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PRIME MINISTER

c.c. Mr. Wolfson
Mr. Pattison

Industrial Relations Legislation

This is just to remind you of the two points which Leon Brittan raised this afternoon, and which you said you would take up with the Department of Employment on Monday.

Trade Union Immunities

The House of Lords are likely to overturn the Court of Appeal judgement in the Express Newspapers v. McShane case. (The Court of Appeal took the view that the immunity for industrial action given in the 1974 and 1976 Trade Union and Labour Relations Acts does not go beyond the first customer and supplier.) Cabinet decided last Thursday that draft provisions on immunities should now be prepared so that, if the Court of Appeal decision is overturned, the earlier position can be restored by amendment to the bill in committee, or in a later separate bill.

Mr. Brittan suggested, however, that we should include in the published bill a declaratory provision which would simply give effect to the Court of Appeal's judgement in the McShane case. It would be much better to include such a provision before the House of Lords judgement which was almost certainly now going to be adverse. And it would be easy to defend politically in view of Mr. Silkin's explanation last winter - that the critics of the 1974 and 1976 legislation had nothing to worry about because of the development of the remoteness test by the Courts in the McShane and other cases.

Closed Shop - Exclusion or Expulsion from a Trade Union

Mr. Brittan said that he could not understand why Cabinet had decided that the right of appeal against exclusion or expulsion should be confined to the circumstances of a closed shop

/ situation.

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situation. It ought to be a general right of appeal. For if someone is expelled from a union when he is working at company A which does not have a closed shop, he will almost certainly find it impossible to get a job at company B which does operate a closed shop.



The paper for Cabinet said that "there is much less justification for examining the trade union's internal procedures in this respect where people's jobs are not at stake". But as you and Leon Brittan pointed out, a man's employment in the future will be at stake if he has been expelled.

Subject to your agreement, David Wolfson intends to tell Mr. Prior on Monday morning that you are going to raise these two points so that we can - hopefully - get a good response.

*Yes - the points only -
not the details of the
meeting etc etc.
Could we also get Pam Selkin's
statement to the House
last year which said
members should be
made that point.
I remember it well.*

*Copies in
Folder*

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23 November, 1979.

PICKETING

The Attorney-General (Mr. S. C. Silkin): With permission, Mr. Speaker, I will make a statement on the law relating to picketing.

It is necessary to deal separately with the criminal and the civil law. It is for the police to take action to enforce the criminal law. It is for those who suffer damage in consequence of civil wrongs to bring civil proceedings in the courts to restrain the commission of those civil wrongs or to recover damages.

Section 15 of the Trade Union and Labour Relations Act 1974 applies both to the criminal and to the civil law. Its ancestry now goes back over 100 years. Its effect is that peaceful picketing as defined in the section is not unlawful. Peaceful picketing is the attendance of one or more persons at or near somebody's place of work or business or anywhere else where he is except his home. The protection of section 15 is given if the attendance is in contemplation or furtherance of a trade dispute, if its sole purpose is to give or receive information or to persuade somebody to work or not to work, and if it is peaceful.

The criminal law makes no distinction between so-called "primary" and "secondary" picketing. But it does not permit acts which, apart from section 15, are breaches of the criminal law. It follows that, whether or not in the course of picketing, the criminal law is broken by violence, extortion, obstructing the highway, or obstructing the police in the reasonable execution of their duty.

Pickets may lawfully indicate to a driver their wish peacefully to communicate with him, but no law requires him to stop. If a picket obstructs the highway in order to cause him to stop, that is a breach of the criminal law and section 15 is no defence. A driver who wishes to drive past a picket line is in law entirely free to do so, so long as he drives in a lawful manner. If a driver or anyone else, including a picket, is unlawfully obstructed, intimidated or assaulted he should report the matter to the police. Extortion of money as the price for letting a vehicle through would, of course, be a most serious offence and indeed a quite intolerable act, and anybody who is the victim of it has a duty to report it.

Picketing as such is not a civil wrong. But its primary purpose is to persuade those who are under a contract of employment not to perform it. If that persuasion is in contemplation or furtherance of a trade dispute, and is the only actionable wrong, section 13 of the 1974 Act gave to the persuader protection from civil action by the employer. This protection went back to the 1906 Act. Section 3 of the 1976 Act added protection from an action based on direct interference with a commercial contract. If in either case the persuasion is not in contemplation or furtherance of a trade dispute, there is no protection and the injured party can obtain an injunction or damages.

The protection from civil action therefore depends on whether the persuasion which is the object of the picketing is in contemplation or furtherance of a trade dispute. This cannot be determined by the very loose terms "primary" and "secondary" picketing. But under recent decisions of the courts the test applied seems to have been whether the industrial action complained of has been so remote from the original trade dispute as to be not reasonably likely to further it. One can lawfully seek to ensure that one's employer's-supplier does not supply him. But if he continues to do so, and one then seeks to ensure that the supplier to that supplier does not supply him, the decisions of the court suggest that one is entering the area of potential remoteness, where the section 13 protection runs out. In both cases the term "secondary picketing" would be apt, but the legal consequences could be quite different.

Finally, it has been suggested that the repeal of the 1976 amendment would make a substantial difference to the balance of strength between employers and unions. I disagree. In my view, its effect on that balance would be insignificant in the light of the remoteness test, which seems to me to be a far greater potential limitation on the protection provided by section 13. The repeal of the 1976 amendment would merely restore a host of anomalies to which the Donovan report rightly drew attention.