeal was unanimous. The reasons given by the individual members of the court were not identical but in oral judgments delivered ex tempore with little time for mutual consultation this is neither surprising nor illegitimate, since the task before the court was to consider the degree of likelihood that the Executive Council of ISTC would establish that the act of calling upon their members in the private sector to join the strike was done in furtherance of the trade dispute between the Union and BSC. One possible argument that could be advanced against the Executive Council's immunity might carry weight with one member of the court, an alternative argument

 /might be ...

might be preferred by another. The court acting might legitimately take into account the cumulative merits of the various arguments which commended themselves to one or other of its members.

A feature of the judgments which appears to me to be less legitimate is the absence of any recognition that the task upon which the Court of Appeal was engaged was not one of exercising an original discretion of its own to grant or to withhold an interlocutory injunction but of reviewing the exercise by a High Court judge of an original discretion which was his alone and which he had exercised in favour of withholding an injunction. Apart from a passing observation in the judgment of the Master of the Rolls that the speeches of the majority of this House in the MacShane case as to the purely subjective nature of the relevant test of entitlement to immunity under section 13(1) of the Act was not nearly as clear as the learned judge had thought, no deference was paid to his exercise of a discretion which the law had entrusted to him; there was no examination of his reasons for exercising it in the way he did. Indeed, both the Master of the Rolls and Ackner L.J. in their judgments refer to the exercise of "our" discretion by the Court of Appeal.

All three members of the Court of Appeal took the view that the original trade dispute between ISTC and BSC about wages had by 17 January 1980, generated a second dispute in which the parties were ISTC and the Government; that this second dispute did not fall within the definition of "trade dispute" because the Government were not the employers; and that the calling out of workers in the private sector

 /was an act ...

was an act done in furtherance of that second dispute. It will be convenient to refer to this as the "Two-Disputes" argument.

My Lords, if all this be accepted as an accurate description of the situation on 17 January 1980, how does this prevent the act of calling out the workers in the private sector from being an act done in furtherance of the trade dispute between ISTC and BSC which was still subsisting? If the Executive Council honestly believed that a principal reason why BSC would not agree to raise wages to the level that ISTC was demanding, was because the Government was adhering to a policy of refusing to provide BSC with the money to do so out of public funds, what could be better calculated to promote the success of ISTC's demands in its trade dispute with BSC than to take steps to create a nation-wide shortage of steel which would induce as many victims of the shortage to put pressure on the Government to change its policy? There may be some who would deplore this conduct; harsh words descriptive of it may come readily to the tongue; but it seems to me that, whatever else may be fairly said about it, it cannot be said with any plausibility that it was not done in furtherance of the existing trade dispute with BSC.

The "Two-Disputes argument" had not been advanced before the learned judge. Counsel for the private sector companies had relied upon a different argument to which I shall be adverting later. The Two-Disputes argument originated from a suggestion proffered from the bench during the hearing in the Court of Appeal; not unnaturally in the haste of a Saturday morning hearing counsel for the private sector companies was reluctant at that stage to reject it. Further reflection, however, prior to the hearing in this

House had led him to the conclusion that the Two-Disputes" argument cannot (rationally) be supported; he has not sought to uphold the judgments of the Court of Appeal upon this ground. In the circumstances I do not find it necessary to analyse those judgments in order to pinpoint what I believe to be the ———— fallacies in the trains of reasoning which led —— individual members of the Court to accept the Two- Disputes" argument as plausible. Suffice it to say that, for the reason I have already indicated briefly, I do not think it is.

Lord Denning M.R. advanced an alternative reason for allowing the appeal which is not echoed in either of the other judgments. He was unwilling to accept that the majority speeches in this House in the MacShane case had expressed a clear opinion that the test of whether an act was done in furtherance of a trade dispute was purely subjective. This led him to conclude that this House had not rejected a test based on remoteness (that) he himself had adumbrated and adopte in three earlier cases. These cases, he said, had not been specifically singled out by name in the MacShane case as being over-ruled. He inferred from this that it was arguable that they (still) remained good authority. In the MacShane case this House was not concerned to decide whether the actual decisions in any of a series of previous cases in the Court of Appeal were wrong. What was considered was whether any —— of three different tests which had been adumbrated in those cases as applicable to determine whether an act was done by a person in contemplation of furtherance of a trade dispute, was right in law or not. Among

the three tests rejected as wrong in law was the test of remoteness the authorship of which was specifically ascribed in my own speech to Lord Denning. Recognising this, counsel for the respondents has not felt able to support the judgment of the Court of Appeal on this ground either.

There remains the argument for distinguishing the instant case from the MacShane case that counsel for the companies had addressed to Kenneth Jones J. at first instance. He had been diverted by the Two-Disputes argument from developing it in the Court of Appeal. It formed the only ground upon which he felt able to rely in inviting this House to over-rule the exercise of his discretion by that learned judge. It receives no mention in the judgments of Lord Denning M.R. or Lawton L.J., but it attracts (what may have been intended as) a brief reference in the judgment of Ackner L.J. who treats it as arguable.

I do not however find the argument easy to formulate with precision. It starts with a question in a form which I have suggested presents the court with an insidious temptation to cross the boundary between interpretation and legislation: "Can parliament in passing the 1974 and 1976 Acts have intended the immunity conferred by it to extend to acts the object of which was to coerce governments by the infliction of great damage on an innocent public?"

Parliament may not have expected when it passed the Acts of 1974 and 1976 that trade union leadership would use the immunity granted to them by section 13(1) in such a way as to produce consequences so injurious to the nation; but if there is some legal limit upon the immunities under the existing legislation it must be found as a matter of

 /construction ...

section "An act done by a person in contemplation "or furtherance of a trade dispute". That parliament contemplated that such an act might be directed at putting pressure upon (or, if you prefer the word, coercing) a Minister to alter government policy where that policy relates to terms and conditions of employment is evident from section 29(2)(b) which brings within the definition of a trade dispute a dispute between workers and a Minister of the Crown if the dispute relates "to matters which cannot be settled "without that Minister exercising a power conferred "upon him by or under an enactment." It is not necessary for present purposes to consider whether the dispute between the ISTC and the Secretary of State comes within this description by reason of his statutory powers of control over the finances of BSC: but the existence of the provision disposes of the suggestion that parliament intended that the mere fact that an act is done with the purpose of coercing government is sufficient in itself to take the act outside the immunity.

Faced by this difficulty counsel submitted that as a matter of construction the expression "an "act done ... in furtherance of a trade dispute" is confined to acts which are intended to have an immediate adverse trade or industrial effect on the opposite party to the trade dispute or to set up a train of trade or industrial causes and effects which will have an adverse consequence of that kind on the opposite party. Like the learned judge I find elusive the concept of a train of causes and effects which is confined to causes and effects that can be described as "trade or industrial", and is presumably supposed

described. There is clearly no principle of construction which would justify reading into the plain and simple words of section 13(1), additional words (and counsel was quite unable to suggest what they would be) to give effect to so elusive a context.

I turn last to the question of discretion. The effect of section 17(2) of the Acts of 1974 and 1976 on the judge's discretion whether or not to grant an interlocutory injunction was discussed by this House in The Nawala [1979] 1 W.L.R. 1294. The learned judge before whom the only argument against the Executive Council's claim to immunity was that to which I have just referred, took the view that there was a high degree of probability that the claim to immunity would succeed. He took account of the evidence that if the threatened strike in the private sector were to continue for any considerable length of time, it would bring in its train consequences of crippling gravity to the manufacturing industries of this country, to workers employed in them and to the nation as a whole. In refusing to grant the injunction he followed the guidance given in my own speech in The Nawala at p.1307G.

My Lords, it is the exercise by the judge of a discretion vested in him, not in the Court of Appeal itself, that your Lordships are required to review. It has not been asserted before your Lordships that there is any real possibility that the Executive Council's claim to immunity will fail on either of the grounds referred to in the judgments of the Court of Appeal. As to the only remaining ground on which it was argued in this House as it was before the learned judge, that the Executive Council's claim to immunity for their action

in extending the strike to the private sector might fail, I agree with his assessment of the likelihood of this argument ever succeeding. In my view, there is so high a degree of probability that it falls little short of certainty, that it would not. I can see no ground on which this House would be entitled to interfere with the Judge's exercise of his discretion.

The nature and gravity of the damage which would be caused if the strike as extended to the private sector continues for any length of time is not in itself exceptional. Comparatively recent experience has shown that almost any major strike in one of the larger manufacturing or service industries, if it is sufficiently prolonged, may have the effect (figuratively) of bringing the nation to its knees. It is the ability in the last resort to carry out a threat to do this, without involving any breach of the civil or criminal law as it now stands, that gives to trade unions, individually and collectively, their "industrial muscle". In practice, one side or the other to the dispute gives way and a settlement is arrived at, either with or without government intervention, before this point is reached.

If the national interest requires that some limits should be put upon the use of industrial muscle, the law as it now stands must be changed and this, effectively as well as constitutionally, can only be done by Parliament - not by the Judges.

As ...

As a means of controlling abuse of industrial muscle, injunctions granted in civil actions depend for their efficacy upon the respect which the majority of those taking part in industrial action pay to the law as laid down by the Judges. "Civil actions cannot be brought against trade unions, but against individual defendants only; and only those individuals are bound to observe the injunction. Everyone else involved in the industrial action can carry on with impunity doing that from which the individual defendants have been restrained."

If Judges were to grant injunctions notwithstanding that they know that it is highly probable that the acts that they are enjoining are perfectly lawful, it is unlikely that voluntary respect for the law as laid down and applied by courts of justice will continue to have any influence in controlling industrial action.

It was for these reasons that I expressed myself in favour of allowing this appeal.

My Lords,

A Judge's sworn duty to "do right by all manner of people after the laws and usages of this realm" sometimes puts him in difficulty, for certain of those laws and usages may be repugnant to him. When that situation arises, he may meet it in one of two ways. First, where the law appears clear, he can shrug his shoulders, bow to what he regards as the inevitable, and apply it. If he has moral, intellectual, social or other twinges in doing so, he can always invoke Viscount Simonds, L.C., who once said (Scruttons v. Midland Silicones Ltd. 1962 A.C. 446, at 467):

> "To me, heterodoxy or, as some might say, "heresy is not the more attractive because it "is dignified by the name of reform. Nor will "I easily be led by an undiscerning zeal for "some abstract kind of justice to ignore our "first duty, which is to administer justice "according to law, the law which is established "for us by Act of Parliament, or the binding "authority of precedent."

Alternatively, a judge may be bold and deliberately set out to make new law if he thinks the existing legal situation unsatisfactory. But he risks trouble if he goes about it too blatantly, and if the law has been declared in statutory form it may prove too much for him, dislike it though he may. For, as Holt, C.J. said in the first year of the eighteenth century, "An Act of Parliament can do no wrong, though it may do several things that look pretty odd" (City of London v. Wood 1701, 12 Mod.Rep. 669, at 687). From time to time some judges have been chafed by this

supremacy of Parliament, whose enactments, however questionable, must be applied. In Inland Revenue Commissioners v. Hinchy (1960 A.C. 748), Lord Reid said (at p. 767):

> "What we must look for is the intention of
> "Parliament, and I also find it difficult
> "to believe that Parliament ever really
> "intended the consequences which flow from
> "the [Commissioners'] contention. But we can
> only take the intentions of Parliament from
> "the words which they have used in the Act,
> "and therefore the question is whether those
> "words are capable of a more limited construction.
> "If not, then we must apply them as they stand,
> "however unreasonable and unjust the consequences,
> "and however strongly we may suspect that this
> "was not the real intention of Parliament ....
> "One is entitled and indeed bound to assume
> "that Parliament intends to act reasonably and
> "therefore to prefer a reasonable interpretation
> "of a statutory provision if there is any choice.
> "But I regret to say that I am unable to agree
> "that this case leaves me with any choice".

My Lords, the principal task in this case at all its stages has been that of considering the meaning and ambit of the words, "An act done ——— by a person in contemplation or furtherance of a trade dispute", in Section 13(1) of the Trade Union and Labour Relations Act, 1974. Similar words have appeared in United Kingdom statutes for over a hundred years (see, for example, Section 3 of the Conspiracy and Protection of Property Act, 1875) and they have many times been judicially considered.

Doubtless, they have sometimes been more favourably regarded from the Bench than at other times. They were considered by this House as recently as last December in Express Newspapers Ltd. v. McShane (1980 2 W.L.R. 89). That decision was naturally binding upon Kenneth Jones, J., and upon the member of

case. In reality, though not in strict law, it is also presently binding upon this House. At first instance it was applied without qualification. But in the appellate court it was restrictively applied and held to have no operation upon certain grave and recent developments from what indubitably was in origin a trade dispute.

The proper impact of the decision in McShane upon the instant appeal, and particularly in relation to the restrictive approach of the Court of Appeal, has been considered with, if I may say so, admirable clarity in the speech of my noble and learned friend, Lord Diplock. This I have had the advantage of reading in draft. I respectfully agree with what he has written, and I feel that, particularly at this interlocutory stage, I cannot usefully add to it. Suffice it to say that, for the reasons he gives I too would allow this appeal and discharge the injunctions granted below. This I regard as the inevitable outcome of the statutory provision. That this outcome is unpalatable to many has already been made clear. What should be equally clear is that the provision is not the work of the judges but of Parliament, and it is to Parliament alone that those who find this state of the law insupportable may now appeal.

LORD FRASER OF TULLYBELTON

My Lords,

I respectfully agree with my noble and learned friends, Lord Diplock and Lord Scarman, that the acts of the appellants in calling out members of ISTC who are employed by firms in the private sector of the steel industry, were acts done in furtherance of a trade dispute that was already in existance between ISTC and BSC. That conclusion is inevitable in light of the decision of this House in McShane. In that case, my noble and learned friend Lord Wilberforce did not agree with the majority who held that the test whether an act was "in furtherance of a trade dispute" was subjective. He considered that the test was whether the act was reasonably capable of furthering a trade dispute but he nevertheless agreed with the majority decision that the act of extending the strike in that case to the PA was in furtherance of the existing trade dispute. In my opinion, it is abundantly clear that if the "reasonably capable" test had been applicable in this case, its application would have led to the same result as application of the subjective test; the act of calling out the members of ISTC in the private sector would still have been held to be in furtherance of the trade dispute with BSC.

I come now to consider the discretion under Section 17(2) of the 1974 Act, as amended by the 1975 Act. I wish to explain in my own words the

/kind

have in mind when exercising his discretion. For the reason that I stated in the Nawala, I consider that the duty of the Court, both in England and in Scotland, is to "have regard to" the likelihood that the party against whom an interlocutory injunction is sought will succeed in establishing the defence that his threatened action would be in contemplation or furtherance of a trade dispute, but without giving overriding effect to that matter. It follows that in a case where the Court considers that the defence is highly likely to be established it will be slow to grant an interlocutory injunction against acts which would be protected by the defence. But even in such a case the Court has the duty to have regard also to the probable effects of the threatened act. If the Court considers, on the available evidence, that the threatened act would probably have an immediate and devastating effect upon the applicant's person or property - for example by ruining plant which could not be replaced without large expenditure and long delay - the Court ought to take that into account. Similarly, if the probable result of the threatened act would be to cause immediate serious danger to public safety or health, and if no other means seemed to be available for averting the danger in time, the Court would in my opinion not be exercising its discretion wrongly if it were to grant an interim injunction. But the kinds of instance which I have suggested do not embrace the facts of the present case where the probable injury to the respondents, although undoubtedly very serious, is not so immediate

as to tip the scale in favour of granting an injunction.

I would allow this appeal.

LORD KEITH OF KINKEL

My Lords,

I agree with the reasons for allowing this appeal which have been stated by my noble and learned friend Lord Diplock, and which I have had the opportunity of reading in draft.

In Express Newspapers Ltd. v. McShane 1980 2 W.L.R. 89 this House authoritatively decided that, in considering whether an act was done "in furtherance of" a trade dispute within the meaning of section 13(1) of the Trade Union and Labour Relations Act 1974, it was necessary for the court to examine the state of mind of the person doing the act in order to ascertain whether his honest purpose was to promote the success of his side in the dispute. It rejected the view that on a proper construction of the enactment it was permissible to have regard to the remoteness of the act done from the immediate source of the dispute, or the extent to which it had reasonable prospects of furthering the dispute, otherwise than in connection with testing the genuineness, on the evidence as a whole, of the purpose professed by the defendant.

In the present case there are no reasonable grounds, on the evidence available at this interlocutory stage, for doubting that the action taken by the defendants was taken with the genuine purpose of promoting their union's side of its trade dispute with the British Steel Corporation. That dispute

/is over . . .

is over wages. It is apparent that there is little or no prospect of the British Steel Corporation being able to pay higher wages to its workers, upon conditions acceptable to them, unless the Government, which has power to do so, makes available to the Corporation, in sufficient quantity to allow of increased wages, money levied from the general body of taxpayers. So action on the part of the defendants designed to result in pressure being applied to the Government to make such money available is plainly directed to improving the prospects of the union's wages claim being met. Even if the quality of the action properly fell to be tested objectively, which is not the position, the test would in my opinion be satisfied.

The Court of Appeal took the view that the action designed to bring pressure to bear on the Government was taken in pursuance of a political dispute which was something separate and distinct from the trade dispute with the British Steel Corporation. Having regard to the considerations which I have mentioned, that was not in my opinion, a tenable view. Further, it was not a view which was urged upon the Court of Appeal by counsel for the private sector. His argument, as he made plain in his most attractively presented address to this House, was to quite a different effect. It was that in order to qualify as an act in furtherance of a trade dispute, the act relied upon must be designed

/to operate . . .

to operate through a sequence of cause and effect of an industrial character. An act designed to operate otherwise than by interfering in some way with the processes of manufacturing and marketing of the employer's product, so it was maintained, did not qualify. This argument was considered and rejected by Kenneth Jones J. at first instance. It was barely noticed in the judgments of the Court of Appeal. In my opinion it is unsound. However desirable its outcome might be thought to be, I can find no warrant in the terms of section 13(1) for implying into the width of the langauge there used a limitation such as is contended for.

Perusal of the judgments in the Court of Appeal makes it clear that their conclusion was strongly influenced by consideration of the injustice involved, in their view, in subjecting to serious economic loss, inconvenience and distress, employers and workers in the private sector of the steel industry, who had no concern at all with the dispute between the union and the British Steel Corporation, and also of the disastrous economic consequences to the country as a whole of the action taken by the defendants. Such considerations cannot properly distract the court from its duty of faithfully interpreting a statutory provision according to its true intent, notwithstanding that events have shown the provision to be capable of being relied on to enable privileged persons to bring about disastrous consequences with legal impunity. There is nothing in the apparent policy of the Act, or the Amending Act of 1976, which might warrant a

/restrictive . . .

restrictive interpretation of section 13(1) of the 1974 Act. Indeed, that policy seems to have been to enlarge, not to abridge, the privileges by way of immunity conferred upon trade unions, their officials and members. If these privileges should prove to have been exercised, with insufficient sense of responsibility, to the serious detriment of the national interest, then it is for the force of public opinion to seek their curtailment through democratic processes available to it. The considerations for and against such curtailment can be properly and definitely debated only in Parliament. It is no part of the function of a court of law to form conclusions about the merits of the issue. The one public interest which courts of law are properly entitled to treat as their concern is the standing of and the degree of respect commanded by the judicial system. Involvement in political controversy, particularly in the legislatively governed field of industrial relations, is calculated to damage that interest. In the interpretation of statutes the courts must faithfully endeavour to give effect to the expressed intention of Parliament as gathered from the language used and the apparent policy of the enactment under consideration.

I have therefore concluded that the appeal must be allowed.

SCARMAN.

My Lords,

This appeal raises two specific questions as to the interpretation of a statute, the Trade Union and Labour Relations Act 1974, as amended. But below the surface of the legal argument lurk some profound questions as to the proper relationship in our society between the courts, the government, and Parliament. The technical questions of law pose (or should pose) no problems. The more fundamental questions are, however, very disturbing, nevertheless it is upon my answer to them that I would allow the appeal. My basic criticism of all three judgments in the Court of Appeal is that in their desire to do justice the court failed to do justice according to law. When one is considering law in the hands of the judges, law means the body of rules and guidelines within which society requires its judges to administer justice. ———————————— Legal systems differ in the width of the discretionary power granted to judges: but in developed societies limits are invariably set, beyond which the judges may not go. Justice in such societies is not left to the unguided, even if experienced, sage sitting under the spreading oak tree.

In our society the judges have in some aspects of their work a discretionary power to do justice so wide that they may be regarded as law-makers. The common law and equity, both of them in essence systems of private law, are fields where, subject to the increasing intrusion of statute law, society has been content to allow the judges to formulate and develop the law. The judges, even

in this, . .

endeavour, have accepted, in the interests of certainty, the self-denying ordinance of "stare decisis", the doctrine of binding precedent: and no doubt this judicially imposed limitation on judicial law-making has helped to maintain confidence in the certainty and even-handedness of the law.

But in the field of statute law the judge must be obedient to the will of Parliament as expressed in its enactments. In this field Parliament makes, and un-makes the law: the judge's duty is to interpret and to apply the law, not to change it to meet the judge's idea of what justice requires. Interpretation does, of course, imply in the interpreter a power of choice where differing constructions are possible. But our law requires the judge to choose the construction which in his judgment best meets the legislative purpose of the enactment. If the result be unjust but inevitable, the judge may say so and invite Parliament to re-consider its provision. But he must not deny the statute. Unpalatable statute law may not be disregarded or rejected, merely because it is unpalatable. Only if a just result can be achieved without violating the legislative purpose of the statute may the judge select the construction which best suits his idea of what justice requires. Further, in our system to statute law as it does the rule "stare decisis" applies as firmly/ to the formulation of common law and equitable principles. And the keystone of "stare decisis" is loyalty throughout the system to the decisions of the Court of Appeal and this House. The Court of Appeal may

not over-rule a House of Lords decision: and only in the exceptional circumstances set out in the Practice Statement of the 1st July 1966 will this House refuse to follow its own previous decisions.

Within these limits, which cannot be said in a free society possessing elective legislative institutions to be narrow or constrained, judges, as the remarkable judicial career of Lord Denning himself shows, have a genuine creative role. Great judges are in their different ways judicial activists. But the constitution's separation of powers, or more accurately functions, must be observed if judicial independence is not to be put at risk. For, if people and Parliament come to think that the judicial power is to be confined by nothing other than the judge's sense of what is right (or, as Selden put it, by the length of the Chancellor's foot), confidence in the judicial system will be replaced by fear of it becoming uncertain and arbitrary in its application. Society will then be ready for Parliament to cut the power of the judges. Their power to do justice will become more restricted by law than it need be, or is today.

In the present case the Court of Appeal failed to construe or apply the statute in the way in which this House had plainly said it was to be construed and applied. This failure was recognised, significantly and courageously, by counsel for the respondents who at the outset of his argument in this House said he would not be relying upon the reasoning of the Court of Appeal.

It was/ . . .

the majority of this House in the recent case of Express Newspapers Ltd. v. McShane [1980] 2 W.L.R. 89. Instead of relying upon the grounds selected by the Court of Appeal for reversing the judge's decision to refuse the respondents the injunctions they were seeking, counsel advanced a skilful and serious argument upon the construction of the statute, which could plausibly be said to be open to him notwithstanding the decision in McShane's case. He had advanced it before the judge in chambers, who considered and rejected it. He advanced it before the Court of Appeal, who so far as one can gather from the terms of their judgments, did not think it merited even consideration: for not one of the three judges dealt with it, though Ackner L.J. did refer to it.

My Lords, I regret to have to say it, but in my opinion the Court of Appeal in this case, for the most laudable of motives, their desire to achieve a just result, strayed beyond the limits set by judicial precedent and our (largely unwritten) constitution. Their decision was contrary to the statute as authoritatively interpreted by your Lordships' House.

The two questions which arise upon the statute are: first, the true construction of the words "an act done by a person in contemplation "or furtherance of a trade dispute" in section 13 of the 1974 Act, the section which confers upon persons contemplating or already engaged in a trade dispute certain immunities from tortious liability: secondly, the extent of the discretion possessed by the court where section 17(2) of the 1974 Act as amended applies.

There are two sectors in the British Steel Industry: the public in which the British Steel Corporation is the employer, and a much smaller private sector which includes a number of private employers, among them the 16 plaintiffs in this action.

It is common ground that there exists in the present case a trade dispute between the union and the B.S.C. It is a dispute about wages. The union wants "more money on the table". The B.S.C. say that they cannot provide it: nor is the Government, who under the Iron and Steel Act 1975 retain ultimate financial control of the Corporation, willing to provide it. In these circumstances, as Lord Denning M.R. said in his judgment, the union "came to a decision to extend "the dispute into the private sector." It was apparent to the union, as Mr. Sirs said in a letter written to union branches and quoted in his judgment by the Master of the Rolls, "that "the continued operation of the private sector was "not only having the effect of prolonging the "trade dispute: but was creating a feeling of injustice within other trade unions." The extension of the dispute was intended to put pressure upon the Government to find the money which would enable the B.S.C. to make an offer acceptable to the Union and so to put an end to the trade dispute. Whether or not this extension brought into existence a second and separate dispute with the Government (as the Court of Appeal thought), it was certainly an act done in furtherance of the wages dispute with B.S.C. in the sense in which this House interpreted the section in McShane's case. The

/executive . .

sincerely believed that by extending the strike into the private sector they were advancing, or furthering, their cause in the wages dispute.

This analysis of the situation, which the respondents in this House have not suggested is false, disposes of the reasons given by the Court of Appeal for considering it "arguable" that what was done was not in furtherance of the trade dispute. And counsel did not contend to the contrary.

His argument assumed that the acts of the appellants were done in furtherance of the trade dispute. But he argued that upon a true construction of the section the acts which attract immunity must be acts having industrial or commercial consequences and designed to bring pressure upon a person or persons who could themselves bring industrial or commercial pressure upon the employer who was in dispute with the union. Applying this criterion to the facts of this case, he submitted that the private sector had no power to coerce, or exert industrial or commercial pressure upon, the B.S.C. It was neither a customer nor a supplier of B.S.C., but a competitor. The purpose of extending the strike to the private sector was, therefore, political in character, i.e. to induce the private sector to bring pressure upon the Government to provide the money needed to satisfy the union.

The plausibility of the submission derives from the fact that it is directed to the quality of the act required for immunity and not to the question whether or not it is in contemplation

/or . . .

it must be rejected. First, the Act imposes no express limitation upon the character of the act which attracts immunity other than that it must be done in contemplation or furtherance of a trade dispute. Secondly, an analysis of the submission reveals that it is an attempt to define acts qualifying for immunity by reference to their purpose. But the only purpose mentioned by the statute is the advancement of a trade dispute.

In brief, the statute is not expressly limited in the way counsel suggests: and, in the light of Parliament's legislative purpose as analysed in N.W.L. v. Woods and McShane's case, it cannot be said that Parliament intended that it should be. To the question - could Parliament have conceivably intended that any act which a trade disputant honestly believed would further his side of the dispute should attract the immunity provided by the section? - the answer is simply "Yes: and "this House in its judicial examination of the "legislative purpose of the statutory provisions "has already so answered the question."

Section 17(2), as amended.

This subsection requires that, where an application is made for an interlocutory injunction against a party claiming that he acted in contemplation or furtherance of a trade dispute, the court shall have regard to the likelihood

/of his . . .

of his succeeding at trial in establishing that he so acted. The subsection does not deprive the court of its discretion: and in both N.W.L. v. Woods and McShane's case are to be found dicta recognising that the court has a residual discretion to grant an injunction notwithstanding the likelihood of such a defence succeeding at trial - for instance, where the consequences to the employer or to third parties or the public and perhaps the nation itself might be disastrous if it were refused (per Lord Diplock at p.1307 in the N.W.L. case and myself at p.1315), or where the action sought to be enjoined endangered a fundamental right of the public such as the freedom of the press (myself in McShane's case at p.105). But it would require an altogether exceptional case - some examples of which my noble and learned friend Lord Fraser of Tullybelton has given in his speech.

In the instant case the high probability is that the defence would succeed at trial. Indeed, my Lords, I think it "a virtual certainty" (to borrow Lord Diplock's words in the N.W.L. case at p.1307). The economic damage threatened by the extension of the strike to the private sector, though very serious, is not so immediate as to justify intervention by the court granting relief to which it is probable that the plaintiffs are not entitled. There is time for the parties to come to terms or for the government to act either by intervention or by taking emergency powers or by some other executive or legislative

/action . . .

action. When disaster threatens, it is ordinarily for the government, not the courts, to act to avert it.

But, my Lords, there is a further ground for holding the Court of Appeal to have been in error in granting the injunctions. Injunctive relief is discretionary: and the discretion is the judge's. An appellate court may intervene if the judge misdirected himself in law, took into account irrelevant matters or failed to take into account relevant matters. The judge exercised his discretion in this case by refusing the injunctions: and there is no indication in his short and admirable judgment that he fell into any of these errors of law.

My Lords, for these reasons as well as for those set forth in the speech of my noble and learned friend, Lord Diplock, I would allow the appeal and discharge the injunctions.

If the law is unacceptable, the remedy lies with Parliament, not the judges. And if Parliament is minded to amend the statute, I would suggest that, instead of seeking to close what my noble and learned friend Lord Wilberforce has aptly called "open-ended expressions" (McShane's case, p.94) such as those which have now given rise to bitter and damaging litigation (e.g. B.B.C. v. Hearn [1977] 1 W.L.R. 1004, N.W.L. v. Woods, McShane v. Daily Express, supra), the draftsman should be bold and tackle his problems head-on.

/If he . . .

If he is to put a limitation on the immunities in section 13, let him do so by limiting the heads of tortious liability where immunity is conferred: if he is to strengthen the availability of interlocutory relief in industrial relations, let him include clear guidelines in the statute. And, if he is to limit secondary or tertiary "blacking" or picketing, the statute must declare whose premises may, or may not, be picketed and how far the "blacking" or picketing may extend." "Open-ended expressions" will bring the judges inevitably into the industrial arena exercising a discretion, which may well be misunderstood by many and/which can damage confidence in the administration of justice.

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PRIVATE & CONFIDENTIAL

RH/PVW

8th February 1980

The Rt. Hon. Margaret Thatcher, M.P.,
Prime Minister,
10 Downing Street, London SW1.

Dear Mrs Thatcher,

As a Non-Executive Director of the British Steel Corporation, I have been close to the present industrial dispute and have been able to observe at first hand the industrial relations problems involved. In this letter I should like to comment on some aspects of this which are relevant to the current Industrial Relations Bill.

At the present time, one of the major destabilising factors in our industrial scene is the imbalance of power between the trade unions and management, and the enormous cost penalties in industry for taking strikes compared with the relatively trivial penalties that the unions and their members suffer.

I have been able to compare the imbalance in this country with the situation in most other countries round the world as a consequence of managing factories in the USA for a number of years, and being responsible for Beecham's consumer product operations round the world for the last ten years with factories in practically all the major industrial countries.

I am sure you have comprehensive data on the industrial relations laws in those countries, but may I say that from the operational viewpoint the economic imbalance in this country is far worse than anywhere else and is, I believe, a major cause of our industrial problems, particularly as it is subject to exploitation by militant groups.

cont...

In most of the countries in which we operate the following applies:-

a) The state does not finance strikes and reserves any funds for real hardship cases. The unions levy their members to build strike funds and management knows that before or when this runs out, the unions will reach a deal and the workers will return to work. Thus, there is a time limit on a possible strike and management can take this into account in their industrial bargaining calculations.

b) The laws prohibit secondary picketing or boycotting of the type we are witnessing today.

N.B. We had a related problem in this regard in the USA in the 1950's with what were called 'organisational strikes', i.e. the picketing of a plant to force people to join a union. Subsequently, the law was amended and these are now prohibited.

c) The right to join or not to join a union is enforced in most countries, either in law or as part of the written constitution of the country. In other words, closed shops of the type operated in this country are banned by law or the constitution.

This does lead me to comment on the present Industrial Relations Bill that is passing through the House of Commons, and I hope you will forgive me for intruding into what we all know is a difficult and emotional area. However, I do feel that the mood of the country, and particularly the mood of industry, is that the present Bill should deal effectively with the situations of last winter and those which are becoming apparent in the present steel strike, and that there should be more equity and economic balance in the bargaining arrangements between managements and unions. Indeed, there could be great dangers in having a Bill that provokes militant union actions without having countervailing economic forces that would limit the consequences of such actions.

Strikes are often initiated and prolonged by relatively small groups of militant trade unionists:-

a) based on shows of hands at meetings and enforced and prolonged by threats of intimidation and withdrawals of union cards;

b) with promises of little hardship, and promises of greater benefits if strike action is taken;

c) highlighting the fact that the economic pressures on managements and industry are far greater than the economic penalties suffered by the workers, and that industry cannot hold out for long.

Your present Bill will go some way towards dealing with these problems, but I doubt if it goes far enough in restoring the economic balance which is a major destabilising factor in our current industrial scene.

cont...

I should like, therefore, to suggest that if possible the Bill could be strengthened in the following ways:-

a) Unions should be expected to pay for the maintenance of the workers on strike; supplementary benefits should be a last resort for hardship cases in the same way as happens in most other Western countries.

b) The laws on secondary picketing, etc., should be strengthened with the experience gained in the current steel strike, and union funds should be put at risk in the event of failure to comply with the laws.

c) Closed shop provisions should be strengthened and, again, union funds put at risk for withdrawal of union cards and intimidation.

N.B. At the CBI Conference and subsequently at the CBI Council, I advocated with a number of others the banning of the closed shop on the grounds of human rights and the protection of workers from intimidation, and pointed out that public opinion surveys very much supported our view. We received significant majority support at the Conference and overwhelming support at the subsequent Council meeting. As a result of the events of last winter and the engineering strike in the following summer, the mood of industry now is very much towards the banning of the closed shop compared with the equivocal position that prevailed a few years ago.

(I have already made these comments privately to Jim Prior).

My feeling is that, as in all the countries in which we operate, economic forces are most important factors in controlling industrial disputes and in the bargaining processes. Many militants are quite happy to break the law and incur martyrdom, but the leadership of unions and their members are less likely to strike, or stay on strike for very long, if it hurts their pockets. In the case of the steel strike, I am sure it has not escaped your notice that the ISTC has called its members out on strike and is prolonging the strike without touching its considerable assets of £11 million. In fact, Bill Sirs made the comment that he needed the interest on the funds to finance his organisation, and anyway did not want to dispose of the securities because the prices were rather low and it would be a bad time to sell! But the fact remains that he can incur huge financial penalties for BSC and the independent steel producers, some of whom could go bankrupt, with virtually no financial penalty for his union, and relatively little hardship for his members.

I hope these comments are helpful and may I reaffirm my total support for what you are trying to do in these critical times.

Yours Sincerely,

Ron Halstead

R. Halstead
Chairman

NEW ST ANDREWS HOUSE
ST JAMES CENTRE
EDINBURGH EH1 3SX

Prime Minister
Seems a good point.
PL
12/2

The Rt Hon James Prior MP
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
LONDON
SW1N 9NA

8 February 1980

CLOSED SHOPS

Some weeks ago I was in touch with you and Michael Heseltine expressing my anxiety about the way closed shop arrangements were being introduced into local authorities in Scotland. Since then there have been further developments, and I thought that I ought now to expose the problem to a wider circle of colleagues.

As I explained, it looks as though the closed shop in local authorities has gone much further in Scotland than in England and Wales. In Strathclyde it is entirely complete for white collar grades. Early last year, I understand, the situation was reached that the Chief Executive was expected by NALGO and by his authority to take part in a one-day NALGO strike which was only narrowly averted. Strathclyde are now pressing on with the introduction of a closed shop for their manual grades, and expect to have it in operation on and from 1 April next.

In Lothian, the Region rushed through, with what can only be described as politically deliberate haste, a closed shop for their manual workers which took effect early in December last, just after the Employment Bill was published. A closed shop for white collar staff is now being actively negotiated, and the intention is that this will take effect as soon as possible. The Region may decide to have a ballot on this proposal (unlike the manual closed shop) but that is by no means certain.

Between them, Strathclyde and Lothian include over 60 per cent of the population of Scotland. It concerns me greatly that local authorities, who are the providers of a number of basic services and in Scotland of one essential service - water - should be able to act in this way and put the provision of such an essential service at even graver risk during a time of industrial difficulty. I have therefore been considering, with the Lord Advocate, what might be done, bearing in mind the political situation on the Employment Bill.

We have considered, but rejected, a suggestion that Clause 6 of the Bill might be made to take effect from the date of First Reading. This would have caught the recent and current proceedings in Lothian and Strathclyde, but only at the price of potential considerable criticism both within and outside the House, and would not have gone to the root of the problem.

The essential point, it seems to us, is that the provision of essential services should not be put at risk by closed shop arrangements. We therefore have two proposals to make.

The first is that Clause 6 might be amended to provide that persons who undertake essential duties would not be subject to dismissal, and would be given the other protections of the clause, if as a result of their activities in maintaining such services they were expelled from their union. My second is to suggest that the Code of Practice provided in Clause 2 in the Bill should be used to provide a code of practice for the operation of closed shops (it may be that this is already in mind) and that this code should allow for the provision of essential services to fall outside closed shop arrangements. I hope that these proposals can now be considered positively.

I am copying this letter to all members of E Committee, to the Lord Advocate and to Sir Robert Armstrong.

George Younger

IMMUNITIES FOR SECONDARY INDUSTRIAL ACTION

Note by Officials

1. We were asked (E(80)3rd Meeting, Conclusion 2) to prepare a note setting out the effects of the various options for amendment to the Employment Bill discussed by Ministers on 6 February.

2. The Employment Bill already contains provisions limiting the immunities enjoyed by those engaged in picketing and SLADE-type recruitment. Ministers are now considering further amendments to the Bill, which would be designed to restrict the immunities applying to other secondary industrial action.

3. This note does not deal with the immunities of Trade Unions themselves as distinct from those granted to their officials, except insofar as it arises in the context of enforcement. The arguments for and against amendment of Section 14 of the Trade Union and Labour Relations Act, 1974 (TULRA) are set out in the minutes of 4 February from the Chancellor of the Exchequer, and 6 February from the Secretary of State for Employment.

4. 'Secondary Action' is understood for this purpose to be industrial action by workers other than employees of the employer in dispute. The extent of the immunity for secondary action under the present law relates to action taken "in contemplation or furtherance of a trade dispute". (It is in theory possible for secondary action to be turned into primary action by the employees concerned picking a dispute with their own employer. But the Courts would normally look to the true purpose of the action).

5. The Nawala case turned on the definition of a "trade dispute" in Section 29 of TULRA 1974. However, some of the options discussed below would have the effect of making unlawful action in the circumstances of the Nawala case.

6. The outcome of the judgements of the House of Lords in Nawala, Express Newspapers v McShane, and now Duport, is in effect that immunity in respect of

all interference with contracts applies whenever there is a trade dispute and the person taking the action complained of honestly believes that it will further that dispute. This is the effect of Section 13 of TULRA 1974 (as amended in 1976). Limitation of this wide interpretation is the object of the options considered by Ministers at their meeting on 6 February.

Option 1: No Immunity for any Secondary Action:

(This option was not discussed at the E Committee meeting, but has been included for the sake of completeness.)

7. This would confine immunity to action taken by the employees of the employer in dispute. It would have the merit of clarity. The difficulty with this course is that it gives the trade unions no redress in cases where the employer has dismissed the whole or part of his original workforce, or where the union has no effective way of putting pressure on the employer, as may happen when they are seeking recognition. Some form of secondary action has always been seen as a reinforcement of the strike weapon and a means of showing solidarity. There would be bitter trade union opposition to any attempt to curtail it altogether.

Option 2: The Solicitor General's Approach:

8. The Solicitor General has drawn attention to the possibility of amending Section 13 so as to provide in effect that any person injured by secondary industrial action should be free to pursue his civil law remedies, provided -

(i) he was not himself a party to the dispute, and

(ii) he was suing on the grounds of interference with a contract other than a contract of employment, eg. for interference with a commercial contract.

9. To illustrate: there is a dispute at a car factory in which the union seeks to get the employees of a component supplier to break their contracts of employment and interrupt supplies. If this secondary action did not interfere with any commercial contract, it would have immunity. But the action would normally be intended to have precisely this effect, in which case any party to that contract, other than the car manufacturer, could sue the union official.

10. In the Solicitor General's view this would significantly restrict secondary action, though there would still be wide-ranging immunity in particular cases where there was no actionable interference with commercial contracts. It would be grounded in common law rights, and could be defended as restoring to those who were not parties to the dispute their common law rights to protect themselves and their employees.

11. Officials believe that this would in fact be a very severe restriction, because it is very difficult to take effective secondary action without interfering with commercial contracts. It would therefore meet very strong opposition from trade unions, who would find it barely distinguishable in practice from Option 1. It is immaterial to the union official calling the action that he is protected from being sued by the employer in dispute if he can be sued for the same action by other employers (possibly at the instigation of the former). Of course, as the Solicitor General has pointed out, it is no comfort to the person who has no dispute with anyone, but who nevertheless suffers serious damage, to be told that he must suffer this so that the union (or even unofficial operators) may have more muscle.

12. An alternative approach, identified in discussion by officials, would be to limit immunity to action affecting commercial contracts to which the employer in dispute is a party. To illustrate: employees of a car manufacturer black components from a particular supplier who is in dispute with his own employees. Provided that the blacking interferes only with the supplier's contracts the action would have immunity. If it interfered with the manufacturer's contracts with anyone other than the supplier it would not have immunity.

13. This would have the merit of clarity, but would be very restrictive because it would effectively 'outlaw' sympathetic strikes (which cannot be targetted specifically on the contracts of the employer in dispute). Apart from the limited immunity it gives for blacking, it would be indistinguishable from Option 1.

Option 3: The Court of Appeal Position

14. The Secretary of State for Employment has proposed that the law should be returned roughly to the state at which the Court of Appeal judgements had left it before they were overturned by the House of Lords. This is intended to draw the line broadly at the level of the first supplier/first customer, although his latest proposal would ensure that immunity for secondary action does not automatically extend to all first suppliers and customers. He has suggested that there are two ways of giving legislative effect to this approach:

a) By providing a legal definition of the area in which secondary action could be protected by immunity by reference to 'first customer/first supplier'. These might be identified as those 'not a party to the dispute, but in regular or substantial, not incidental or minor, commercial relationship with such a party'. Immunity would extend to secondary action by employees of first customers/first suppliers. Beyond that it would extend only to breaches of employment contracts which did not interfere with commercial contracts. This method has the advantage of being relatively specific; it would therefore limit the scope of interpretation by the Courts. But the boundary line would inevitably be drawn somewhat arbitrarily. In the current steel dispute, immunity would run for secondary action against those independent steel manufacturers who are in a substantial commercial relationship with the BSC, but not the rest. However, there is some prospect that the trade unions might be brought in time tacitly to acquiesce in a definition on these lines.

b) The other approach is to lay down in statute tests which would need to be satisfied if secondary action is to attract immunity. The tests, developed from those evolved by the Courts prior to the House of Lords judgements in McShane, might include:

(i) that the action was reasonably capable of furthering the trade dispute in question;

(ii) that it was not too far removed from the original dispute;

(iii) that it was not taken principally for some extraneous motive.

15. These tests would normally extend immunity to secondary action involving first customer and first supplier, and rarely beyond, but could according to circumstances restrict immunity even at that level. This method has the advantage of adaptability to the varied industrial situations which arise and is indeed the method that the Court of Appeal were using. But it places considerable discretion in the hands of the judges, and leaves uncertainty about the meaning of the law (particularly on the test of extraneous motive) until it has been tested in the Courts. It would be regarded by the unions with suspicion.

16. Approaches (a) and (b) above are not necessarily mutually exclusive. It would be feasible to achieve the intended effect of Option 3 by drawing the line at the level of first customer/first supplier as in (a), but with a clearer legal definition (eg those in commercial contractual relationship with the party in dispute); and provide that immunity within that line would apply only to action which met the tests of capability and motive in (b). This would be rather more

flexible in operation than (a), and give less scope for judicial discretion than (b).

Option 4: Immunity for Specific Forms of Secondary Action

17. The Secretary of State for Trade suggested at E that the line should be drawn "a few notches up", as he had argued in his letter of 11 January. There would be no blanket immunity for secondary action or for action against an employer whose own employees were not in dispute (as in the Nawala case): but immunity could apply to certain specific kinds of secondary action which the Government thought justifiable on their merits. Two possibilities mentioned as illustrations in his letter were:-

(i) Action in support of a workforce who had been sacked en masse during a strike (so that primary action became impossible);

(ii) Action against an employer giving material support to the employer in primary dispute (eg when the latter has a partial strike at his factory and arranges to buy components from another company to replace those his employees are refusing to produce, that other company could be held to be giving material support and secondary action against it would attract immunity).

Other illustrative possibilities that might be put forward by the Government for consideration are:-

(iii) Action by employees of a first customer or supplier solely affecting the contracts of the employer in primary dispute, and not injuring third parties (ie the same approach as in paragraph 12 above).

(iv) Secondary (sympathetic) strikes voted in a secret ballot by the workers taking part in them (if Ministers were anxious to avoid the charge that the legislation abridged workers' rights to withdraw their labour).

In consultation the Government could suggest (i) and (ii) and offer to consider other instances on their merits.

18. This is a completely different approach from the other Options, since it removes immunity from all secondary action save as specified. But each exception is liable to problems of definition and there would be pressure for others to be added. The exemptions would be uneven in application, eg that for sympathetic strikes would allow the immunity to extend well beyond any other Option. This approach would be strongly opposed by the unions.

ENFORCEMENT

19. If the Section 13 immunity were reduced in any of the ways outlined above an employer whose business was damaged by unlawful secondary action would be able - as at present - to bring civil proceedings against the union officials organising the action. Everything would, of course, turn on the willingness of employers to use the remedies available.

20. The employer would normally apply for an injunction requiring the officials to call off the action. (Injunctions apply not only to those named in them but to any who stand in their place). If they refused to do so they would be liable for contempt and might be fined and ultimately (if the contempt continued) imprisoned. Employers do not normally seek damages in such cases; their primary concern is to get the action stopped. If they were to pursue the action for damages the union would normally stand behind the official concerned and meet the cost.

21. This procedure carries the risk that individual officials may seek martyrdom by deliberately ignoring the injunction. This risk could be reduced if the Courts were enabled by amendment of Section 14 of TULRA to issue injunctions against the union itself and fine the union for non-observance of the injunction. In the event of failure of the union to pay such a fine, the assets of the union could be sequestrated. Putting union funds at risk in this way might have the additional advantage of making unions more responsible for the actions of their officials and members. It could, however, be a less certain and speedy means of getting unlawful action stopped. This is particularly so in the case of unofficial disputes (the vast majority) which are often carried on in defiance of union instructions; it would indeed put a premium on unofficial action. It is likely, therefore, that employers would wish to continue to be able to seek injunctions against individuals and hence the risk of martyrdom would remain. Furthermore, the present immunity of union funds from civil actions is of great symbolic significance to the trade union movement and any change to this would provoke very strong opposition and would drive the moderates into the hands of the extremists.

CABINET OFFICE,
WHITEHALL.

8 February 1980

CONFIDENTIAL

IMMUNITIES FOR SECONDARY INDUSTRIAL ACTION

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RL 1 2 3 4

Option 1: No Immunity for any Secondary Action:
(This option was not discussed at the E Committee meeting).

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Logically Option 4 should come first.

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In consultation the Government could suggest (i) and (ii) and offer to consider other instances on their merits.

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ENFORCEMENT

19. If the Section 13 immunity were reduced in any of the ways outlined above an employer whose business was damaged by unlawful secondary action would be able – as at present – to bring civil proceedings against the union officials organising the action. Everything would, of course, turn on the willingness of employers to use the remedies available.

See p. 17 of Dip Lobby

20. The employer would normally apply for an injunction requiring the officials to call off the action. (Injunctions apply not only to those named in them but to any who stand in their place). If they refused to do so they would be liable for contempt and might be fined and ultimately (if the contempt continued) for imprisonment. Employers do not normally seek damages in such cases; their primary concern is to get the action stopped. If they were to pursue the action for damages the union would normally stand behind the official concerned and meet the cost.

21. This procedure carries the risk that individual officials may seek martyrdom by deliberately ignoring the injunction. This risk could be reduced if the Courts were enabled by amendment of Section 14 of TULRA to issue injunctions against the union itself and fine the union for non-observance of the injunction. In the event of failure of the union to pay such a fine, the assets of the union could be sequestrated. Putting union funds at risk in this way might have the additional advantage of making unions more responsible for the actions of their officials and members. It could, however, be a less certain and speedy means of getting unlawful action stopped. This is particularly so in the case of unofficial disputes (the vast majority) which are often carried on in defiance of union instructions; it would indeed put a premium on unofficial action. It is likely, therefore, that employers would wish to continue to be able to seek injunction against individuals and hence the risk of martyrdom would remain.

Surely it has been tracked in the case of - both job losses & closures.

Furthermore, the present immunity of union funds from civil actions is of great symbolic significance to the trade union movement and any change to this would provoke very strong opposition and would drive the moderates into the hands of the extremists.

CABINET OFFICE,
WHITEHALL.

8 February 1980

(1) The first main point is

can one limit the phrase "in furtherance

of" Page 5 gives three ways - these

are not sufficiently certain to be

easily or clearly justiciable.

This point in itself leads to nothing.

(2) We will decide where line is to be drawn

Options 1, 2, 3a, 4

There is a real divide between

2 & 3. 3 - ? 3rd countries, ? suppliers,

2 - party nature regard dispute ~~[illegible]~~ common law right to protect himself ? interference with commercial contracts.

---

(3) S. 13. -

B/F 13/2
Ind Pol

Ref. A01371

MR. LANKESTER

Report on Trades Union Immunity

We had a word about your minute of 7th February, and we agreed that a note summarising the history of the 1971 Act should be prepared separately from the report by officials and circulated to Ministers as background to it.

2. I have asked the Department of Employment to prepare a note on the lines you suggest.

RA

(Robert Armstrong)

8th February, 1980


8 FEB 1

JS

10 DOWNING STREET

THE PRIME MINISTER

7 February 1980

Dear Leonard,

Thank you so much for your letter of 5 February about the Employment Bill. I was very grateful to have your detailed comments, and we will certainly take these into account before reaching final decisions on how the Bill might be amended.

I much enjoyed the meeting the other evening.

Warm regards,
Yours sincerely,
Margaret

Sir Leonard Neal, CBE.

VLB

IndPol/Rè B
bc Mr Mountfield
Mr Duguid.

10 DOWNING STREET

From the Private Secretary

MR. WRIGHT
CABINET OFFICE

Report on Trade Union Immunity

The Prime Minister would be grateful if the report by officials could include an annex summarising the history of the 1971 Act, and in particular the enforcement of the injunctions which were issued by the Industrial Relations Court and the events surrounding them.

T. P. LANKESTER

7 February 1980

cc

10 DOWNING STREET

PRIME MINISTER

You will no doubt want to reply to Leonard Neal's latest letter? I attach a draft.

Shall I send a copy of the letter to the Department of Employment?

6 February 1980

6 February 1980 Ind Pol

PRIME MINISTER Top copy returned to John Hoskyns

1. You could begin by mentioning key background factors: public and Party disillusionment over the failure to implement the Manifesto, most forcibly expressed by BISPA, evidence of public opinion etc. You could then ask Jim Prior to explain how he reconciles his latest proposals with the Manifesto commitment to extend legal protection to those not concerned in disputes. If, as expected, he argues the case for a step-by-step approach, he could be asked to explain the next steps and the preparations for them.

2. Leaving aside the issue of trade union immunities at this stage, you could then ask John Nott to elaborate on his proposal to make all secondary action unlawful. He should explain the simplicity of this approach, its practical limitations as far as secondary striking is concerned, and the need for any exceptions.

3. You could then ask the Solicitor General to say whether John Nott's proposal could be easily drafted. In principle, we think it is simpler and much less arbitrary in its effect than the Prior formula of continuing immunity for first customers and first suppliers. You could also ask the Solicitor General whether there is a need to alter the definition of a trade union dispute.

4. We suggest that you should only move onto the trade union immunities when it is clearly agreed that measures to prevent secondary action need further study - in order to fulfil the Manifesto commitment. Mr Prior cannot reasonably take exception to this.

5. At this stage, you could ask the Chancellor whether he still believes it is also necessary to align the immunities of trade unions themselves with those of individuals. One strong argument for doing so may be that if individuals are pursued, they may end up in prison. There should be general agreement that this is to be avoided if at all possible. The Solicitor General will no doubt raise the difficulty of defining when a trade union is responsible for the actions of its members. (It may be possible to provide the trade unions with a defence that they have used their best endeavours to prevent action.)

6. The meeting's conclusions should include:

(1) The publication of the consultative document will need to be delayed by two or three weeks.

(2) It will need to contain an option which fulfils the Manifesto commitment.

(3) A holding statement will be necessary at tomorrow's Committee on the Employment Bill.

(4) Officials will need to work very quickly to produce a further paper for Ministers.

7. The small group of officials should look very urgently at the options which could feature in a consultative paper that fulfils the Manifesto commitment completely. It is very important that the group's terms of reference should be directly tied to the Manifesto. This group could be chaired by Cabinet Office, CPRS, or Department of Employment. (In any event, it would be "serviced" by Cabinet Office - which means they take the minutes etc.) Its composition could be:

Department of Employment
Cabinet Office
Treasury
Home Office
Industry
Law Officers' Department
No.10 Policy Unit.

8. The terms of reference could be:

"To consider the ways in which legal protection could be extended to those not concerned in disputes who suffer from secondary action, <u>including</u> blacking and blockading. /<u>Optional, depending on discussion</u>: The group should also consider whether, in order to make the legal remedy effective and less likely to lead to imprisonment of individuals, it might be necessary to align the immunities of the <u>trade unions themselves</u> with those of individuals./"

It should report next Friday, 15 February, in time for E Committee and Cabinet during the following week.

JOHN HOSKYNS

CONFIDENTIAL

PRIME MINISTER

WORKING PAPER ON IMMUNITIES FOR SECONDARY INDUSTRIAL ACTION

I have been thinking further about what you said to me following our meeting yesterday with BISPA and also about the Chancellor's minute of 4 February.

2. I am absolutely certain that amending Section 14 of TULRA now will not help us. It would not avoid individual martyrdom. 95% of strikes are unofficial and the union could hardly be held liable for them. It is, I presume, not proposed that the remedy of injunctions against individuals would no longer be available. Employers are most interested in getting the action stopped and this is their prime remedy. Martyrdom will be possible under the Bill but only in ways which already exist under present legislation and, provided we do not make the legislation itself a matter of conflict with the unions, there is no reason to think that we shall have more martyrs than before.

3. I think also that the Chancellor's proposal overlooks the practical difficulties of setting a maximum limit on fines or damages. Would it, for instance, be open to each plaintiff company to apply (there were 16 in the Duport Steel case)? What happens if the fined union refuses to pay? At what stage does sequestration of union assets take place? What happens when the union then continues or starts a strike until its assets are returned? This was the sequence of events which occurred under the 1971 Act with the AUEW in the ConMech case. The strike was only called off after the payment of the union's fine by an "anonymous donor".

4. But in addition to all this there is the grave political objection pointed to in my minute - that this move would give the emotional content as yet lacking to the campaign against our legislation. It would be taken as an assault on the unions and it would be resisted as such. In the course of that resistance there would be no lack of extremist volunteers for martyrdom. At the moment we have made a discreet venture into making union funds liable for unreasonable exclusion or expulsion of members

/and

and for union pressure in unfair dismissal cases in closed shops. That could be a move of considerable significance for the future which we would hereby set at risk for no practical gain because unions traditionally stand behind their officers in the payment of damages.

5. I do, however, think that there is scope for agreement between us arising from what the Chancellor says in paragraphs 9 and 10 of his minute about the scope of immunity for secondary action. We are of course in the Employment Bill already withdrawing immunity for secondary picketing, by far the most effective method of secondary action. But I am not prepared to go beyond this by outlawing all forms of sympathetic action. This was not done even in 1971. But from the tests that the Chancellor quotes, I think that we may be much closer as regards withdrawing immunity from a wider range of secondary action than may appear. One of the options in my working paper is indeed to set down general tests of the kind that the Chancellor quotes and, although the Court of Appeal in applying those tests did not in the cases before them outlaw the action taken at first supplier or customer, those tests would require that the secondary action is much more closely related to furthering the original dispute and could, depending on the facts of the case, mean that immunity would not necessarily always extend to first supplier and customer.

6. Even on the more precise option for defining the scope of immunity I think that we should have to define "first supplier/customer" in such fashion as to ensure that we do not bring within the net those whose commercial relationship with the party in dispute is incidental or minor. That again would mean that immunity would not necessarily run to all secondary action taken at first customers/suppliers. This, of course, could be of particular significance for the independent steel producers and, indeed, the operation of the general tests in their case would give them some hope of success.

/7.

7. I think if we were to make this clear in the working paper this would go a long way to meeting your own points of concern. I have therefore had pages 3-5 of the working paper revised for this purpose and the new passages are sidelined. I hope that this will ease the anxieties that some colleagues have expressed about my approach.

8. This is as far as I consider it wise to go at the present moment. It is not a matter of whether we have one or more chances to move forward with this problem. What counts is whether we succeed in making use of this chance now or whether we overplay our hand.

9. It is now obviously highly desirable to publish our proposals and to take the views of industry. If colleagues find the working paper in its revised form acceptable as a basis for consultation, I would wish to proceed with publication tomorrow as previously planned.

10. I am sending copies of this minute and its attachment to other members of E Committee, the Lord Chancellor, the Paymaster General, the Attorney General, the Solicitor General and the Lord Advocate and to Sir Robert Armstrong.

J P

6 February 1980

removed from the original dispute or too lacking in effect or pursued for too extraneous a motive to be reasonably regarded as furthering the dispute. By these tests action in furtherance had to be reasonably closely related to the original dispute and the way the tests were applied by the Court of Appeal in the cases which came before them suggested that the immunity might often extend to action taken to interfere with performance of a contract by the first supplier or customer of the party in dispute, but would rarely go beyond that.

There were some hopes, particularly following the decision of the Court of Appeal in the MacShane case, that this development might afford a basis for consensus on the extent of immunity, provided that the immunity for secondary picketing was statutorily restricted because of its special connotations for public order. Since the Government would much prefer to proceed in these matters by consensus, it was felt that further consideration must await the decision of the House of Lords in the case of MacShane.

7 That decision was given in December 1979. Their Lordships found that, under the existing statutes, the test of what is "in furtherance of a trade dispute" is subjective, ie it depends on whether the person taking the action honestly believes that it will further the cause of those taking part in the dispute. The effect of their judgements seem to be that Section 13 is to be interpreted and applied as conferring immunity in every case in which, for example, "blacking" is undertaken in the genuine belief that it will in some way further an imminent or existing "trade dispute". Thus, it does not seem to matter how remote the person (or business) whose contractual arrangements are thereby interfered with may be from the party to the "trade dispute" whose interests the "blacking" is intended to attack or whether he has any commercial concern in that dispute and its outcome. In short, the fears expressed in 1974 and 1976 about the virtually unlimited extent of the immunity were shown by the Lords judgements to be justified.

8 The Government believe that the statutory immunity should now be amended to restore a more widely acceptable balance of interests. In the case of secondary picketing, where the immunity has been much abused, Clause 14 of the Employment Bill now provides for the immunity to be restricted to acts done in the course of picketing undertaken by employees at their own place of work. It has been argued that, similarly, immunity should no longer extend to other secondary industrial action, like 'blacking', but should be restricted to action taken by employees in dispute only with their own employers. This would, however, result in the proscription of all forms of sympathetic action, even in cases where this may be the only effective industrial action available to assist employees in dispute with their own employer.

The Government consider that considerably more thought needs to be given to the framework of immunities for industrial action appropriate to modern conditions before such sweeping restriction could be contemplated. However, since the current immunity clearly cannot be allowed to run virtually unlimited, the Government believe that the best basis on which to proceed immediately is to bring the position on immunity broadly into line with that suggested by the Court of Appeal decisions before the House of Lords judgements in Express Newspapers v MacShane (ie as indicated in paragraph 6 above).

9 One way of approaching this would be to define the scope of the immunity expressly in statute. This might be done by providing that the Section 13 immunity should continue to apply to inducements to break, or interfere with, contracts where the action, threatened or actual, is taken in furtherance of a trade dispute by

(a) employees of the party in dispute

(b) employees of his first suppliers or customers (who might be identified as someone who was not a party to the dispute but was in a regular or substantial - not incidental or minor - commercial relationship with such a party)

but that the Section 13 immunity should no longer apply to such action in furtherance of the dispute by the employees of any other

employer if it involves interference with commercial contracts. In the case of such an employer inducements to break his employees' contracts of employment would continue to attract immunity if in furtherance of the dispute, but there would no longer be immunity for any inducement to break his commercial contracts, whether directly, or indirectly through breach of the employment contracts.

10 This method would be specific, but could be sometimes arbitrary in effect, depending on the nature of the commercial relationships of the party in dispute. It would be particularly important to provide a definition of "first supplier/customer" which had regard to the size and regularity of the commercial relationship, so as not to extend immunity to action against those too little commercially connected with the party in dispute.

11 Another approach would be to lay down general tests of the kind adopted by the Court of Appeal (see paragraph 6 above) which have to be objectively applied. These would be intended to ensure that immunity extended only to secondary action closely related to furthering the original dispute.

General tests of this kind are, of course, in the nature of guides rather than clear and precise indications to employers and unions in dispute whether action is "in furtherance". They would often have the same effect as the approach outlined in paragraph 9 in regard to secondary action taken by employees of first customers and suppliers, but because they would be capable of being applied to that action as to any other action, they would allow more flexibility in the application of the law to the varied situations which arise.

12 Views are invited on the proposed limitation of immunity for secondary action (other than picketing for which the Employment Bill already provides) and on the approaches set out in paragraphs 9-11 above. In the light of the consultations, the Government propose to introduce the necessary amendment to the Employment Bill, currently before Parliament. Although this limited action is what the Government consider at this stage to be appropriate, their review of trade union immunities will continue.

United Biscuits

01-560 3131

SYON LANE
ISLEWORTH
MIDDLESEX

The Rt.Hon. Mrs. Margaret Thatcher, MP,
10 Downing Street,
London S.W.1

6th February 1980

Dear Margaret

You will know what Elizabeth I said to William Cecil : "that without respect of my private will you will give me that counsel which you think best" - and it is in that spirit that I write to you.

As I think you know, I am a member of a sounding group that Jim uses from time to time on human relations and related matters.

The pressures to go further than the measures as outlined in the Employment Bill must be very great. My belief is that the Bill as amended achieves about the right balance - at least as a first step. I have talked with a number of senior industrialists whose judgements I respect, representing a wide cross-section of industry, and almost unanimously they take the same view. I believe that it is important at this stage to retain the goodwill of the moderate trade unionists, which you are doing, and not force them into the militant camp.

There will be some who think that this is a "wet" approach - and they may be right - but I do not believe your government will be able to redress "at a stroke" the accumulation of union power built up over many years. To try to do so, it seems to me, may provoke a degree of confrontation which could become insupportable.

I remember using a phrase to you : "information about your own troops". Your troops in this case are of course partly public opinion, but partly industrialists, and I believe that those who may be demanding even stronger action than is proposed will not be at the barricades behind you when the shots start flying.

Yours

Hector.

Ref: A01344

CONFIDENTIAL

PRIME MINISTER

E: Employment Bill
(Minutes of 1st February from the Secretary of State for Employment and 4th February from the Chancellor of the Exchequer: letters of 4th February from Paymaster General and Secretary of State for Trade)

BACKGROUND

This meeting has been arranged at your request, to consider the reactions to Mr. Prior's proposed 'working paper' which he wished to publish on Thursday. The main reactions are those from the Chancellor of the Exchequer and the Paymaster General; but the Secretary of State for Trade has also raised an issue arising from the Nawala judgment, which could be covered at the same time.

2. Mr. Prior's working paper correctly reflects the decisions reached in E on 15th January. But, as the Paymaster General says, 'things really have changed significantly' since then. The question for Ministers is whether they have done so in a way which makes it essential to go beyond Mr. Prior's proposals. The law is in roughly the same position in which the McShane Judgment left it (tilted even further in favour of the unions as against last year). Mr. Prior's proposals were judged to be an adequate response to that. But feelings on the trade unions' side have sharpened up, and public opinion seems to favour a more rigorous approach by Government.

3. You will have the latest available information on the steel dispute, which is the immediate occasion of this second look at the problem. We have been told that there is a good chance of negotiations beginning again at the end of the week; that picketing on the ground is fairly effective and nearly all the private sector (apart from Sheerness) is closed. Picketing at the docks seems fairly light. You are seeing BISPA at 5.00 pm on Tuesday, and will have a better 'feel' for their reactions then. You will also need to consider whether publication of a working paper at this stage - particularly if it was one that significantly toughened the provisions on immunities and on picketing and blacking - would make settlement of the steel strike more difficult.

CBI evidence - length of strike

(1) Restricting immunity to people directly involved in giving dispute.

CONFIDENTIAL

HANDLING

4. The issue which emerges from the correspondence is as much "how fast" as "how far". The Chancellor's view is that we must go further than previously envisaged and quickly. Mr. Prior does not object to going further but wants to move forward more deliberately and with wide consultation. He will no doubt remind the Committee that they have already decided (on 15th January) how they wished to approach the question of immunities. They then agreed on the approach put forward by the Secretary of State for Employment, and his draft 'Working Paper' (circulated with his minute of 1st February) correctly records those decisions. He will (I imagine) say that to be seen to be taking decisions in the light and heat of the steel strike will put at risk the chances of the trade unions acquiesing in the Employment Bill, once it has become law, and reunite the trade union movement in the sort of unrelenting opposition that the Industrial Relations Act encountered. The counter-argument is of course that in the light of the steel strike public opinion, including many trade unionists, expect and would like to see more far-reaching proposals, and there is now a tide to be caught. So the question is whether to go further at this time on the lines of one or more of the proposals set out by the Chancellor of the Exchequer. You could suggest that the Committee takes the main points in reverse order: secondary action as being the most immediate issue (and the one on which colleagues - and perhaps even Mr. Prior himself in the end - are most likely to agree) and then trade union immunities generally.

5. Scope for Immunity for individuals engaged in secondary action. This is paragraphs 9 - 11 of the Chancellor's minute. He suggests that we should go beyond the present proposal which limits immunity to 'first supplier/ first customer'. He proposes two alternative routes: a copy of Australian Legislation, or a statutory designation of 'tests' which would have to apply to any legalised form of secondary action.

6. The Australian model may well not be appropriate. It stems from a quite different tradition of industrial legislation, building on the concept of 'restraint of trade'. Ministers have of course asked officials to look at the scope for legislating on restrictive labour practices (and a report is coming up from MISC 14 at present), but this is an entirely different set of problems. It is not easy to see how the Australian model could be adapted to our circumstances. You might ask for views on this from the Secretary of State for Trade and from the Solicitor General, but try to dispose of this one fairly quickly.

7. The alternative, and more attractive proposal, is to devise legislative tests to govern the legality of secondary action. (The Chancellor's paper, in the first line of paragraph 10, speaks of a 'non-legislative' approach, but we think this is a typing error.) It is important that Ministers should realise that this proposal is an addition to and not a substitute for, the 'first supplier/first customer' limitation. It tightens up the rules considerably. It is not, in fact, very far from one of the options displayed in Mr. Prior's draft working paper - that in paragraph 9(i). This suggests that the tests should in future be written into the Statute. Two of the three tests which the Chancellor proposes are already mentioned in Paragraph 6 of the Working paper. All that seems necessary to meet the Chancellor's wishes, is (a) to build on paragraph 9(i) of the Working Paper (and reject 9(ii)), (b) to specify more clearly the kind of tests which would be embodied in legislation and (c) to accompany this by some general statement that the Government intends this as a clarification and tightening-up of the law (phrased in a way to reassure the Government's supporters).

8. If it were possible for the Committee to agree on something like this (where the main protagonists are not far apart), you could then move on to the second, and more contentious, issue.

9. General Trade Union Immunity. The Chancellor has for some time been urging a head-on approach to the immunities enjoyed by trade unions as such, by amending or repealing Section 14 of TULRA 1974. Mr. Prior believes that this is the unions' sticking point, and it is very probably his own.

It would indeed be highly emotive in the trade union movement: is there a risk of losing the tacit support of moderate trade unionists, if this is included in the package? Mr. Prior also believes that such action would not really achieve its main purpose, of putting an effective brake on strikes, and would still risk 'martyrs'. You might invite the Committee to consider briefly the likely effectiveness of such action. Then you need to assess the trade union reaction. Is it really a 'general strike' issue, as Mr. Prior has sometimes hinted? If so, is this the time - with the steel dispute entering a new phase - for such a confrontation? If not, is the political requirement to be seen to be taking strong measures met by a compromise, under which the Chancellor drops his demands for amendment of Section 14, in exchange for something on the lines of his proposed additional limitations on secondary action.

10. In seeking to reach a consensus, the Committee will want to bear in mind the state of opinion in the Party and in the country (as reported by the Paymaster General, and in the paper by Lord Thorneycroft which we have not seen). They will also want to take account of the views of industry: not only the immediate participants in the steel dispute, whom you are seeing tonight, but also the CBI. Could a compromise of the kind outlined above be sold to the Party? Would the CBI back it? Could Sir John Methven deliver CBI support for the attachment of trade union funds?

11. Only if time permits will you want to look at Mr. Notts points in the Nawala Judgment. And even then it would be enough to accept his conclusions which call for more work rather than more decisions.

TIMING

12. If it seems possible to reach a consensus in the Committee, you may well want that view to be reported to the Cabinet for decision on Thursday. If the Committee is split, however, you may want to take a little more time for reflection before inviting the Cabinet to take decisions. How much time has the Government really got? Mr. Prior's wish to publish his working document this week really turns on two things: the need to leave adequate time for consultation, and the need to move amendments at Committee stage

of the Employment Bill. The need for consultation is genuine: the Government cannot very well move unless it knows that the CBI is behind it, whatever the views of the TUC. And the CBI moves slowly, because of the need to consults its constituents. Four weeks rather than five might be tolerable. But more time could be won, if the Government were prepared to move the amendment (as the Paymaster General suggests) at Report stage, not at Committee. This carries the risk of re-committal, but probably the Government could muster the votes to avoid this. The Chancellor of the Duchy is very worried about the timetable, and although he is not invited to the meeting, you will want to make sure that someone consults him before a final decision is taken: perhaps at Cabinet tomorrow.

You agreed this evening that Mr St John Stevas should discuss with the Lord Chancellor.

CONCLUSIONS

13. The outcome of the meeting will have to be referred to the Cabinet in any case. If you can achieve a consensus in whole or in part, that can be recorded "subject to the view of Cabinet" and reported to Cabinet on Thursday. But if the Committee is deeply divided you may want to seek a little more time, e.g. by asking for a new paper to go to Cabinet next week. But this course carries a high risk of leaks. You may also in any case wish to give Mr. Nott the authorities he seeks in the conclusions to his minute of 4th February.

pp (Robert Armstrong)

5th February 1980

NOTE OF A MEETING BETWEEN THE PRIME MINISTER AND THE BRITISH INDEPENDENT STEEL PRODUCERS ASSOCIATION AT NO. 10 AT 1715 HOURS ON TUESDAY, 5 FEBRUARY, 1980

Present:

Prime Minister
Secretary of State for Employment
Secretary of State for Industry
Mr. Derx, Department of Employment
Mr. S. Gross, Department of Industry
Mr. D. Wolfson
Mr. C. Whitmore
Mr. B. Ingham
Mr. T. Lankester

Mr. J. Paterson (President)
Mr. A. H. Mortimer (Director-General)
Dr. D. Hardwick
Mr. Peter Lee
Mr. I. J. Blakey
Mr. S. Williams

* * * * * *

Mr. Paterson said that he and his colleagues were grateful to the Prime Minister for the opportunity to meet her to explain their difficulties. The private steel industry was faced with an increasingly horrific situation. They had been brought into a dispute between BSC, BSC's workers and the Government in which they ought not to be involved at all. The only real victims of the dispute were likely to be the private companies. They were losing about £10 million per week, and great damage was being suffered especially by those companies who had been investing heavily. They had met the Secretary of State for Employment on 16 January and had suggested to him the need for immediate legislation to outlaw secondary picketing. Mr. Prior had indicated that it would not be possible to rush this through Parliament. Now that they were faced with a full strike, they were asking the Prime Minister if the Government would enact urgent legislation to make both secondary picketing and secondary striking unlawful.

The Tory Manifesto had indicated that the Government were going to deal with all forms of secondary action; but so far they had done nothing, and furthermore, it appeared that the Employment Bill currently before Parliament would deal with only one aspect of secondary action - namely picketing. Even if it were not possible to rush through the Bill to help deal with the present strike, they hoped that it would at least be toughened up. There was no guarantee that, against the background of heavy redundancies at BSC, there would not be similar strike action later in the year. The private companies felt that at present they had no protection at all. He hoped the Prime Minister would be able to indicate what legislation the Government now intended to enact in the light of recent events.

Mr. Mortimer said that BISPA fully endorsed the Government's policy that BSC should achieve early viability. It was important that BSC should operate without subsidy so that the private companies could compete. But they were dismayed by the inadequacy of the current law which seemed unable to protect those who were brought out on strike against their wishes. The ISTC had torn up all their procedural agreements with the private companies and instructed the employees of these companies to strike even though there was no dispute. It was clear that they did not really want to strike since, as soon as the union had withdrawn the strike instruction after the Court of Appeal decision, there had been a 100 per cent return to work. Mr. Paterson added that the threat of losing their union cards was unfortunately decisive. Working class solidarity also had had an important effect - the private sector workers tended to live in the same communities as BSC workers. Moreover, those who failed to accept the strike call would often face intimidation.

The Prime Minister said that, while the Government had the greatest sympathy for the private companies' difficulties, there was no possibility of rushing legislation through to deal with the current strike situation. But the Government would like to ensure that it would not happen again. She

 / asked if the

asked if the Association had any particular proposals. For example, would the private sector workers have gone on strike if there had been a secret ballot?

Mr. Prior said that Lord Denning had tried to establish the principle that immunities against breaches of contract should not extend beyond the first customer or supplier of an employer in dispute. If this principle were enacted in law, would the private steel companies be protected? He understood that some companies had a first customer/supplier relationship with BSC; others not. Mr. Blakey said that all the companies had some contractual relationship with BSC. The Prime Minister said that, in that case, it did not appear that drawing the immunities line at first customer/supplier would help. Mr. Paterson agreed; immunities in his view should not extend to secondary action at all. Furthermore, the unions should suffer financial penalties if they breached agreements, or if their members broke the law. The Prime Minister commented that the unions ought perhaps to be financially liable for breaking agreements in situations where there was a closed shop.

Mr. Williams suggested that secondary action should only be lawful if there was first a secret ballot. Alternatively, it might be made unlawful for a union member to lose his union card if he refused to take part in secondary action. Mr. Prior said that he doubted whether it would help to make secret ballots compulsory. But there could be a provision in a statutory code which would say that expulsion from a union was unreasonable if there had not been a ballot. However, he would consider this and any other ideas which the Association might have.

Mr. Mortimer said that he had understood from Mr. Prior that the Government thought it would be a mistake for legislation to come into effect while the current dispute was on. He disagreed with this point of view.

The sooner the law was rectified, the better.

Mr. Prior said that it had been the Government's policy all along to "take the steam" out of their proposals by consultation and the step-by-step approach. So far this appeared to have been successful since the unions seemed unable to decide whether the Government's proposals were modest or radical. It would be far better for the legislation to come into effect in the summer when, on past form, there were likely to be a few months of industrial calm. If the legislation had gone through now, it would immediately have been threatened by Scargill and others. The Prime Minister added that there was no question of the Government holding up the legislation; but it had to be right, and they were looking for BISPA's and others' advice on what new clauses should be added to the Bill. It was essential that the Government had the employers' support since they would have to enforce it. She hoped that BISPA were in touch with the CBI.

Mr. Paterson said that management morale in the industry was being destroyed by the inadequacy of the current law. If the present strike continued, the larger companies would survive, but there would be less investment and fewer jobs in the future. Too few union members understood this. Only when companies actually collapsed did people begin to face up to reality. He repeated that the Government must outlaw all forms of secondary action, and make the unions liable for their members' actions.

The Prime Minister said that the Government were urgently considering what further changes were needed in the Employment Bill, and they would certainly take into account the views expressed by BISPA.

TL

5 February 1980

Prime Minister

Shall I send a quick copy of this to Mr Prior?

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Flat 68,
Millbank Court,
24 John Islip Street,
London, SW1

Sir Leonard Neal CBE, MA, CIPM

Tel. 01-828 9528

The Rt. Hon. Mrs. Margaret Thatcher, M.P.,
10 Downing Street,
London SW1

5th February 1980

TL has said - no copy to Employment.

Dear Prime Minister,

The following is the gist of my report last night. I am confining myself to the remarks on the Employment Bill, and its relevance to the current situation, rather than to cover the whole spectrum of industrial relations.

My first criticism is that if the Bill is inadequate, as we believe it to be, it will be placed on top of an edifice of law that is already anomalous, ambiguous, unbalanced and unfair. This combination will produce even more legal problems than we have at the moment and bring the law into further disrepute. I was only able to confine myself to one item last night, that of:

Picketing

Because of the legal vacuum that now exists, there is effectively no restraint on the behaviour, numbers and policies of pickets. This along with the strike culture that has developed so insidiously in the last fifteen years ensures that those moderate members of the community and the workforce, who give support to pickets, do so reluctantly, because in many, many cases, they feel that 'picket law' is the only law we have now. It is thus in this situation that the right to strike becomes superior to all other rights; is not shameful, but is almost a supreme virtue, a culture in which the law is disregarded and the rights of the ordinary citizen are trampled on.

I have said that Parliament needs to restore concern and consideration for some basic principles, e.g.

1. That strikes in themselves are undesirable, and that it is better that production should not be interrupted, rather than it should, and it is better that fewer people should withdraw their labour than that more should.

2. That the individual rights of all involved in industry should be respected and this includes managers and non-strikers, as well as strikers.

More precisely, the Bill does nothing in its present form to

1. Inhibit secondary blacking and boycotts, including 'sympathetic strikes'.

2. Does not provide for a return to the state of the law before 1976, which allowed for action to be taken against those inducing breaches of commercial or other contracts.

3. The Bill currently does not provide for any amendment of the definition of a 'trade dispute' (Section 29, 1974 Act). The current definition is so wide that 'secondary picketing' could be lawfully undertaken simply by claiming another cause for dispute, or the same cause at another place.

It is for these reasons (and others, for which time does not allow) that causes us to say, with considerable emphasis, that Sections 13, 14 and 15 T.U.L.R.A. 1974 should be repealed. They grant immunities to trade unions, which under another Section (S.28 (1)) of the 1974 Act ensures that trade unions 'can be purely temporary groups of individuals'. By these and the Sections referred to, trade unions are given immunities for any civil offences, which are granted to no other subject or institution in the Land, and institutions (e.g. Trade Unions and companies) should be pursued for breaches rather than just individuals.

We believe that a number of remedies could be sought at an early stage to limit the effects of picketing to its proper level, and the following are some of the suggestions made last night:

To create an offence of 'unlawful picketing' so that picketing would be unlawful if the following conditions for all pickets were not observed.

1. A Trade Union calling the official strike should be responsible for appointing a 'picket organiser', for the purposes of the picketing currently being undertaken (this would have the effect of making the unions themselves responsible for the activities of pickets). The 'picket organiser' would have to be registered with the Police, who would issue official armbands, so that the 'picket organiser' could be recognised readily, along with others present on the picket line.

2. The numbers of pickets should be limited to six at any one access point of the premises in dispute. (In terms of the T.U.L.R.A. Section 15, it is not necessary for 5,000 pickets to assemble for the purpose of 'peacefully obtaining or communicating information or peacefully persuading any person' to support their cause).

3. The 'picket organiser' should desirably be a local trade union official, but in any case responsibly appointed by the union concerned.

4. In the event that a strike is called 'unofficially' i.e. in defiance of the trade union concerned, or alternatively that the strike is the action of non-trade union employees, the 'picket' would still only be lawful providing the conditions described above were fulfilled.

5. Threats to or obstruction of non-strikers.

6. If picketing occurs at premises other than those of the employer originally involved in the dispute.

7. Interception of non-strikers within 500 yards of any access point of the premises under dispute.

Finally, I said that we must attempt to create a situation where non-striking becomes a way of life before striking becomes the way of death. We lost more than 29m working days in dispute in 1979.

* * *

Ballots

I had no time to mention this last night, but I believe as the Government does, that we should begin a long term process of restoring individual rights. Thus, I believe that it would be far more effective if public money was made available (to a given proportion of employees being required to strike) to oblige the trade union to ballot the entire membership concerned as to that membership's wishes. For example, there is little doubt that if members of I.S.T.C. in both public and private steel manufacture were ballotted as to their wishes, would express different views to those of their leaders as to the desirability of being on strike. Providing such issues were canvassed by a secret postal ballot!

I hope this letter is not too discursive.

Yours sincerely and in haste,

Leonard

cc. Mr Wolfson
Mr Hoskyns
Mr Lankester.

cf Ind. Pol (Pt 2) 'Meetings with TUC'.

Confederation of British Industry

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From the Director-General: Sir John Methven

STRICTLY PERSONAL

5 February 1980

Dear Clive,

I have thought deeply about the discussion which we had with the Prime Minister this morning: and I would be the first to admit that I came away deeply disturbed, because I could not provide an easy solution to a difficult situation.

Frankly, I know that this Government, and in particular this Prime Minister, provides the last chance that this country is likely to have to preserve economic freedom and therefore personal freedom.

Therefore, my natural inclination is to fall in behind and back what is done. But that is not my job. My job is to help to win: and to predict where individual and commercial opinion will stand.

As an industrial animal, I have seen both Conservative and Labour Governments confront the unions and lose. This Government has great courage and must win opposite the unions. If too great a step is taken at once then there is a real practical danger that the unions will

/continued ...

Clive Whitmore Esq
Principal Private Secretary to the Prime Minister
Prime Minister's Office
10 Downing Street
London SW1

again confront the Government and win. We cannot afford that.

It is true that the present Employment Bill, if amended to reverse MacShane will only deal with tertiary action (except in respect of picketing where it will deal with secondary action). That will be an imperfect solution - "band-aiding". To say, however, that to deal in one Bill with the closed shop, secondary picketing, and MacShane is "nothing" is, in my view, wrong. I had never expected while I occupied my post as Director General of the CBI even to be able to discuss these things after the disaster of 1971/74.

The question for me is - how much will the union movement take, without erupting totally, for the union movement is still more powerful than public opinion? In spite of this morning, I do not believe that we could, in the absence of a substantial period of consultation, secure the impugning of union funds and the making unlawful of secondary action (apart from picketing) in this Bill without :

a. the risk of totally unifying the union movement against the Government, or

b. splitting employers' opinion down the middle.

I am well aware that bodies such as BISPA might well support such action at this time. But who will enforce it? Not Government, because it is a civil matter. It must be the bigger employers, with highly unionised workforces - that is where the battle will be.

It is much easier to advise you and our Prime Minister that all will be well and that in this Bill she should deal, at one quick blow, with all secondary action and the impugning of union funds: and I have also made it quite clear that I personally will back her decision. But my advice remains, after many hours thought, that she should say that this Bill is "band-aiding", that there is more to do (secondary action/trade union funds) and that that will be, quickly, the subject of a Green/White Paper. Action against these matters strikes at the very core of the trade union movement and, in my book, they are entitled to a reasonable period for consultation.

/continued ...

Privately, I do not believe that the trade union movement is totally against this Government. I know that Len Murray is trying to cool the situation in South Wales and yesterday carpeted George Wright (the TUC Wales General Secretary) who is trying to exaggerate a serious situation there. Murray is also making great efforts to get the various trade unions into the same room as BSC. Surely, this sort of effort is still worthwhile?

To recommend a more robust or perhaps dangerous course would be much easier. But in the end I want to secure ground against the unions which is won, consolidated and enforced by employers.

I add one point about the enforcement of the law. It is now clear, from the common law, that the police have the right and duty to control the number of pickets at any one point - and this is quite separate from the point that I made this morning about the "act of picketing". That, in many places, they are not doing. The picketing of steel stock-holders has increased greatly over the last week: and yet we can see on TV (and from evidence which I have available) large numbers of pickets at one point. Why, for a start, is the law not being enforced by the police, in a strict manner, in respect of peaceful picketing, which would make a lot of difference to the current situation?

I do hope that, if you think this note worthwhile, you will show it to the Prime Minister.

Yours ever,

FE

Ind POL: Legislation: Pt 2.

CONFIDENTIAL

Sir Robert Armstrong
c. Mr. Wolfson
Mr. Hoskyns

NOTE FOR THE RECORD

Subject cov: Ind POL: Meetings with the CBI: May 1979. Whitmore

Sir John Methven called on the Prime Minister at 1145 today. David Wolfson, Clive Whitmore and I were also present.

Steel Strike

Sir John referred to the ISTC threat to withdraw safety cover. He said that the threat should not be taken too seriously because it had come from an ISTC official and, at least in England, the safety work was carried out by blast-furnacemen. BSC did not believe that the blast-furnacemen would ruin their own plant. But in any case, even if they did refuse to carry out the work, it could still be done by BSC staff. The position in Scotland was more serious because the blast-furnaces there were manned by ISTC members. However, BSC's Scottish management ought to be able to cope with the situation.

Sir John went on to say that the CBI's latest assessment was that steel consuming industries could manage for another three or four weeks without suffering much damage. But BSC ought to make a major effort to settle the strike within the next two weeks. He had been in touch with Villiers and Scholey to make this point. After another two weeks, industrial opinion was likely to begin swinging in favour of a quick, costly settlement. The strike had had little effect so far because of large steel inventories and because successful of swopping arrangements (which the CBI had for obvious reasons not publicised). But the situation would change quite rapidly in another few weeks. It would then be hard for the CBI to hold their members behind the Government and BSC. If BSC had not been a member of the CBI, it would have been far more difficult to have held the membership: by keeping in close touch with Villiers and Scholey, and by enabling members to hear BSC's case at first hand, he had found it much easier than it would have been to keep them in line.

/The Prime Minister

The Prime Minister asked why ACAS had not been more effective in dealing with this dispute. Sir John said that both ISTC and the blast-furnacemen were suspicious of ACAS. It was much more likely that Len Murray and other union leaders such as Moss Evans and David Basnett could help to conciliate. It was unfortunate that Len Murray had intervened prematurely early in January.

Employment Bill

Sir John said that the Employment Bill and Mr. Prior's proposal for reversing MacShane would outlaw tertiary action in all its forms, but would only outlaw secondary action in the form of picketing: in other words, sympathetic strikes, blacking and boycotting at first customer/first supplier would not be covered. He understood that, on tertiary action, the Department of Employment favoured a "territorial" test - which would expressly say that the scope of immunity was confined to employees of the party in dispute and employees of his first supplier or customer. The CBI favoured a "general objective" test on the lines used in the Court of Appeal decision on MacShane. Although this might offer less clarity, it might also - in certain cases - enable an injunction to be brought against secondary action. Both approaches were apparently included as options in the draft consultative document which Mr. Prior was planning to publish later in the week; he hoped that the Government would consider carefully before coming down in favour of the "territorial" test.

More generally, he felt that Mr. Prior's proposals went about as far as was possible in the present Bill. The objective must be to gain as much ground as possible and to make it stick. His recommendation was that the Government should push through the existing Bill with the additional clauses reversing MacShane and to follow this up with a Green Paper on all forms of secondary action and possible remedies with a view to legislating further in due course; alternatively, the Government might propose a 12 months inquiry. Before deciding to strengthen

/the Bill

the Bill either by removing union immunities or by outlawing secondary action, the following factors ought to be borne in mind.

First, consultation would be required, and - judging from the time it had taken to draft the presentation consultative document - this would take several weeks to get off the ground. All the more so since the idea of removing union immunities was a highly complex issue. It would be quite wrong not to consult with the unions and the employers on these matters, and to allow the necessary time for this would put at risk the passage of the Bill during the current session. Second, the union movement had been founded on secondary action - that was how traditionally they brought the most pressure on employers. Any further move by the Government against secondary action would therefore be bitterly opposed. Third, there were many problems in going down the union immunities route. In particular, it would often be difficult to decide when and where a union was responsible for action which had been outlawed. Before it would be possible for a plaintiff to attach union funds, it would be essential to identify this responsibility. For example, if one union official authorised unlawful strike action, while another official from the same union countermanded it, would the union be responsible? Furthermore, if employees took unofficial action against their union's instructions, this remedy would be ineffective.

Sir John said that he was not against going further: on the contrary he would in principle favour it. But it was crucial that the employers should support the Government's measures. If the Government were to announce more radical measures, he himself would support them; but he could not guarantee his membership. Their response was much more likely to be that the Government should confine any additions to the present Bill to reversing MacShane. As between outlawing all forms of secondary action and removing union immunities, he thought that the former would cause less trouble.

/The Prime Minister

The Prime Minister said that on tertiary action, the Department of Employment had indeed favoured the "territorial" test at first; but it now seemed that they were moving towards the "general objective" test favoured by the CBI. On the general question of whether the present proposals were adequate, she was more concerned than anything about the lack of adequate remedies. Recent events showed that trade unionists as individuals would not obey the law and would readily go to prison. This was why she strongly favoured making unions as institutions responsible for their members' actions. Sir John responded that there was no case in the last few years of trade unions or their members not sticking to the law. The Prime Minister commented that this was because there was, in effect, no law for them to obey. Sir John went on to say that, if there was a problem in preventing unlawful actions by individuals, the Government ought to consider making the act of picketing unlawful, just as he understood the act of squatting was unlawful. He had suggested this to the Department of Employment but they had rejected it. He understood that if an injunction were successfully brought against the act of picketing of a particular establishment, the police would then have the power to remove any pickets. The Prime Minister said that she doubted whether this was the case: since it would be a civil suit , she thought pickets would have to be removed by officers of the court.

As regards the timing of more radical measures, the Prime Minister said that there would always be a risk of confrontation with the unions. It seemed to her that it would be better to accept this risk in the coming few months rather than wait until next Autumn when the miners and others could cause the maximum disruption. It was a great pity, in her view, that the Government had not brought forward more radical proposals when the Bill was introduced: nine months had virtually been wasted in reached the present unsatisfactory juncture. The alternative to amending the existing Bill would be of course to announce that further legislation would be introduced, and to make this clear in the consultative document.

EMPLOYMENT BILL

Line to take (agreed with Employment)

Mr. Prior is in Committee today. Will be talking about immunities. Government will be bringing forward its proposals on immunities soon.

Government's intention to incorporate its proposals in the Bill at the appropriate stage.

Very much aware of impatience; but important to deal with the problem carefully. If pressed, cannot be precise when working document will appear.

BI
5.2.80

PRIME MINISTER

Thanks very much PA 2 MS.

Bringing the Employment Bill Back to the Floor of the House

In considering the Parliamentary handling of the Employment Bill, you might like to be reminded of the 1976 precedent of the Agriculture (Miscellaneous Provisions) Bill. I attach the discussion on the business question on 26 February 1976 (Flag A) and the subsequent debate on 8 March 1976 (Flag B).

You will remember that the eventual solution was to adjourn the Committee stage and to hold a debate on the Floor of the House on a Motion taking note "of the Government's intention to make fresh provision with regard to agriculture tenancies." After that debate, on which the House did not divide, the new clauses were taken in Committee.

There is no reason which has yet become obvious to the Chief Whip or the Clerks (who have, I hasten to say, been consulted only on the abstract problem) why this precedent should not be followed again, albeit in much more controversial circumstances.

One possible difficulty would be whether the new clauses would be within the scope of the long title of the Employment Bill, which is as follows:

> "To provide for payments out of public funds towards trade unions' expenditure in respect of ballots, and for the issue by the Secretary of State of Codes of Practice for the improvement of industrial relations; to make provision in respect of exclusion or expulsion from trade unions and otherwise to amend the law relating to workers, employers, trade unions and employers' associations; to repeal section 1A of the Trade Union and Labour Relations Act 1974; and for connected purposes"

The terms of the long title look to me to be sufficient to incorporate the clauses, but I have not of course sought advice on the point.

MS

5 February 1980

PRIME MINISTER

Top copy returned to John Hoskyns

E COMMITTEE - EMPLOYMENT BILL

This minute suggests an approach to the discussion at E Committee tomorrow.

1. BACKGROUND - THE BILL IN PERSPECTIVE

1.1 Britain's Establishment is still basically defeatist on trade union reform. It is essential we keep the problem in perspective. All other countries have a proper legal framework. Opinion polls show that the public favours the same. Establishment members communicate to each other the fear of another "Union Victory". Only political leadership can break out of it.

1.2 CBI and Industry

1.2.1 Methven is bound to be cautious. Big industrialists know we've got to crack the problem but fear the pain of doing so. Little ones know they've got fight or they'll be bankrupted. It's just the same as people wishing Government would end inflation, but not liking the idea of a monetary squeeze. Industrialists are not leaders in this context. They are followers.

1.2.2 CBI seems to be edging to the Right every time it meets to discuss this issue. CBI is not homogeneous. Some CBI members will take advantage of extra legislative powers, others won't. It's up to them. But at least they will have the chance.

1.3 The trade union debate never happened

1.3.1 The real reason why the Establishment are so nervous is that the debate which would have captured the groundswell of opinion never took place. It still hasn't begun because Jim Prior himself, for whatever reason, always refused to lead that debate. If he wouldn't even participate (let alone lead) it was difficult for a credible debate to start.

1.3.2 We've never even had the debate properly among colleagues, with no holds barred. So we still have a position where although you see a clear long-term objective, no-one at the Department of Employment is doing any work towards it. If we can't have uncomfortable argument, we can't get the real answers. But it must be rational. We mustn't allow it to degenerate into

stone-walling or huffing and puffing as it tends to do.

1.4 We must not lose sight of the strategy

1.4.1 Previous notes have set the broader strategic context. But it's worth remembering that the changes we're now contemplating could significantly reduce the power of the NUM (through secondary blacking by railwaymen, etc.) to bring the country to a halt next time they strike - and we can't pay them out whatever the demand, once Scargill replaces Gormley.

1.4.2 We are committed to collective bargaining, we know the pitfalls of incomes policy. At the moment we are delivering exactly what the militants want - free collective bargaining without a proper legal framework. That's what the unions will fight for, with the broken-reed moderate leaders trailing behind.

1.5 The danger is that we settle for the status quo with undue haste!

1.5.1 We should listen carefully to the technical problems because these could be a minefield, as Jim says. But we won't solve those problems by using "dove brains", ie people who, however clever and expert, have not spent time thinking about immunities, because they have been regarded as unthinkable. We need people like Len Neal, whom Jim won't talk to any more.

1.5.2 While being cautious on the technical pitfalls, we must insist on the moral position, the objectives and the strategy. The principle moral issue, for this discussion, is very simple. If secondary action by a union can financially ruin a hostage company, why should trade union funds themselves be totally immune from these innocent victims? The "first supplier, first customer" theory is really simply an attempt to extend the union right to take hostages, as far as public opinion is prepared to accept it. Its effects would be arbitrary; it would be much clearer to restrict immunity to primary action only. The Manifesto commits us to putting this right.

1.5.3 It is possible that the changes now proposed would themselves outflank the unions, in the sense that the very effect of the changes would impose penalties on the unions using/no longer immune measures to resist it. The union rumpus, in other words, would itself be outlawed by the act against which the rumpus was directed.

2. GETTING CABINET AGREEMENT

2.1 We need a rough view of how the process of reaching agreement will go, before we can think how best to use the E Committee discussion tomorrow.

2.2 The greatest danger is that E Committee is simply a re-run of old arguments from fixed positions. If we are to break out of that, I suggest that we give Jim maximum opportunity to explain his positions (we elaborate in Section 3 below) so that colleagues understand the way he is thinking, and, if he is right in his present view, we understand him in time.

2.3 The subject is too important for colleagues to be hustled. We should be prepared to delay for, say, 2 weeks in order to get the thinking done, and then publish the consultative document allowing 4 weeks for consultation (and an accompanying debate, led by other colleagues if Jim won't do it).

2.4 Further work could be done by an inter-departmental official group, but it must go beyond Department of Employment. Could it use "unclean" outsiders like Len Neal or Ray Boyfield?

2.5 If necessary, we should consider a longer session at Chequers to ensure that colleagues really understand the issues - political, strategic and technical. Jim's team should present their strategy for solving the union problem - something they have never done since Stepping Stones began.

2.6 You could press for removal of both individual and trade union immunities for all secondary action, accepting a fallback position to the lifting of individual immunities only.

2.7 The consultative document could itself mention the lifting of trade union immunities and the exposure of union funds, so that the media could begin to debate that issue properly during the 4 weeks' consultation. We could brief the media. Jim would not agree to lead that debate, but someone else could. (We

/ could

could then decide magnanimously, to shelve it, but with warnings that it would be introduced later if abuse made it necessary).

2.5 We will have the latest opinion research results for you early Thursday morning. The questions will be about the Government's resolve, people's attitudes to Government's behaviour, reactions to a referendum proposal, whether the strike is political or about wages, the unions' motives and respect for the law, possible new laws, appropriate speed of introduction of new laws, whether people think that changes in the law would be in the best interests of the country.

3. E COMMITTEE AGENDA

3.1 You might start with a reference to our Manifesto commitment to the strength of public opinion, to representations by BISPA and chambers of commerce etc. Then Jim should be asked to comment on general questions to help clear colleagues' minds. The technique should be probing and questioning, not disagreement and argument which will waste time. What he says should be tested and probed, and then noted, moving on to the next questions. He should not be allowed to stonewall on the basis that "We've been over all this so many times before".

3.2 The main questions to be debated

3.2.1 Jim has said, in his latest paper "Our aim is to start the process of putting industrial relations in Britain on a firm legal footing for the future". What are the steps he proposes? What is his definition of a "sound legal footing"? Is this a shared view amongst colleagues? How does Jim propose the Government should move towards that goal?

3.2.2 On the present proposals, could Jim explain the moral justification for saying that a first supplier or first customer may be blacked? He argued (E(79)44) that change on the

/ lines

lines proposed would "threaten the very existence of a union". But union action itself threatens the existence of companies which, unlike unions, provide jobs, wealth, income tax, VAT, corporation tax, rates. Why should the unions be free to fight against (often imaginary) injustice - in other words, demanding something for nothing - by inflicting real injustice? Does he see this right as a permanent part of the industrial relations furniture?

3.2.3 Jim stresses the importance of carrying "the major employer organisations" with us. Who, apart from the CBI, does he include? What does "carrying" them mean? What would they do if we didn't carry them? How homogeneous or heterogeneous are they in fact? He has warned of "disproportionate opposition" if we go beyond the present consultative paper. Does he feel that that opposition would be less if the changes were introduced later? If so, what is his reasoning? He says that his two industrialist advisory groups are emphatic that we should go no further. Who are they? What is their analysis? What is their view of desirable longer-term changes? He talks of a "minefield". Can we be more specific about the legal pitfalls if that is what he means?

I am sending a copy of this minute to the Chancellor.

JOHN HOSKYNS
5 February 1980

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Our Ref. AJLD/KW.

4th February, 1980.

Nicholas Winterton, Esq., M.P.,
House of Commons,
Westminster,
LONDON, S.W.1.

Dear Mr. Winterton,

Re: Industrial Relations - Steel Strike.

I am writing to you not only as a Constituent but as Director responsible for a Steel Stockholding Company operating in your constituency at Poynton, Nr. Macclesfield, Cheshire.

During the past two weeks our premises have been subjected to secondary picketing by striking steel workers. This has resulted in abuse, obstruction, intimidation, violence and blackmail threats to our staff. Also considerable damage to company buildings and property to the value of approximately £1,000.

All our employees have shown great strength of character and courage in continuing to cross the picket lines and carry out as far as possible their normal duties. Whilst we have people like this in the country who are prepared to live peaceful lives and carry out a good days work in the face of anarchy and mob rule, there is hope.

However Mr. Winterton, they must be given support. Nine months ago Mrs. Thatcher, you and other conservatives were given a mandate to put this country back in its rightful economic position. You have started down that road but please do not leave industrial relations legislation a moment longer.

cont'd...

NO. 1 CONTINUATION SHEET

FROM HALL & PICKLES LTD.

Nicholas Winterton, Esq., M.P.,

4th Feb. 1980.

We must be governed by a democratically elected government, not by the T.U.C., individual Unions such as at present the I.S.T.C. or any irresponsible group of people whose prime aim is to bring this country to its knees for their political aims.

Please act and support, and/or propose legislation which will limit secondary picketing so that innocent, hard-working people such as my staff will not be subjected to violence and intimidation. If you do not, what group of people will next appear outside our gates in an attempt to involve us in their dispute?

Please, Mr. Winterton, can I urge you to do all in your power to support legislation which whilst allowing individuals or unions to conduct a dispute with their employers peacefully will also allow individuals and companies not concerned with the dispute to carry out their work.

From what we have seen in the past fortnight it is possible that if industrial relations legislation is not amended, then anarchy could rule - that I am sure the majority of people do not want.

Yours sincerely,

A. J. L. Davis.
Divisional Director.

P.12

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

PRIME MINISTER

IMMUNITIES FOR SECONDARY INDUSTRIAL ACTION

You will have seen Jim Prior's minute of 1st February and the working paper that he proposes ("subject to surrounding events") to publish on Thursday. This paper, as Jim explains, "puts forward the policy proposal agreed by E Committee on 15th January".

2. In the light of "surrounding events" - which include the recent legal proceedings in the steel strike and the resumption of "sympathetic" and secondary action against the private steel producers - I am very doubtful whether we can or should now restrict ourselves to the limited change agreed on 15th January. I hope very much that E Committee can meet to discuss this question before Jim goes ahead with publication of his working paper in its present form.

3. I fully appreciate and agree with Jim Prior's view that it would be wrong for us to "rush forward with instant solutions" as a reaction to any single dispute. So I am certainly not suggesting any speedy "one-off" legislation designed to deal with the present strike.

4. On the other hand, I believe it is important to ensure that the Bill now before the House is likely, by the time it reaches the Statute book, to deal effectively with the key problems. I am not convinced that it will do this, even as Jim now proposes to amend it - and recent events have tended to confirm that view.

5. I suggest that we need to deal more fully with at least two major points:

(A) Immunity of trade unions: Section 14 of TULRA, 1974

6. All the new remedies (and sanctions) so far proposed will be available only against union officials or union members, as individuals. Some of this (for example, the extensive widening of the restraints on picketing that is proposed) may be inescapable. But I do not believe we should, with our eyes open, create substantial (and unnecessary) opportunities for individual martyrdom. I believe we should at least make it possible to seek an injunction against a union to restrain acts that are being threatened or taken by union officials or executive committees on its behalf.

7. Jim Prior argued (E(79)44) that change on these lines would "threaten the very existence of a union". This is just not so. A union's funds would be (as they should be, I suggest) at risk to pay fines for non-compliance with injunctions. If we wished, they could also be liable (as with any company) to pay damages. In either case we could provide a maximum limit on fines or damages.

8. The only alternative is to confine the courts to making orders against individuals. In the last ten days both Scargill and Sirs have volunteered for going to prison in this role. As Tom Jackson has pointed out today, there would soon be a daily ration of trade unionists going to gaol. How much less difficult (and how much more sensible) to win public support for the exposure of trade union funds.

(B) Scope of immunity for secondary action

9. Should we not consider the withdrawal of immunity for all - or at least for a wider range of - secondary actions? Jim Prior's present proposal is to leave first customers, suppliers and providers of services without a remedy. If we were to give them a remedy, then (as Jim set it out in paragraph 8 of his paper, E(79)44) this "would be consistent with the line we took in Opposition; it would tackle directly the 1976 Act, which is thought by many to have encouraged recent union excess; it could be presented as a return to the position which existed .... between 1906 and 1971". (Not, it may be thought, a very radical objective.)

10. One relatively simple (and non-legislative) way of dealing with this was suggested in paragraph 29 of the Annex to E(79)44, as follows:

"An amendment might be on the lines that action in contemplation or furtherance of a trade dispute:

(i) must not be principally for some extraneous motive; and

(ii) must be directly in furtherance of a trade dispute; and

(iii) must be reasonably capable of furthering the original trade dispute and not merely intended to do so."

Such an amendment, as Jim points out in that paper, would take the law no further than the Court of Appeal did in the "Daily Express" case.

11. An alternative approach to the same problem could be modelled on the recent Australian precedent described in the Annex to this minute. You will see that this also deals quite neatly with the problems of trade union structure.

12. In closing, I return to the political point. Public opinion is looking for effective change. Unless we do achieve such change we cannot expect to make a significant impact on our central economic problems. And we might as well not have fought (and won) the last General Election.

13. Jim has argued - and after my experience in 1971-4 I have good reason to understand his point - that we should proceed step by step, for the sake of winning the major prize of prior consent to a change in the rules. But it is now increasingly clear that any change which we propose and carry through will initially face unqualified opposition from the union hierarchy. The crucial test will be whether it is effective.

14. My fear is that if the present Bill becomes law in anything like the form so far proposed, disillusionment will swiftly follow. The "limited objectives" will not in practice be achieved. Yet union opposition - concentrating, as usual, on emotional issues - will be little different from what we might expect if we tried to deal with the really basic issues. If this is what happens, then I believe it is very doubtful that the path to a second Bill would have been made easier as a result of the first. The reverse could well be the case if it involved a second period of "massive confrontation" shortly ahead of the next General Election.

15. May we please have a further opportunity of considering what is probably the most important issue in the life not just of this Government but of the nation?

16. I am copying this minute to the recipients of Jim Prior's.

G. H.

(G.H.)

4 February 1980

Extract from CBI discussion paper on Trade Union immunities

(vi) Secondary boycotts as restraint of trade

42. At common law, an agreement which restrains trade or competition is void and unenforceable unless it was at the time of the contract reasonable as between the parties and reasonable in relation to the public interest. The effect of many trade union rules is prima facie in restraint of trade, but in order to enable unions to enforce their rights by means of collective withdrawal of labour, backed by the sanction of expulsion of members who do not obey instructions to do so, the purposes of trade unions are regarded by statute as not in restraint of trade.

43. Australia has approached the problem of secondary action by using restraint of trade legislation. The Trade Practices Amendment Act 1977 at section 45 prohibits two or more persons from engaging in conduct that hinders:-

(a) the supply by a third person of goods or services to a company; or

(b) the acquisition by a third person of goods or services from a company where the company is not an employer of the person prohibited and the conduct has the purpose or effect of either

(i) Causing substantial loss or damage to the company's (or an associated company's) business; or

(ii) Causing a substantial lessening of competition in any market in which the company or any related company operates.

44. The penalty for a proven breach is a fine of up to A$50,000 in the case of an individual and A$250,000 in the case of a union. In addition a company suffering loss or damage as the result of a breach of the Act can recover the full amount of the loss or damage from either the union or the

individuals concerned. The remedy of an injunction is also available. A person has, however, a defence to an action taken by an employer under the Act, if he can show that the "dominant purpose" for which the industrial action was taken "substantially relates" to the "remuneration, conditions of employment hours of work or working conditions" of either himself or of another person employed by the same employer. In other words, the defence will only be operative where primary action is taken by employees in dispute with their own employer.

45. The Act also specifies that where the persons engaging in the prescribed action are union members, the union itself will be a party to that conduct unless it establishes that it took reasonable steps to prevent the boycott.

46. Since the amendments to the original laws on restrictive trade practices were enacted, a considerable number of actions have been initiated by employers against unions organising and conducting secondary boycotts. Many actions have resulted in voluntary settlement and the lifting of boycotts. In other cases, injunctions have been issued pending a full trial. There appear to have been no reported instances of unions defying the court and continuing an unlawful boycott.

47. An amendment along these lines in UK would be a restriction on trade unions' present legal status, and its success, as with many other suggested new remedies against secondary action would depend an employers' willingness to use it. Nonetheless it appears to have had some effect in Australia.

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

CONFIDENTIAL

From the Secretary of State

In scan

Prime Minister

Mr Nott wants to deal with Nawala-type blacking by making almost all forms of indirect action unlawful. A helpful intervention since 4 February 1980 it supports the case for generally toughening up the law.

JL 4/2

The Rt Hon James Prior MP
Secretary of State for Employment
Caxton House
Tothill Street
London SW1

Dear Jim,

TRADE UNION IMMUNITIES

I am writing to seek your views on how best to follow up the recent E Committee discussion on trade union immunities. We accepted the tactical and Parliamentary considerations governing your wish to make the minimum amendment to the current Employment Bill. But in principle we would have preferred a more radical approach and to impose further restrictions on trade union immunities. In particular, it was noted that it might be necessary to pursue the implications of the Nawala case, and that you and I would give these further consideration; it now falls to us to carry out this mandate.

The Nawala case can be argued at two levels. I take very seriously the effect of inaction on our world-wide shipping interests. To counter increasingly protectionist trends, we are committed to the maintenance of a freely competitive shipping environment in which the world's fleets can compete on equal terms in each others ports. But under the Nawala judgement, even if there is no dispute between employer and crew, vessels can be effectively denied access to UK ports simply because they do not meet criteria established by the ITF. If this trend continues - and the Nawala judgement will encourage it - it could mean:

From the Secretary of State

a) only high cost shipping could risk using UK ports, with consequences for the cost of our international trade;

b) the risk of imitative or retaliatory action which could directly damage our overseas shipping interests;

c) severe prejudice to our defence in international fora, in UNCTAD and elsewhere, of the freedom of the seas, including freedom of registration and competition for cargo; and

d) the ship repairing industry (a Department of Industry responsibility) will be - indeed we are told is being - damaged because potential customers fear blacking.

In my view this damage to our national interests would justify legislative action for shipping alone and I would propose this if there were no alternative. But I am not at present convinced that the best way to approach the problem is to legislate narrowly. The general point of principle - the protection of the law for those not concerned in a dispute - was a fundamental point in our manifesto and is underlined by what is happening in the steel strike. I would therefore prefer to consider secondary blacking on the general principles set out in my letter of 15 January and I hope that these can form the basis for further consideration. I remain in agreement with the retention of immunity where there is a dispute between an employer and dismissed employees.

From the Secretary of State

I therefore suggest that we proceed as follows:

a) that in response to Parliamentary and other pressure on the Nawala case, we say that this raises wide-ranging issues which require further study before a decision is made. The Prime Minister, in the Weekend World interview in which she linked the Nawala case with the McShane Judgement as matters to be dealt with, said we would rather spend a little longer time in getting things right and our line should be that this is exactly what we are doing; and

b) that we ask officials to prepare a paper on considerations governing legislation to remove trade union immunities from blacking activity where there is no dispute between an employer and past or present employees. This paper might cover the merits of both general legislation and action specific to shipping. We shall then be able to take the matter back to colleagues. While the timing of any announcement should be related to tactical considerations arising from the present Bill, these need not hold up further work.

I am sending copies of this letter to the Prime Minister; the Lord Chancellor; Keith Joseph, who is responsible for the ship repairing industry; Norman Fowler, in view of the relevance to port operations; Peter Carrington, who will be concerned with the international implications; David Howell, who will be interested in the potential consequences for the transport of oil; the Attorney General; the Solicitor General, other E Committee colleagues and Sir Robert Armstrong.

Yours ever

John..

JOHN NOTT

Confederation of British Industry

21 Tothill Street
London SW1H 9LP
Telephone 01-930 6711
Telex 21332
Telegrams
Cobustry London SW1

From the Director-General: Sir John Methven

4 February 1980

Dear Chris,

Herewith the statement which I put out yesterday.

Yours ever,

John

S

From : Philip Ditton, Chief Information Officer, CBI. Home phone - 654 8222

TIME FOR AN END TO INDUSTRIAL

ANARCHY - SIR JOHN METHVEN

Sir John Methven, Director General of the Confederation of British Industry, said today (Sunday February 3rd) : "This country is now entering a dangerous period with the steel union leaders losing no time in seeking to put a stranglehold on the British economy by extending their dispute to the private sector, whilst other trade union leaders still claim to preserve their right to stand above the law and to inflict immense damage upon our society - a right unparalleled in our history, and open to no other set of people in the UK.

"Many not involved in the steel dispute now stand, if the strike continues, to lose their jobs as orders are lost both at home and overseas. No wonder our overseas customers are beginning to write Britain off as a land controlled by unions who seem determined to make it impossible for industry to operate in a normal commercial manner.

"The general public, having lived through three major strikes in the last 12 months are sick and tired of the overwhelming power of the trade unions and the industrial anarchy which springs from it.

"The law as it stands is a licence for trade unions to destroy at their will individual businesses and even to blockade and throttle the trade of our country. No country can tolerate laws which are against natural justice. Whatever the resistance, profound changes must now be made in the laws relating to trade unions. They must be supported and enforced by all those of us who believe in fairness and equity, if we are to bring sanity back to our industrial relations scene".

ENDS. February 3rd., 1980.

CONFIDENTIAL

cc A Dignam Tuf/ Received 17.00 A.

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

4 February 1980

The Rt Hon James Prior MP
Department of Employment
Caxton House
Tothill Street
SW1

Dear Jim,

Thank you for sending me a copy of your draft Working Paper on Immunities for Secondary Industrial Action, with your covering minute to the Prime Minister.

As you know, I have (both before and since the Election) supported your general line of moving one stage at a time, in step with public opinion, towards a reform of industrial relations law which would restore a fair balance between the rights and powers of unions and those of management. But I am bound to say that I believe the most recent events have changed both the political situation and the state of public opinion (including that of rank-and-file trade unionists) to such an extent that it would be unwise to commit ourselves now to the limited reforms suggested in your paper without further consideration by Cabinet.

I am not sure, in any case, that I understand the need for haste suggested by your timetable. Surely really major amendments to this politically sensitive Bill ought to be debated by the House rather than in Standing Committee, so that discussion time could be extended until nearer the beginning of Report Stage?

You will have read Peter Thorneycroft's paper circulated to members of Cabinet. I agree entirely with his views and with his assessment of opinion in the Party. However, since it is my job to advise colleagues on what can be effectively presented to the public, I would myself go further. I just do not believe that your proposals are now adequate to satisfy public opinion and remove the disquiet of rank-and-file trade unionists (which has been repeatedly shown in opinion polls - to say nothing of the last Election). Things really have changed significantly since 'E' Committee discussed these proposals on 15 January.

You say that 'Whatever we may decide to do ultimately ... our aim is to start the process of putting industrial relations in Britain on a sound legal footing for the future'. On the contrary, I believe that if we do not get it right this time, and be seen to remove the injustices and put the law beyond reasonable doubt, we shall get the worst of all worlds. We may well never get a second chance at a politically suitable moment; we shall miss the tide of public opinion; we shall appear to have let down the responsible rank-and-file trade unionists (including many in the private steel firms) who look to us for protection; we shall get a bad Press; and we shall forfeit most of our credibility.

/You say

CONFIDENTIAL

The Rt Hon James Prior MP (contd.) 4.2.80

You say that to go further would provoke extreme opposition by union leaders, and that John Methven and the employers who have advised you 'are emphatic that at this stage we should go no further than these proposals'. I am bound to say that this does not appear to me to be what John Methven was saying yesterday in the attached statement, in which he speaks of 'industrial anarchy' and calls for 'profound changes' in the law.

In any case, surely we have a much wider responsibility as a Government, to the public at large as consumers, as workers, and as the main sufferers from industrial disputes as at present conducted? We shall not be forgiven if we appear to let this majority down in deference to minority vested interests.

Finally, let me tell you what worries me most. We are continually being told that 'we are not getting our message across' - on the economy, on spending cuts, money supply and interest rates, etc. I am absolutely sure that, if we do not by adequate action now convince people that we have the will to deal effectively with industrial relations law, we shall never get any economic message across at all. Most people believe that excessive trade union powers and immunities are at the root of our industrial and economic problems. If, however, we do get this one right now, I believe our gain in credibility and support will enable us to carry the majority of the people with us on all the rest.

I am sorry to have written at such length, but I feel strongly that this is perhaps the most important and critical decision this Government will ever have to make, and that it should not be taken in a hurry. I hope, therefore, it may be possible to discuss it further in Cabinet.

I am copying this to the recipients of your paper.

Yours ever,

Angus

ANGUS MAUDE

From : Philip Ditton, Chief Information Officer, CBI. Home phone - 6[illegible]

TIDE FOR AN END TO INDUSTRIAL

ANARCHY - SIR JOHN METHVEN

Sir John Methven, Director General of the Confederation of British Industry, said today (Sunday February 3rd) : "This country is now entering a dangerous period with the steel union leaders losing no time in seeking to put a stranglehold on the British economy by extending their dispute to the private sector, whilst other trade union leaders still claim to preserve their right to stand above the law and to inflict immense damage upon our society - a right unparalleled in our history, and open to no other set of people in the UK.

"Many not involved in the steel dispute now stand, if the strike continues, to lose their jobs as orders are lost both at home and overseas. No wonder our overseas customers are beginning to write Britain off as a land controlled by unions who seem determined to make it impossible for industry to operate in a normal commercial manner.

"The general public, having lived through three major strikes in the last 12 months are sick and tired of the overwhelming power of the trade unions and the industrial anarchy which springs from it.

"The law as it stands is a licence for trade unions to destroy at their will individual businesses and even to blockade and throttle the trade of our country. No country can tolerate laws which are against natural justice. Whatever the resistance, profound changes must now be made in the laws relating to trade unions. They must be supported and enforced by all those of us who believe in fairness and equity, if we are to bring sanity back to our 'industrial ralations scene".

ENDS. February 3rd., 1980.

CONFIDENTIAL

Prime Minister
We have fixed the E meeting for Wednesday afternoon.

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

PRIME MINISTER

IMMUNITIES FOR SECONDARY INDUSTRIAL ACTION

You will have seen Jim Prior's minute of 1st February and the working paper that he proposes ("subject to surrounding events") to publish on Thursday. This paper, as Jim explains, "puts forward the policy proposal agreed by E Committee on 15th January".

2. In the light of "surrounding events" - which include the recent legal proceedings in the steel strike and the resumption of "sympathetic" and secondary action against the private steel producers - I am very doubtful whether we can or should now restrict ourselves to the limited change agreed on 15th January. I hope very much that E Committee can meet to discuss this question before Jim goes ahead with publication of his working paper in its present form.

3. I fully appreciate and agree with Jim Prior's view that it would be wrong for us to "rush forward with instant solutions" as a reaction to any single dispute. So I am certainly not suggesting any speedy "one-off" legislation designed to deal with the present strike.

CONFIDENTIAL

4. On the other hand, I believe it is important to ensure that the Bill now before the House is likely, by the time it reaches the Statute book, to deal effectively with the key problems. I am not convinced that it will do this, even as Jim now proposes to amend it - and recent events have tended to confirm that view.

5. I suggest that we need to deal more fully with at least two major points:

(A) Immunity of trade unions: Section 14 of TULRA, 1974

6. All the new remedies (and sanctions) so far proposed will be available only against union officials or union members, as individuals. Some of this (for example, the extensive widening of the restraints on picketing that is proposed) may be inescapable. But I do not believe we should, with our eyes open, create substantial (and unnecessary) opportunities for individual martyrdom. I believe we should at least make it possible to seek an injunction against a union to restrain acts that are being threatened or taken by union officials or executive committees on its behalf.

7. Jim Prior argued (E(79)44) that change on these lines would "threaten the very existence of a union". This is just not so. A union's funds would be (as they should be, I suggest) at risk to pay fines for non-compliance with injunctions. If we wished, they could also be liable (as with any company) to pay damages. In either case we could provide a maximum limit on fines or damages.

8. The only alternative is to confine the courts to making orders against individuals. In the last ten days both Scargill and Sirs have volunteered for going to prison in this role. As Tom Jackson has pointed out today, there would soon be a daily ration of trade unionists going to gaol. How much less difficult (and how much more sensible) to win public support for the exposure of trade union funds.

(B) Scope of immunity for secondary action

9. Should we not consider the withdrawal of immunity for all - or at least for a wider range of - secondary actions? Jim Prior's present proposal is to leave first customers, suppliers and providers of services without a remedy. If we were to give them a remedy, then (as Jim set it out in paragraph 8 of his paper, E(79)44) this "would be consistent with the line we took in Opposition; it would tackle directly the 1976 Act, which is thought by many to have encouraged recent union excess; it could be presented as a return to the position which existed .... between 1906 and 1971". (Not, it may be thought, a very radical objective.)

10. One relatively simple (and non-~~legislative~~ legislative) way of dealing with this was suggested in paragraph 29 of the Annex to E(79)44, as follows:

"An amendment might be on the lines that action in contemplation or furtherance of a trade dispute:

(i) must not be principally for some extraneous motive; and

(ii) must be directly in furtherance of a trade dispute; and

(iii) must be reasonably capable of furthering the original trade dispute and not merely intended to do so."

Such an amendment, as Jim points out in that paper, would take the law no further than the Court of Appeal did in the "Daily Express" case.

11. An alternative approach to the same problem could be modelled on the recent Australian precedent described in the Annex to this minute. You will see that this also deals quite neatly with the problems of trade union structure.

12. In closing, I return to the political point. Public opinion is looking for effective change. Unless we do achieve such change we cannot expect to make a significant impact on our central economic problems. And we might as well not have fought (and won) the last General Election.

13. Jim has argued - and after my experience in 1971-4 I have good reason to understand his point - that we should proceed step by step, for the sake of winning the major prize of prior consent to a change in the rules. But it is now increasingly clear that any change which we propose and carry through will initially face unqualified opposition from the union hierarchy. The crucial test will be whether it is effective.

14. My fear is that if the present Bill becomes law in anything like the form so far proposed, disillusionment will swiftly follow. The "limited objectives" will not in practice be achieved. Yet union opposition - concentrating, as usual, on emotional issues - will be little different from what we might expect if we tried to deal with the really basic issues. If this is what happens, then I believe it is very doubtful that the path to a second Bill would have been made easier as a result of the first. The reverse could well be the case if it involved a second period of "massive confrontation" shortly ahead of the next General Election.

15. May we please have a further opportunity of considering what is probably the most important issue in the life not just of this Government but of the nation?

16. I am copying this minute to the recipients of Jim Prior's.

G. H.

(G.H.)

4 February 1980

Extract from CBI discussion paper on Trade Union immunities

(vi) Secondary boycotts as restraint of trade

42. At common law, an agreement which restrains trade or competition is void and unenforceable unless it was at the time of the contract reasonable as between the parties and reasonable in relation to the public interest. The effect of many trade union rules is prima facie in restraint of trade, but in order to enable unions to enforce their rights by means of collective withdrawal of labour, backed by the sanction of expulsion of members who do not obey instructions to do so, the purposes of trade unions are regarded by statute as not in restraint of trade.

43. Australia has approached the problem of secondary action by using restraint of trade legislation. The Trade Practices Amendment Act 1977 at section 45 prohibits two or more persons from engaging in conduct that hinders:-

(a) the supply by a third person of goods or services to a company; or

(b) the acquisition by a third person of goods or services from a company where the company is not an employer of the person prohibited and the conduct has the purpose or effect of either

(i) Causing substantial loss or damage to the company's (or an associated company's) business; or

(ii) Causing a substantial lessening of competition in any market in which the company or any related company operates.

44. The penalty for a proven breach is a fine of up to A$50,000 in the case of an individual and A$250,000 in the case of a union. In addition a company suffering loss or damage as the result of a breach of the Act can recover the full amount of the loss or damage from either the union or the

individuals concerned. The remedy of an injunction is also available. A person has, however, a defence to an action taken by an employer under the Act, if he can show that the "dominant purpose" for which the industrial action was taken "substantially relates" to the "remuneration, conditions of employment hours of work or working conditions" of either himself or of another person employed by the same employer. In other words, the defence will only be operative where primary action is taken by employees in dispute with their own employer.

45. The Act also specifies that where the persons engaging in the prescribed action are union members, the union itself will be a party to that conduct unless it establishes that it took reasonable steps to prevent the boycott.

46. Since the amendments to the original laws on restrictive trade practices were enacted, a considerable number of actions have been initiated by employers against unions organising and conducting secondary boycotts. Many actions have resulted in voluntary settlement and the lifting of boycotts. In other cases, injunctions have been issued pending a full trial. There appear to have been no reported instances of unions defying the court and continuing an unlawful boycott.

47. An amendment along these lines in UK would be a restriction on trade unions' present legal status, and its success, as with many other suggested new remedies against secondary action would depend an employers' willingness to use it. Nonetheless it appears to have had some effect in Australia.

1. We are considering legislation which will restrict the power of the unions. We believe:

(i) We have public support.

(ii) Our election manifesto and campaign implied that we would take effective action to control the unions.

(iii) Reduction of union power is morally and economically right.

(iv) The public expect us to achieve results, not pretend to go through the motions. They want us to solve the problem: we will lose credibility if we just avoid the problem pro tem.

2. Do we accept an unsatisfactory package, which will be seen not to have worked in a year or two, because a satisfactory package might cause a general strike? Do we buy peace now, and leave the unions the choice of date for confrontation, while leaving them the weapons whose removal they would fight?

3. If we show our cowardice now, with a mandate for effective action, a big election victory, and public memory of last winter, the unions will know we are not prepared to fight. We will encourage the very action we fear, by making the unions believe we feel they are invincible. The story of the 1930s.

4. Is it not clear that in 12-18 months' time:-

(i) If unions are quiet, we will not have a cause for action. The unions can wait until 1982-3 to cause trouble and win the next election for Labour.

(ii) If we have union problems in a year or more, the public will blame us for incompetence! We told them that we dealt with the unions in 1980. Will the public support us then, or prefer peace? If they think we are not competent to win a war, they will choose peace.

5. It may be now or never! Have we asked ourselves if our first package must be sufficient, not just necessary.

6. The area of law covering trade unions is immense. Therefore
(i) We cannot put it all right at once.
(ii) But we must deal with enough to affect balance of power between:
union and member
union and employer; union (and union members) and other employers
union and general public; union and taxpayer.

7. So we must make union liable in certain cases, e.g. for wrongful expulsion or exclusion, unjustifiable fines, etc., vis-a-vis individual members or would-be members.

8. We must act on secondary picketing and secondary blacking. If we do too little, we will throw too great a burden on the police and the criminal law. Arthur Scargill has thrown down a gauntlet which we can not now ignore. If 1% of closed shop members are militant would-be martyrs, we must

(i) build 50,000 more prison places
OR
(ii) put immense financial pressure on unions to control their own militants in order to protect their non-militant majorities.
(No other pressure can possibly succeed!)

9. We must consider the problem of taxpayers finance for strikers. It was a manifesto commitment. Can we do nothing and remain credible? Would ISTC be out now without social security benefits for wives? i.e. is it more important than appears from financial totals paid annually, to balance of power in disputes?

CONCLUSION

10. The experts must draft the necessary legislation.
But Cabinet must decide strategy on which they must draft.
Is it:-

/ (i)

(i) to do minimum to appear to be carrying out our manifesto

OR

(ii) to do maximum which TUC say (privately) that they can bear. (This may be more or less than (i))

OR

(iii) to do minimum to make a real change in balance of power, even at risk of maximum trade union opposition.

11. The choice of 10(iii) must be based on a judgement that both

(a) these changes are necessary if British industry is to have a chance (in a free society)

AND

(b) our best chance of success is by acting now rather than trying to do a little at a time. Refer back to 4 (on page 1). Are 4 and 5 the best judgement, or will slowly, slowly catch the union monkey?

12. If Cabinet opt for 10(iii), then a small group of, say, 2 Department of Employment officials, 4 industrialists with suitable I.R. experience, and Solicitor-General/a legal expert could fairly quickly put together a reasonable package for Parliamentary draughtsmen to work on (3 weeks work).

13. Parliamentary handling of amendments to present Bill or a new Bill must be considered.

THE WORLD THIS WEEKEND INTERVIEW WITH MR JAMES PRIOR,

Radio 4, SUNDAY, 3 FEBRUARY, 1980, 1.00 PM

Minuted to Chequers 3/2 - PM seen.

Robert Williams asked Mr Prior whether he accepted the private steel producers'accusations that the Government had let them down?

A: No, in no way would I accept that. It takes a long while to prepare legislation as complicated as this and as important as this and as sensitive as this, and certainly the employers as well as the unions have been saying you must consult us before you bring it in and that's what we've been doing.

Q: You had the mandate when you came to power, that was 9 months ago, you knew then and Mrs Thatcher said then that it was absolutely essential that something was done about it.

A: Yes, it has been done. The Bill is in the passage of going through Parliament now, we're on the Committee stage. The great mistake the Government has made in the last 15 years is to legislate for one specific event rather than legislate for a whole period of time, now we cannot afford to make those mistakes again and this is why I am absolutely firm that what we're seeking to do is a long-term change in industrial relations. That is what is important.

Q: But the fact is you have been seen as a government to be overtaken by events hav'nt you?

A: No, I don't think we have been overtaken by events, the Bill is going through Parliament, and actually one of the worst

/things that could have

things that could have happened would have been for the Bill to have just passed into law before this took place, because it would have been put under immediate test. I always wanted this Bill to come in at a period of relative peace because then it could have become established in peoples' minds before it has to be used in the way that it would have to be used at the moment. If we suddenly tried to push 2 or 3 clauses of this particular Bill through Parliament now in a great rush on picketing and immunities then I think that Bill could come under immediate test, it would be tremendously highlighted in the public and union mind and I think would almost certainly fail as a result.

Q: Do you think that provisions of the Bill as they are at the moment would stop the kind of secondary picketing which started yet again this morning?

A: Yes I do. When you say that it started again this morning much of this picketing that has started again this morning will not be secondary picketing, it will be picketing by employees at their own place of work. Now that's not secondary picketing and if they picket their own place of work then that would be legal but if other people come in to picket that place of work that would not be legal.

Q: So what you're saying is even strangers to a dispute could be drawn in willy nilly even so and the unions would still have immunity under a new act.

A: Now you're getting on to a very much more complicated matter now. Now what we are seeking to say on immunity, and we shall be publishing a consultative document with our proposals in it this coming week or in the next few days at any rate - what we're saying there is

/the law

the law which gives immunity to trade unions against being taken to court for breaching contracts particularly commercial contracts is far too wide at the moment and needs narrowing. Where the individual employees decide to come out in dispute with their own employers of course it would'nt stop it but where they are drawn out for reasons which have nothing to do with that dispute at all, with an individual dispute at all, then of course we should seek to stop it. The point of difficulty is to be precise as to how you draw the legislation which brings about that narrowing. It's a very complicated piece of law. In 1969 Donovan in his great report said that it was a legal maze and that I think has proved to be the case.

Q: How difficult has Lord Denning's ruling, the one that has now been overturned, how difficult has that made the job of the Government in this kind of situation?

A: I don't think the recent Denning judgement, the one which was overturned on Friday last week has made any difference. I am not going to comment on Lord Denning's judgement. I think he is a very great man. I would'nt comment on his particular judgement; all I know is that 2 recent judgements by Lord Denning have now been overturned and by the House of Lords, and therefore the Government has to act and really what we are acting on is the earlier House of Lords judgement - the one in the case of Daily Express versus McShane which came out in the third week in December and which is the one on which we have prepared our consultative document.

Q:

Q: In other words something is wrong at the moment and the Conservative Government is going to sort it out.

A: It is very wrong at the moment. It has to be put right, it has to be put right with a great deal of sensivity or else we shall end up with a situation worse than that we have now. And I cannot stress too strongly that if the Government gets its industrial relations policy wrong this time round then the outlook for our country, and I mean our country is very bleak indeed. We've now had in the past 15 years 3 different Governments defeated on this issue, we cannot afford to let that happen again.

WEEKEND WORLD

SUNDAY 3RD FEBRUARY 1980

THE UNIONS.....AND THE LAW

PART 2

STUDIO INTERVIEW WITH

ARTHUR SCARGILL - PRESIDENT, YORKSHIRE MINEWORKERS
TOM JACKSON - GENERAL SECRETARY, POST OFFICE WORKERS
BILL SIRS - GENERAL SECRETARY, STEEL WORKERS

BRIAN WALDEN:

Hallo and good morning. For Britain this is a fateful weekend. The long struggle between government and unions may at last be nearing a climax. Until now, Mrs. Thatcher and her Ministers have avoided action which could be seen as a full-scale attack on trade union rights. In this way, they've hoped to avoid a confrontation. But last week's legal judgements now seem to have forced their hand. Lord Denning ruled that the private sector steel strike is unjust and illegal, but the Law Lords ruled that it's perfectly legal. The reaction from employers has been predictable: they've insisted that the Government must make major changes in the law. And the Employment Secretary, Mr. Prior, has already announced that this will now be done. Today we're going to try and work out what the government will do and how the unions will react. But first, let's have the latest news headlines from ITN and Martyn Lewis.

ITN NEWS

BRIAN WALDEN:

A cut back in the power of the unions has always been an essential component of Mrs. Thatcher's plan for Britain. Her economic strategy requires a reduction of strikes, which disrupt industry and force through pay increases which industry can't afford. So she's often said that the balance of industrial power must be tilted in favour of bosses and against workers. But Mrs. Thatcher's also been keen to protect individual freedom from the power of the unions. And she's made it clear that here, too, changes will have to be made. For over a year now, Mrs. Thatcher's accepted that neither of these aims can be achieved without changes in the law. On Weekend World in January last year, she had this to say on the subject of trade unions:

BRIAN WALDEN:

"I am a Parliamentarian. I am not in Parliament to enable anyone to have a licence to inflict harm, damage and injury on others. And if I see it happening then I have to take action."

Once she'd won the election last May, Mrs. Thatcher remained determined to change the law governing union activities. But there was of course an obvious problem. A real onslaught on trade union rights would be bound to provoke resistance. And the unions were undoubtedly powerful enough to cause grave difficulties for any government that fell foul of them. Within Mrs. Thatcher's Cabinet, some Ministers urged caution. This group is believed to include men like the Deputy Foreign Secretary, Sir Ian Gilmour, the Agriculture Minister, Peter Walker, and some even weightier figures like the Employment Secretary, Jim Prior, and Mrs. Thatcher's own deputy, William Whitelaw. These Ministers seem to have argued that an instant overhaul of union law would be a mistake. It could provoke a showdown, in which the Government might come off worst. Far better, they appear to have suggested, to move slowly. And any early changes in the law should be so modest that resistance would be minimal. These Ministers seem to have persuaded Mrs. Thatcher that they were right. For when the Employment Bill appeared last year, the Government's proposals for union law reform turned out to be very limited indeed. The Bill embodied three main proposals; Government funds were to be made available to encourage unions to hold secret ballots, closed shops were to be made less restrictive, and secondary pickets were to lose their immunity from legal action against them. The unions did complain about these proposals. But few people believed that these measures would lead to a major confrontation. And the Cabinet seem to have hoped that for a time at least no further legislation would be needed. For there were signs that the courts might help in holding the unions in check. They seemed to be prepared to rule that some of the union behaviour to which the Government objected was illegal under existing law. Throughout the autumn, Ministers followed with great interest the case of MacShane versus the Daily Express.

BRIAN WALDEN:

Denis MacShane had been President of the National Union of Journalists during a provincial newspaper strike. And he'd ordered NUJ members working for the Fleet Street papers, who weren't involved in the dispute, to black copy from a newsagency. The point of this step was to support a strike by journalists of the newsagency - which also supplied the provincial newspapers. And Lord Denning ruled in the Appeal Court that secondary industrial action like this was too remote to be granted the protection of the law. The Government seem to have hoped that this might mean that the courts could be relied on to curb union excesses. And if the courts did the job for them, the Government would be spared the anger of the unions.
In December however, this prospect suddenly started to fade. When the MacShane case went to appeal in the House of Lords, Denning was over-ruled. The Law Lords decided that the NUJ's secondary blacking was legal. Mrs. Thatcher herself quickly recognised that this judgement would force her to rethink her position. On Weekend World last month, Mrs. Thatcher indicated that new steps would have to be taken in view of the MacShane case. She said:

"We will have to deal with the consequences of that judgement. Either we have to deal with this in the Committee Stage, or else we'll have to have another Bill."

Mrs. Thatcher still seems to have hoped last month however, that she'd be able to get away with a minor addition to the provisions laid out in the Employment Bill. Secondary blacking, like that in the MacShane case, would be outlawed. But nothing further need be done and a full-scale showdown with the unions could still be averted. But last week's legal wrangle over the steel dispute changed everything. It was clear from the beginning that the national steel strike was bound to throw up the most sensitive of all the issues involving the unions and the law - secondary action. The MacShane case had of course revolved around secondary blacking. But the steel strike was to involve secondary picketing and secondary strikes as well.

BRIAN WALDEN:

Each of these forms of secondary action is regarded as a vital weapon in any union's armoury.

ROBERT TAYLOR - LABOUR CORRESPONDENT, 'THE OBSERVER'

If the union was simply restricted in its activities to the place of work, then it would be isolated in an industrial dispute and therefore the employer or other employers could find ways and means of thwarting the effectiveness of the strike, ah, by importing raw materials ,or other employers increasing their production to damage the, the company that's in dispute. Consequently, the unions do feel that they require an ability to move outside the primary object of the dispute in order to achieve effectiveness.

BRIAN WALDEN:

Many unions would be at the mercy of employers if they were deprived of the weapon of secondary action. The steel dispute demonstrated this clearly. BSC workers know that their bosses - the Corporation Board - have no extra resources to raise their wages. The workers' only hope is to force the Government to provide the extra money they want. And they can only do this by bringing much of British industry to a standstill. And to achieve this, they depend almost entirely on secondary action. Before the strike even started,they gained the support of other unions. Railwaymen and dockers pledged that they'd black steel imports. The miners promised to black steel products. But to cripple British industry,the steelmen realised that every alternative source of supply would have to be blocked. So two weeks ago the steel unions called their members in private steel firms out on strike - even though they weren't involved in the dispute at British Steel. If this move worked, it looked as though much of industry would grind to a halt. It was a grim prospect for Mrs. Thatcher.

BRIAN WALDEN:

However, even at this stage there was still one hope to which she could cling. The steelmen's secondary action might prove to be illegal - even under the present law. Secondary picketing, blacking and striking have always been vulnerable to legal action. By blacking goods and picketing, workers may force a firm to break its commercial contract with other firms. By striking, they may break their own employment contracts too. In either case, they may be liable to legal action by the firms whose business they've damaged. At the beginning of this century, it looked as if the possibility of such proceedings might be enough to destroy our infant trade unions. So Parliament decided that, unlike other organisations such as companies, unions should have special protection from legal action. The Trade Disputes Act of nineteen hundred and six made a trade union and its members immune from legal liability, providing they were participating in a dispute with an employer - a trade dispute.

JEREMY McMULLEN - INDUSTRIAL RELATIONS LAWYER:

Now the 1906 Act, the Trade Disputes Act, said, firstly trade unions themselves cannot be sued for civil wrongs. Secondly, that if I take action in furtherance of a trade dispute you cannot sue me. If I'm asking other people not to work, telling people that we've got a strike on and persuading them not to deliver goods to my factory 'cos I'm in a strike, you can't sue me for that. And thirdly, the right for the first time was given to picket. Anybody can picket anywhere in pursuance of a trade dispute.

BRIAN WALDEN:

As unions have got bigger and better organised they've exploited their immunities to the full. And judges have found it more and more difficult to decide where a trade dispute ends and a union's legal liability begins. By the nineteen seventies there were already doubts about whether secondary action was covered by immunity. So the last Labour Government decided to widen immunities still further, to make it easier for unions

BRIAN WALDEN:

The Trade Union and Labour Relations Act of 1974, together with amendments made in 1976, embodied the necessary changes. But in spite of this progressive build-up of immunities, there was still a chance last month that the private sector steelmen's strike was outside the law. And to test this possibility, a group of sixteen private steel employers in the Midlands went to court to seek an injunction against the steelmen's leaders. They wanted the court to order union leaders to call off the strike in their plants, on the grounds that they had no trade dispute with their workers. The case reached Lord Denning and his colleagues in the Appeal Court last weekend. And as in the MacShane case, he ruled that the union had gone too far. Lord Denning said that the private sector strike was not part of the trade dispute at British Steel, for it was directed at the Government, not the BSC Board. So it was illegal. It may be that Mrs. Thatcher hoped that Lord Denning had solved her problem. But if she did hope this, she was soon to be disappointed. On Friday, the Law Lords over-turned Lord Denning's judgement on the private sector steel strike - just as they'd over-turned his judgement on MacShane. This morning, the private sector steel strike started up again. And the prospect of industrial chaos is once more staring the nation in the face. But the problems posed for the Government by the Law Lords' judgement go far beyond the steel dispute. Now that it's clear that secondary action is legal, almost any strike could turn into something approaching a general strike.

ROBERT TAYLOR - LABOUR CORRESPONDENT 'THE OBSERVER'

Employers fear at the moment, trade unions have, are limitless in how far they can extend a dispute. A specific particular strike can turn into a general strike, hitting the whole community. There are no, at the present moment despite the Denning judgements, there are no clear demarcation lines laid down under the law which restricts how far a union can take a trade dispute as long as the trade union officials involved believe honestly and sincerely that they're carrying out this action in pursuit and contemplation of a trade dispute.

BRIAN WALDEN:

In view of this threat, the entire Cabinet now seem to accept that something beyond the provisions of the Employment Bill has got to be done. And Jim Prior, the Employment Secretary, announced that the Employment Bill would now be amended. On the BBC television programme 'Newsnight', Mr. Prior said:

"We shall be publishing proposals within the next few days which can be consulted upon, and which we shall then introduce into the Employment Bill now passing through Parliament."

But the Cabinet don't seem to be agreed on just what the new proposals should be. At the moment, Ministers seem to fall into two different camps. The cautious faction - led by Mr. Prior- want to see the smallest possible change in the law. Under their proposal, unions themselves would remain immune from legal action. But the degree to which individual trade unionists could extend a trade dispute would be limited to some extent. Certain minor forms of secondary action would become illegal, but those which are most effective would remain immune. This proposal has been under consideration ever since the Law Lords' decision on the MacShane case. It would certainly outlaw the NUJ's action at the Daily Express. But it is far more doubtful if it would have any effect on the private sector steel strike. And since Friday's decision by the Law Lords, some members of the Cabinet seem to have been insisting that the Government must go further. This hard line group is believed to include the Industry Secretary, Sir Keith Joseph, and the Chancellor, Sir Geoffrey Howe. And they now have a rival plan. What they want to do is to outlaw all forms of secondary action completely. This far more radical proposal would stop the private sector steel strike in its tracks. But it would horrify the unions. And for this very reason it's already horrified the more cautious members of the Cabinet. Some of these men already seem to be insisting that the risks attached to this proposal are just too great. They've seen drastic union legislation before, as members of Mr. Heath's government. And they seem to be arguing that this experience proves it's fatal to move too far, too fast.

BRIAN WALDEN:

When Mr. Heath came to power in 1970, he too was determined to curb the power of the trade unions. To achieve this, his Government introduced a comprehensive Bill, the Industrial Relations Bill, into Parliament. The unions were aghast - they decided to organise to try to defeat it. Protest marches took place all over the country and the culmination of the 'Kill the Bill' campaign was a one-day strike in the engineering industry, supported by many other unions. Nonetheless, the Bill became law, and cases under its provisions started to be heard in front of Sir John Donaldson, sitting in his specially constituted National Industrial Relations Court.

SPEAKER:

"This is a Government of misery makers, who either don't care or won't care about the problems that they are creating."

BRIAN WALDEN:

But the TUC leadership continued to take a very tough line against it. At their Blackpool conference of 1971 they decided to boycott its provisions.

And when some unions were taken to the Industrial Relations Court by employers, they refused to obey the Court's orders. In one case during the 1972 docks dispute, this eventually resulted in the jailing of five London dockers in Pentonville for contempt of court. A national dock strike was only averted when they were hastily released. In other cases, fines were levied on unions. During the notorious dispute between the engineers' union and the Con Mech company, the union was eventually fined sixty five thousand pounds. The union refused to pay up and a national engineering strike threatened. Only the intervention of an anonymous donor saved the day, but the damage had been done. So many unions were by now defying the Law that the Heath Government feared industrial and civil chaos. The only way to avoid it was to persuade employers to shun further use of the new law.

ROBERT TAYLOR - LABOUR CORRESPONDENT, 'THE OBSERVER'

Well, the 1971 Industrial Relations Act was effectively destroyed because of the solid TUC resistance to it, both at national and at local level. It was, it simply shattered in the hands of the government because when it came to the crunch it was found impossible to make the legislation stick, to make comprehensive general principles apply in the messy, localised realities of an industrial dispute, and because the unions resisted and because employers didn't make use of the law and because the government wanted a deal with the unions eventually, the whole measure was put into cold storage.

BRIAN WALDEN:

By poisoning the relations between the unions and the Government, the 1971 Act helped pave the way for Mr. Heath's defeat by the miners in 1974. Now, the doves in the Cabinet seem to be warning that the hawks' plan could have similar results. But the hawks are trying to allay these fears. They're arguing that what helped sink the Industrial Relations Act was the Industrial Relations Court. This was an artificial court with no real authority, they say. But their law would be administered by the High Court, whose authority is much more likely to be accepted by the unions. Even more important however, Cabinet hard-liners are arguing that this time no individual trade unionists need go to prison. So feeling wouldn't be whipped up through the creation of martyrs like the Pentonville 5. To avoid this danger, the law could be enforced quite differently. Their proposal is that the unions themselves - as well as their members - should lose their legal immunity where secondary action is involved. If this happened, unions themselves could be fined for contempt if they defied a court. No doubt the Cabinet's doves are replying that any such move would enrage the unions even more than the creation of martyrs would. For in practice the hawks' plan could end up destroying unions as an effective force. If the unions obeyed the law, employers would walk all over them. But if they defied it, they could be bankrupted by fines. The hawks can't completely dismiss the argument that radical action will entail great risks. So instead they seem to be saying that the Government has no choice. The hawks are arguing that before last Friday, a modest change in the law might have been enough. But, they say, Lord Denning's judgement raised employers' expectations. Obviously Lord Denning and the Appeal Court were convinced that the private sector steel strike was wrong. So employers are insisting that the Government must now ban such action. The Employment Bill just isn't enough anymore.

WALTER GOLDSMITH, DIRECTOR-GENERAL, INSTITUTE OF DIRECTORS:
And now the Government can surely not afford to have an Employment Bill that does not provide for the, a study, and therefore the restriction of trade union immunities in this area. What I believe the Government must now face up to is that the Bill does not go far enough, it is not going to have a major impact on the trade union power imbalance in this country, and the Government must now see that this is the time to take action and that it has to be done very soon.

BRIAN WALDEN:
Over the last few days, most of the country's major newspapers have also demanded a complete overhaul of union law. Yesterday's letter from the private steel bosses to Mrs Thatcher, demanding an immediate change in the law, has only increased the clamour. In this climate the Cabinet hawks believe their hour has come.

MALCOLM RUTHERFORD, POLITICAL EDITOR, 'FINANCIAL TIMES':
The decision from the Law Lords ah, suggests that the law is a bit of a nonsense at the moment, you can't go on having this process of Denning saying one thing and then being overturned and it is quite clear that ah, the law is somewhat out of date, the power is in favour of the unions and the Tories had, ah, pledged in their election campaign to shift that balance away from the unions a bit so the hawks can say, um, everything's going in our favour, we've got to go and we've got to go fast.

BRIAN WALDEN:
The new demands for radical action from the Government's own supporters seem to have cut the ground from under the Cabinet's doves. It looks this weekend as if the hawks are set to win the argument. The final round of this debate could well take place at Tuesday's Cabinet meeting. And it now seems likely that a decision will then be made to ban all secondary action and remove legal immunity from [illegible] which indulge in it. If this decision is made,

BRIAN WALDEN CONT:

a consultative paper containing the proposals will be published later in the week. Very soon after that, the measures embodied in this paper will almost certainly become law. Everything the hawks want could be made law through amendments to the Employment Bill. The new measures could be in effect in a matter of weeks. Well, if all this does happen, what will the unions do? We'll be back to look into this question in a moment.

END OF PART ONE

PART TWO

BRIAN WALDEN:

Hello again. If secondary industrial action is banned and the unions are made liable for any breaches of the new law, trade unionists will face a dilemma. Such legislation would endanger the very survival of effective trade unionism. Yet most trade unionists and most of their leaders support the rule of law. So they'd have to make a choice. They might decide that they'd have to accept the will of Parliament and abide by the new law, even if this meant that in future trade union activity would be severely restricted. On the other hand, they might decide that respect for the rule of law would have to take second place to the defence of trade unionism. In this case, they'd have to defy the new law, just as the TUC did in 1971 and the Tolpuddle Martyrs did a hundred and fifty years ago. If they took the first course, then all the Government's problems would be over. The Cabinet hawks would have been proved right in their belief that the unions can be made to swallow unwelcome but necessary restrictions. If they took the second course however, the worst fears of the doves might come true. A confrontation could develop in which the unions would be challenging not only the Government, but also Parliament and the courts. Well, last week we tried to get some idea of how trade unionists feel about this dilemma. On Thursday, we went to the solidly working-class area of Tower Hamlets in East London. And there, on Thursday evening, Mike Floodpage talked to a group of local shop stewards and other trade unionists. He asked them first how they would react if secondary action was outlawed.

1ST TOWER HAMLETS TRADE UNIONIST:

I don't like the idea of um, solidarity action being taken by trade unionists as becoming illegal. 'Cos last year I was on strike for nine months, er, sorry, nine weeks, it

1ST TRADE UNIONIST CONTINUED...

seemed like nine months. But we would never have had the success, or what little success we did have, without the support and solidarity of other unions. And although we're a manual workers' union, the National Union of Teachers, locally, supported us, NALGO supported us, white collar unions. And without that support, there's no way we can win a dispute,

MIKE FLOODPAGE:

Mike, could you tell me how this may have affected your union, and your union work.

2ND TRADE UNIONIST:

Well, I'm a member of the NUJ, which is not really renowned, or hadn't been renowned for industrial action, until really last year when we had the first national strike for seventy years. Er, so it became very important for us, er, to take on board the support that we were offered from other sections of our own union, from other sections of the local working-class movement, er who recognised that if we were going to get decent pay and conditions they were going to have to recognise that they shouldn't be er, collaborating with the management in the production of papers. Er, the only way that we can really within our own industry have any impact is if we can gain sympathy from the printers and the distributors, and that became an important part of our struggle.

3RD TRADE UNIONIST

I'd like to say something about sympathy action. People talk about trade unions in terms of their might and their power. But many situations where sympathy action has been called upon has been in issues over, for instance trade union recognition. Where the weakest, the poorest, the most abused section of the workers, as we saw in a place like Grunwick, um, were taking on a very powerful employer. And there was no way, by themselves and of themselves in that situation, or for instance in this

3RD TRADE UNIONIST CONTINUED....

area, um, many small work-places could tackle that kind of job on their own. That's what the trade union movement is about, fighting, it always has been and it always will be. If that means defying what we see as an unjust law, I've no doubt our trades council in this area and other trades councils, and other trade union branches at a very local level, will be in the thick of that defiance.

MIKE FLOODPAGE:

How do you feel trades unionists will respond, in the event of, lets say, sympathy action with your union, leading to injunctions, leading to possible union instructions on members, for instance?

4TH TRADE UNIONIST:

Quite honestly, workers will always attempt to work and remain within the context of the law. But workers understand one thing more than that, and that's the defence of their own rights, their civil rights, trade union rights.

5TH TRADE UNIONIST:

And we must make very clear that the rights of trade unions, when they are attacked or diminished, will mean the diminishing of rights and civil liberties of the mass of ordinary people, for until the trade union movement was strong enough to establish rights for itself, only at that period were rights and civil liberties increased for the ordinary people.

MIKE FLOODPAGE:

George, what kind of action would you as trades unionists have to take in the event of such a law?

1ST TRADE UNIONIST:

It's very difficult to say what the official trade union movement will do. I'm sure they will make representation to Government, they will plead, they will do the best they can to show the Government the folly of it's ways, with this new Bill. But when the crunch comes, I think, as in the past the movement will have to come from the rank and file, the mass body of the trade unionists. And what action that will take will be the action that is necessary at that time to defeat the Bill.

3RD TRADE UNIONIST:

Our job first of all is to explain, to educate, to organise the working people about what will, what is being done to, to tear away their defences. That's our job immediately, demonstrations, forms of action, follow on from that, but right now we must be in the business of explaining honestly what the thing means, and what the thing is about

MIKE FLOODPAGE:

George, did you have something on that?

1ST TRADE UNIONIST:

Yes, I think um, what we're dealing with is something we've dealt with before unfortunately, and that is when a Government will impose unfair laws, or better termed bad laws, and before a law, any law is workable, it has to be accepted. And I think you'll find, and I don't think the Government is unaware of the fact, that the trade union movement, the Labour movement of this country will not accept this law. It means confrontation, unfortunately. I'm not, I'm very much a law abiding citizen - I don't go about breaking the law. But I'm also a committed trades unionist and this Government decides that if I'm involved in industrial action and that industrial action becomes illegal, then unfortunately I have to become a criminal

1ST TRADE UNIONIST CONT...

under the law. And I will do so.

BRIAN WLADEN:

So those rank and file trade unionists seem to know where they stand. If legislation of the kind now being proposed is introduced, they'll want to resist it, even if that means breaking the law. There's reason to believe that the attitudes we found in Tower Hamlets are not untypical. Now that Lord Denning's judgement has been overturned, many trade union activists seem determined to resist any new ban on secondary action. If this feeling persists, trade union leaders will have to respond to it. However, any attempt to defy the new legislation could have awesome consequences. Once the new law's passed, any secondary action - like the private sector steel strike which started up again this morning - will be illegal. So anyone who's being made to suffer by secondary action will be entitled to turn to the courts for help. An employer who finds himself in the same position as the private sector steel bosses will be granted an injunction requiring the union involved to call off the strike. If the union refuses to obey, the court could impose on it an unlimited fine, once the unions' immunity as organisations had been withdrawn. If the unions then paid this fine, it could easily be bankrupted. And then through this process the unions might be destroyed, one after another. So what will trade union leaders do? With us today are Bill Sirs, the General Secretary of the Iron and Steel Trades Confederation, Tom Jackson, the General Secretary of the Union of Post Office Workers, and Arthur Scargill, the Yorkshire Area President of the National Union of Mineworkers. Mr. Scargill, it seems likely that the Government are in fact going to ban secondary action and make it illegal for unions to engage in it. Now suppose in some future dispute a court ordered you to cease secondary action, would you obey the law?

ARTHUR SCARGILL President, Yorkshire Mineworkers:

I think we ought to get one thing perfectly clear; the government, which was elected on a 33% vote, are now proposing changes in the law which effectively destroy trade unionism and if we accepted those decisions, be they changes in the law or not, we would be parties to the destruction of trade unionism itself. If this Bill becomes law and thereby curtails the effectiveness of trade unionism, then my argument would be that we would be doing ourselves an injustice and certainly those who created our movement an injustice, unless we opposed it, and in the same way that the Tolpuddle Martyrs opposed laws which were unjust and unfair, and in the same way that people in Nazi Germany opposed laws that were unjust and unfair, our trade union movement, again in the same way as we did in 1971, would have to oppose that law, because it would be destroying a fundamental right, that which we have had since 1906 to approach a fellow worker and ask for his or her support. If that right is taken away, in my view it is not a fair law and we should oppose the law in those circumstances.

BRIAN WALDEN:

Mr. Sirs, can I ask you the same question I put to Mr. Scargill? If a court told you to call off secondary action because it was illegal, would you obey the law?

BILL SIRS General Secretary Steel Workers:

I've just been through this experience of course and I obeyed the law, and I'll tell you this, I had a pretty grim struggle with my executive and we only won by three votes. My belief was that the judiciary would uphold the law as it stood.

BILL SIRS (Contd)

The problem now is, the Conservatives are seeking to introduce a law which will, as Arthur says, effectively destroy us and destroy our, any strength we have to try and maintain our trade union position against massive organisations of employers. Now when we do reach the stage, or if we do reach that stage, I am afraid that the membership of my union, who now feel that they have solid power behind them, will in fact want to go along the route that the whole trade union movement will follow in trying to effectively ah, get rid of those laws.

BRIAN WALDEN:

I wonder if I could ask you just one question on that Mr. Sirs, to clear up a point there. Obviously you're going to oppose any attempt to change the law...

BILL SIRS:

Yes ..

BRIAN WALDEN:

But supposing it were changed, and you were then told; it's a new law and under this new law you cannot take part in secondary action, at least you cannot with immunity. Would you then disobey the court?

BILL SIRS:

Well, this is a tremendous problem one would have to face, and it will occur, but it won't occur with one single union and one small issue. I contend it will occur with a massive issue, such as could come before us with the dispute on closures in steel, the pay dispute and also this law coming into one. If that happened, the confrontation with the movement as a whole would be so general and so involved that it would be an impossibility for the law to deal with that sort of ah, ah, grouping and under those circumstances, it would appear we're going back to 1971.

BILL SIRS: (Contd)

That's why I would say to the doves in the Cabinet, "for heaven's sake, you make your pressures considerable, because if you don't have it withdrawn at the moment, we are in for a rough time in this country".

BRIAN WALDEN:

But I must press you just very quickly on that, because, not because I don't find the rest of the reply very interesting, indeed I want to come back to the whole question of doves and hawks, but Mr. Scargill was absolutely clear. He would disobey the law if he had to. Now what I'm putting to you is, if you didn't, let us say, for some reason have the support of the whole movement and you had to advise your own union in those circumstances, would you then disobey the law?

BILL SIRS:

Well it's a very difficult question, I've always been very much law-abiding and part of it, and I don't want to disobey the law under any circumstances, but I said last week that if my executive made its decision, I would indeed go to prison if I had to be a martyr, and when it comes to an individual like myself, then saying to my executive, "here is some advice, we must break the law", that is something unfortunately which is extremely embarrassing to me at the moment, but if we are faced with the destruction of the trade union movement as a whole, I'm afraid that I would have to give the same sort of support that every other general secretary will give and the same sort of advice.

BRIAN WALDEN:

I wonder if I could come to you Mr. Jackson, just adding this first; it's the same question of course, but it may not be of course what Mr. Sirs had in mind, that a trade union leader would be sent to prison. It may be that the union funds would be at risk.

TOM JACKSON, GENERAL SECRETARY, POST OFFICE WORKERS:

BRIAN WALDEN:

Now, in those circumstances would you break the law?

TOM JACKSON:

My first job would be to protect my union, to protect its funds, protect its property, my second duty would be to win the battle, and I maintain that both of these things are possible. That it would be possible for secondary boycotts to go on unofficially, ah, with no direction from the union. Men and women would go to gaol of course, the unions funds would be protected because we would have nothing to do with this. You may remember the Grunwick situation, when our Cricklewood members refused to handle mail for Grunwick's, and we were told by Denning that we had no right to strike, we had no right to do what was being done, and therefore our union couldn't support those men at Cricklewood in doing what they were doing. We just paid their wages when the Post Office put them off. I mean, men and women will certainly go to gaol, I'm certain of that, but the unions' funds will be protected, and we'll protect the fabric of our organisation and what we will do is we'll have a Pentonville Five situation almost every weekend. Now if that's what the government wants, that's what they'll get.

BRIAN WALDEN:

Well now let me, that's a extremely interesting answer. Let me define what I think that ploy involves and then let me come back to you as to how it might possibly be countered by the Government. What you're in effect saying is, "O.K., if in official disputes we found our funds were at risk, we'd make good and sure that every single dispute was unofficial, and we weren't involved in it". But supposing, and I don't say they will because I don't think this has even been discussed, but I'm not in the Cabinet, perhaps it has. Supposing they say, "Oh, no, no, no, no, we're not going to let these unions get away with it like that, they are going to be held responsible for any of the actions of their members...

TOM JACKSON:

Oh, no, no, no....

BRIAN WALDEN:

... By virtue of the fact that they're members..

TOM JACKSON:

Now that wouldn't, that, that would just be terribly bad law, and not even Denning would uphold the right for them to tell me I was doing something wrong when I wasn't doing anything at all. Now come on, I mean that is just not possible.

BRIAN WALDEN:

Well now, hang on you see, you didn't regard the '71 Act as good law, and indeed I know that none of you regard the present Employment Bill as good law. It may well be, Mr. Jackson, that the government are so absolutely determined to crack you on this that they don't much care whether it's good or bad law, as long as they can enforce it.

TOM JACKSON:

All right then, the only thing that one has to say about that is that they are running terrible risks with the fabric of British society, and they must understand that when they reach their decision. The real danger involved in what you are proposing now, which is extremely bad law forced upon an unwilling trade union movement, is that people will go to gaol, and that you know, in the end there'll be rioting in the streets. I mean, let the government face that.

BRIAN WALDEN:

All right, let's switch to something else now. I'll come back to Mr. Scargill, because I think that discussion was enormously valuable, but let's scale it down. You made an appeal to the cabinet doves Mr. Sirs, supposing they say, well yes, you know ...

BRIAN WALDEN: (Contd)

... there's a great deal in what the trade union leaders say, we want a much more modified response, we certainly want to do something about secondary picketing and we certainly want to do something about some forms of secondary blacking, but we'd better leave it there. I got the impression from your answer, Mr. Scargill, that that wouldn't make a great deal of difference to you anyway, you would regard that as quite bad enough to justify the breaking of the law. Am I right?

ARTHUR SCARGILL:

Oh you're absolutely right Mr. Walden. In fact what the Tories are wanting to do, and indeed the film demonstrated it earlier, they're wanting to effectively castrate the trade union movement. They're suggesting that we're all right and we can picket, provided it's not effective. Now if the proposals being suggested by the so-called moderates in the Cabinet are put into operation, it will still have a disastrous effect upon the trade union movement, and either the moderate view or the view of the hawks in the Cabinet, in my view will bring in to an industrial dispute situation a political dimension that we've not yet seen, and in those circumstances I can see what Tom Jackson says coming to a head, and that is a situation where people will begin to take to the streets and oppose what is not only bad law but law which effectively destroys the rights of people in the trade union movement, rights which they've enjoyed since 1906.

BRIAN WALDEN:

Even if the doves in the Cabinet won, you can see that happening? You don't draw any great distinction?

ARTHUR SCARGILL:

Of course I can. You see, no one ever talks about secondary production. You can have a situation where the law of the land is changed, and that's what effectively is being proposed at the moment, which bans secondary picketing, it's a new term introduced

ARTHUR SCARGILL: (Contd)

...nothing to stop the manufacturer, or a group of manufacturers, producing the goods or cars or whatever it may be at another factory or importing them. In other words, transferring the production of that particular item, and by doing so effectively destroying the action of the trade union movement, emasculating it. Now in those circumstances I can see that trade union members, irrespective of trade union leaders, would not accept that they would be, ah, attacked in that way, and if that happened I feel that the trade union movement as a whole would find itself in conflict with a government who were so paranoiac to destroy the effectiveness of trade unionism that they're prepared to change the laws which had been accepted by everybody for at least three quarters of a century.

BRIAN WALDEN:

All right, just for clarity's sake can I put you quickly through a series of scenarios, Mr. Scargill, I think they're involved in your reply, but let's be absolutely sure, because I don't want to put words in your mouth. Supposing you did disobey a new law like this and the court then fined the union, supposing your funds were at risk. Would you pay the fine?

ARTHUR SCARGILL:

I would advocate not paying the fine, because that would destroy the union.

BRIAN WALDEN:

All right, if the court then said, all right, he won't pay the fine, we'll send the bailiffs in to seize union property. Would you call upon miners to resist the bailiffs in carrying out their duties?

ARTHUR SCARGILL:

I think what the miners would do in those circumstances is that

ARTHUR SCARGILL: (Contd)

they would continue with their industrial action until their funds and their property, if they were sequestrated, were returned to them, and I can see that that situation could develop.

BRIAN WALDEN:

Ah, but you wouldn't stop the actual sequestration itself?

ARTHUR SCARGILL:

Oh I don't know what would happen with individual, individual members. You're talking about what would happen if the court decided to sequestrate funds and to take over union property. I think that what would happen is that the trade unionists involved in that dispute would continue with their action, but far more important, as indeed in the 1971 situation, thousands, hundreds of thousands of other trade unionists not directly involved and probably not even in sympathy in some cases, would suddenly find themselves in sympathy with a union that is quite clearly being attacked by a decision of a government that introduces a new law.

BRIAN WALDEN:

All right, now that's a very clear scenario, Mr. Sirs, let me put it back to you. What Mr. Scargill has said, in effect, is that he's not drawing any very great distinction between what we've called, ah, and I must make it clear it's a 'Weekend World' term, what we've called the Cabinet hawks and the Cabinet doves. Mr. Scargill says, well it's much the same, and the law has got to be resisted anyway, and he's ended up with a scenario which is not quite a general strike but is very near it, of the union movement simply refusing in fact to obey that kind of law, would you agree with that approach?

BILL SIRS:

Not exactly, because we've got to face the fact, we have been discussing proposals from this government over a period of months. The T.U.C. has taken a certain stand, and the stand we have been taking is this; that it is going ultimately to have a tremendous impact upon our rights, upon how we can prosecute a strike, and we feel it could be disastrous to us. Now it isn't something that will happen immediately, as a result of the doves winning. It will gradually build up and then maybe, some degree of confrontation, over a period, after a period of time. Whereas if the hawks were to win and win immediately, the confrontation would come very, very quickly, because of the terrible impact that could have. Now it is my job to protect my union's funds, it's finances, it's property, etc., and I would have to do that regardless, and I would, as I did last week, tell my members that under no circumstances am I prepared to let them destroy our, ah, our finances, our building, take our buildings away, because if they do the trade unions are finished and we're back to hundreds of years ago.

BRIAN WALDEN:

All right, let me ask you this Mr. Sirs. If the confrontation comes slowly if the doves win, or quickly if the hawks come, anyway there is a confrontation, and Mr. Scargill came to you and said, 'Look, my lads supported your lads; now we're in trouble, we're breaking the law, will you rally to us,' would you?

BILL SIRS:

There's no doubt about it, that if my boys were asked to help the miners, help the seamen, and help the railwaymen and other unions, they would rally to help them. They would rally in such a way that it would be impossible for law to deal with many hundreds of thousands of workers revolting against a law which was trying to destroy trade unions.

BRIAN WALDEN:

All right, supposing it was in effect a political strike that you called in order to beat the government, would you be prepared to do that?

BILL SIRS:

Well I haven't called a political strike, I couldn't understand there was any need for it...

BRIAN WALDEN:

No, but in this situation, would you?

BILL SIRS:

If Arthur Scargill called a political strike within the N.U.M., and we were asked to support it, it then comes to the T.U.C., who have to make their decisions in relation to it. Don't forget, my strike was discussed by the T.U.C., who supported it totally, and we have to consider whether or not the whole T.U.C. movement should be backing it. My view is that if we reach a stage where we are being the whipping boys of the industrialists and of a hard-line government, at some stage there will be this reaction and my members will support it.

BRIAN WALDEN:

Mr. Jackson, let me come to you, and let me put the case that I think a Conservative Member of Parliament, perhaps even member of the Cabinet, ah,might put in response to all of this. He might say, 'look,we won a democratic election about 9 months ago, one of the reasons we won it is the extreme unpopularity of trade unions. We always said we were going to do something about it and now we are doing something about it. Jim Prior's kept advising me to play it softly, but listening to these chaps it's pretty obvious it doesn't make any difference, we might as well be hung for a sheep as a lamb, we might as well do the job thoroughly and properly and get rid of all the things that are obstructing our economic policy'. Now how would you reply to a man who said that

TOM JACKSON:

Well, I, I think I'd be inclined to agree with him. I mean, if they are going to legislate away freedom and free men are no longer going to be free in a free society to withdraw their labour and to ask a brother for assistance, they may as well be hung for the sheep as the lamb. No question about that!

BRIAN WALDEN:

I see that Mr. Scargill agrees with you on that.

TOM JACKSON:

And therefore, therefore I would say to him, go ahead, do your worst, but remember you're dealing with people, and people are awkward, they're not easy, you can't corral them like you would with a sheep, you can't whip them along the road, people are people. And free men in a free society will defend their rights and that's what will happen.

BRIAN WALDEN:

Yes, and I've no doubt at all that you all believe that, you've now all said it, but I must point out to you Mr. Jackson for your comment what the consequences of course of that might be. They might well be awesome, you would, you could easily end up with a general strike..

TOM JACKSON:

Yes..

BRIAN WALDEN:

And a struggle with the authority of the State, now have you contemplated that..?

TOM JACKSON:

I would, yes, I would be very much opposed to a general strike, I'm opposed to taking industrial action for political purposes, and furthermore at the end of a successful general strike somebody's got to be Prime Minister, there isn't a single one on the General Council who wants to be Prime Minister, I mean Arthur might , but, ah, he's not the General Council yet. I mean I just don't think the general strike is on. I think that scenario is wrong, what will happen...

BRIAN WALDEN:

But you see, to be fair to Mr. Scargill, though you...

TOM JACKSON:

..is you will have a number of sporadic outbreaks of problems with men going to gaol, stoppages here and stoppages there.

BRIAN WALDEN:

Well I think I'll let Mr. Scargill answer for himself, because I, I rather suspect that what you're both talking about is much the same thing and it would lead to what was in effect a general strike, wouldn't it?

ARTHUR SCARGILL:

The difference is this you see, that the term political strike keeps creeping into this discussion, and all the time on our side we have referred to an industrial situation, and I am specifically pointed out that as a result of the Conservatives determination to change the law, that's been with us since 1906, it is they that are introducing the political con notation into this dispute situation. Now if that happens, then quite obviously, if people are going to be sent to gaol, if unions are going to have their funds sequestrated, or their buildings occupied, as Tom Jackson

ARTHUR SCARGILL: (Contd)

says, human beings are going to have freedom and rights taken away from them which they've come to expect, and in that situation you're going to have enormous strikes, whether it's a general strike or not, little matter, it's going to be certainly a significant strike.

BRIAN WALDEN:

O.K. O.K. Let me ask you this, Mr. Scargill, supposing I were a Tory dove and said to you; look, the way you chaps talk you make it sound as if I can't do anything at all, as if it's a seamless road that I can't cut into anywhere. Is there nothing that you will let me do Mr. Scargill to change the present situation? (INTERRUPTION)...I'll come to you....

ARTHUR SCARGILL

Very quickly.....
I'll answer it this way, during the film sequence earlier on Mrs. Thatcher made it perfectly clear that the object of this exercise was to take away the authority and a power which the unions possess, which isn't a great deal, and transfer that power to the employers. In that situation, we as trade unionists have an obligation to defend our members' rights and the union's rights, and that we will do.

BRIAN WALDEN:

O.K. very quickly Tom, 10 seconds..

TOM JACKSON:

What I would say to that guy is this; enforce the present law, there's a law against violence, there's a law against obstruction, the police, MacNee says, he doesn't need any changes in the law, he can do it.

BRIAN WALDEN:

O.K. Just stick with the present law..

TOM JACKSON:

That's it, that's it!

BRIAN WALDEN:

Gentlemen, thank you very much indeed.

END OF PART TWO

From : Philip Ditton, Chief Information Officer, CBI. Home phone - 654 8222

TIME FOR AN END TO INDUSTRIAL ANARCHY - SIR JOHN METHVEN

Sir John Methven, Director General of the Confederation of British Industry, said today (Sunday February 3rd) : "This country is now entering a dangerous period with the steel union leaders losing no time in seeking to put a stranglehold on the British economy by extending their dispute to the private sector, whilst other trade union leaders still claim to preserve their right to stand above the law and to inflict immense damage upon our society - a right unparalleled in our history, and open to no other set of people in the UK.

"Many not involved in the steel dispute now stand, if the strike continues, to lose their jobs as orders are lost both at home and overseas. No wonder our overseas customers are beginning to write Britain off as a land controlled by unions who seem determined to make it impossible for industry to operate in a normal commercial manner.

"The general public, having lived through three major strikes in the last 12 months are sick and tired of the overwhelming power of the trade unions and the industrial anarchy which springs from it.

"The law as it stands is a licence for trade unions to destroy at their will individual businesses and even to blockade and throttle the trade of our country. No country can tolerate laws which are against natural justice. Whatever the resistance, profound changes must now be made in the laws relating to trade unions. They must be supported and enforced by all those of us who believe in fairness and equity, if we are to bring sanity back to our industrial relations scene".

ENDS. February 3rd., 1980.

PART 2 ends:-

HMT Internal Memo 1.2.80

PART 3 begins:-

CBI Press Release 3.2.80