SECRET

Prime Minister

Working Paper on Secondary Industrial Action

1. Ian Percival came to see me this morning.

2. Herewith Minute of yesterday's date which he has prepared, on this stage only as a confidential Minute setting out his carefully considered views on Tuesday's Working Paper.

3. You will remember that the first paragraph of Jim's Minute dated 18th February, 1980, with which he circulated his Working Paper referred to the "very substantial assistance from the Solicitor-General" which he had received in preparing the Working Paper.

4. It is difficult to overstate Ian Percival's unhappiness. But during our talk this morning he used the word "disgust" on three occasions.

5. Although the Working Paper is only a consultative one, Ian finds it impossible to defend. He made it clear that if the proposals in the Working Paper were to be incorporated in new clauses to the Employment Bill, he would not be able to remain as a Member of your Administration.

6. I pointed out to Ian that it was probable that the same very carefully argued objections to the Working Paper as are set out in his own Minute would be presented to the Department of Employment, and that although we had lost the battle so far as the Working Paper is concerned, we had not lost the war, because the key future decision which has to be taken is what change should be made to the Bill

7. Ian believes that many of your colleagues would be appalled if they realised the reality of the position, as set out in his Minute. Ian is being subjected to very considerable criticism by his colleagues at the Bar who take an interest in Industrial Relations - a criticism with which he finds himself in full agreement.

8. I know that Ian would welcome the chance of a talk with you about this, and mentioned the possibility of you dining with him again this Sunday evening. If you had a chance to give him a ring over the weekend, I know that he would appreciate this greatly. His telephone number is Appledore 321 (023 383 321).

9. I have never seen Ian so unhappy and depressed. You know, better than I, his worth and value.

22nd February, 1980

Ian Gow

Minute on the effects of the proposals set out in paragraphs 15 - 20 inclusive, of the Working Paper on Secondary Industrial action published 19.2.80

1) If these proposals were implemented persons who are not parties to a dispute, whose commercial contracts were interfered with by secondary industrial action and who had a right at Common Law to go to Court to protect themselves from it, would still be prevented from doing so (by Sec 13 as it is proposed to amend it) if the actions complained of were:-

(a) reasonably capable of furthering the trade dispute in question; and

(b) had been taken predominantly in pursuit of that trade dispute and not principally for some extraneous motive; and

(c) were taken in furtherance of that trade dispute either

(i) by employees of the employer in dispute; or

(ii) by employees of those first suppliers or customers of the employer in dispute who were not themselves party to the dispute but who regularly conduct a substantial part of their business with such a party.

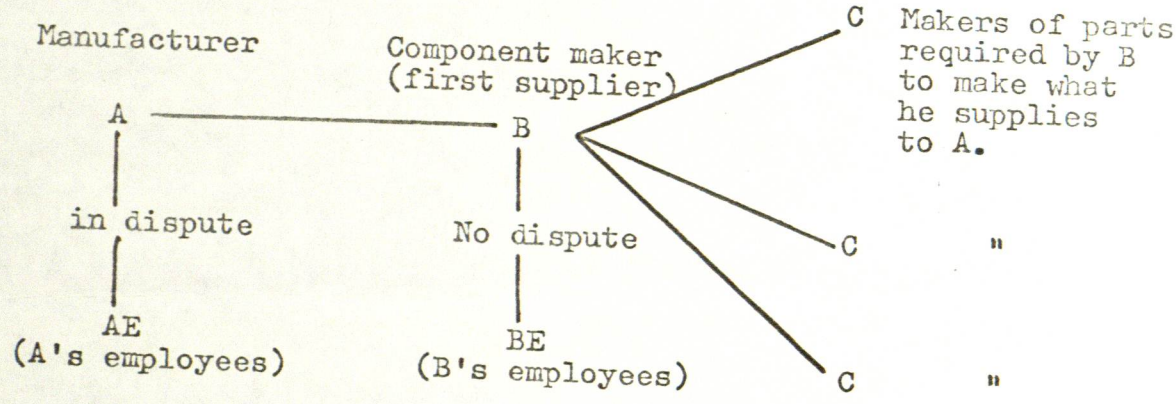
Where those tests were satisfied "no-one whose commercial contracts suffered as a result of such secondary action would be able to obtain redress in the Courts."

2) Tests (a) and (b) can be taken together and in my view would present no difficulty to the Union (or others) taking the secondary action, in any practical circumstances that I can visualise. (In my view the action taken in the cases of Nawala, McShane and Duport would have passed both tests). It is difficult therefore to see how those tests would limit Sec 13 "immunity" to any significant degree - if indeed at all.

3) As to the remaining tests it is clear that they are not intended to have and do not have the effect of restoring their Common Law rights to those beyond the relationship of first supplier or customer of the party in dispute. On the contrary, it is plain that many beyond that line may be damaged and deliberately damaged and yet be still unable to sue. What is more difficult is to see where the limits end, but some idea of the extent of the remaining immunity may be gained from the following examples.

Nawala (1979) 3 All ER p.614 at p. 622 b to e.
McShane (1980) 2 WLR 89 at p. 95H/96D.
Duport Steels - transcript p. 11.

(i)



If the action was taken by either AE or BE no-one in that diagram could sue for interference with commercial contract, e.g. BE are instructed by their Union to black goods coming in from C - indeed to refuse to allow them in - this would still enjoy immunity under Sec 13, neither B nor C could sue.

(ii) If B's employees decline to take any action (or the Union wishes to bump up the action) the Union at A may seek to enlist the support of some <u>other</u> first supplier or customer of A to bring pressure to bear on B or C and such action would also enjoy immunity, e.g. if British Rail was a first supplier of A and the NUR blacked goods which C wanted to send by rail to B, that too would still be protected by Sec 13.

(iii) Another example of particular relevance at the moment and potentially of general application might be:-

BSC on Strike ——— British Leyland cannot get steel from BSC so buys it from C ——— C Supplier of steel

It would seem highly probable that both the NCB and British Rail are first suppliers of BSC. If so the NUM might black supplies to BL or C, and/or the NUR might black carriage either of coal/coke to BL or C or of steel from C to BL, and neither B nor C could sue.

<u>21 February, 1980</u>

CONFIDENTIAL

PAYMASTER GENERAL

PRIVY COUNCIL OFFICE

WHITEHALL, LONDON SW1A 2AT

The Rt Hon James Prior, MP,
Department of Employment

cc Prime Minister

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 the disquiet of rank-and-file trade unionists (which has been repeatedly shown in opinion polls - to say nothing of the last Election).

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.

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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 the employers who have advised you 'are emphatic that at this stage we should go no further than these proposals'. No doubt: but 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 get a convincing message across that we have the will to deal effectively with industrial relations law, we shall never get any economic message across at all - if only because 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 Prime Minister.

AM