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 conference
- length of talks

① Restricting immunity to people directly involved in primary dispute.

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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 <u>at this time</u> 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. <u>Scope for Immunity for individuals engaged in secondary action.</u> 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