Confederation of British Industry

From the President:

Sir John Greenborough KBE

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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.

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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