

# CONFIDENTIAL

Ref. A0292

PRIME MINISTER

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## Legislation on Picketing, Closed Shop and Union Ballot

(E(79) 43)

21.9

### BACKGROUND

The Government is committed to make changes in the law on picketing, the closed shop and union ballots. The relevant pages of the Manifesto are attached to this brief. E Committee broadly approved the Secretary of State for Employment's proposals for implementing these commitments at the meeting on 19th June (E(79) 3rd Meeting, Items 1 and 2). Since then, he has had formal consultations with the TUC and CBI, and his paper reports the result. The section on picketing relates closely to the separate review of trade union immunities (also promised in the Manifesto) which is the subject of his second paper, E(79) 44.<sup>24.9</sup> (Although we have listed this as a separate item on the agenda, you will find it convenient in one or two places to cross-refer.) You are discussing these papers with Mr. Prior on Wednesday evening, and you may therefore find it convenient to have this brief before then. But it is primarily directed to the handling of the E meeting next day.

2. The general approach is very conveniently summarised in paragraph 5 of the second paper (E(79) 44): the Government's objectives are:

- (i) To tip the balance of power away from the unions.
- (ii) To give the employer a legal remedy.
- (iii) To get general support for these proposals, not least from trade unionists.
- (iv) To avoid active trade union opposition to the measures.
- (v) To forge an instrument which will remain effective, and not be rendered unworkable by union opposition.

3. The initial response at the TUC Conference was predictable, but not as severe as might be feared. The TUC is committed to a publicity campaign directed against the proposals, but not to any form of direct action.

# CONFIDENTIAL

4. The reforms themselves will not be operative in time to have much direct effect on the current wage round. Paradoxically, however, most of the unions will be reluctant to stir up trouble on the picket lines while the Bill is going through, for fear of demonstrating the need for this - or tougher - legislation. Once the Bill is on the Statute Book, the situation may well change with the unions perhaps testing the employers' nerve or an employer seeking a showdown. The Government cannot then control the course of events. Timing therefore becomes important: and the operation of the Act (from Royal Assent or from a Commencement Order) a point for consideration.

## HANDLING

5. I suggest you invite the Secretary of State for Employment to make a general introduction, and then plunge straight into the detail. (The Committee has already had its "Second Reading" debate on the proposals at the meeting on 19th June.) You might note that, although the main proposals are summarised in his covering paper, there is more detail set out in the Annexes.

### Picketing (paragraph 5 and Annex I)

6. Who can picket and where? It is common ground that the right to picket must be reserved to those in dispute, and to officers of their unions. The Committee agreed last time round to limit the right, if possible, to those picketing at their place of work, but gave Mr. Prior a discretion to fall back on a wider formula if necessary. He has now plumped for the "place of work", and the Committee will probably welcome this. Apart from the difficulties mentioned in Annex I, the most difficult cases will be building workers (whose "place of work" will be the site where they are employed) and maintenance workers (like the liftmen whose dispute has affected Government offices recently: their place of work will be their depot, not the building where they happen to be working on lifts). Flying pickets would thus be ruled out.

7. Who and what can be picketed? This is the point where you need to track forwards to E(79) 44 on immunities. Paragraph 4 of that paper explains that the courts have recently interpreted trade union immunities to cover the picketing of first customers and suppliers, but probably not beyond that. Again to take a parochial case, it is therefore legal to picket the entrance to Downing Street and



stop the delivery of beer to the Cabinet Office Mess when Civil Service electricians are on strike; but not to picket the man who supplies hops to the brewer. The proposal would make it possible to sue a union who picketed in this way, on the ground that it would be inducing a breach of commercial contract. But unions would still be free to picket and persuade direct employees to break their contracts of employment.

8. How would the law be enforced? The paper explains that the remedy rests with the employer to sue either the union or the individual picket. This, as intended, takes the Government out of the front line, and puts the employer there instead. The fundamental difficulty of "martyrdom" remains but no-one has found a way round this.

9. Police action. In the earlier E discussion, the question was raised of police control of pickets. This has been a subject of separate correspondence between the Secretary of State for Employment and the Home Secretary. The short point is that, while the Government cannot dictate what Chief Constables do, it will find ways of advising them. No formal decision seems necessary.

10. Code of Practice. There is, of course, an existing TUC Code of Practice, and the Secretary of State is anxious that the TUC should not be panicked into withdrawing this. He therefore proposes to take power to produce his own code (which would have the sort of "highway code" status suggested earlier) but not actually to publish it yet. This does not prevent the remaining provisions of the legislation coming into force. No doubt you will want the draft code to be considered by a Ministerial Committee at some stage.

Closed Shop (paragraphs 6-9 and Annex II)

11. Existing employees. The proposal would protect existing employees who refuse, or have earlier refused, to join a closed shop. It would not however cover employees who wish to resign from a union. At E last week, you yourself made the point that AEU workers at Derby might be encouraged to resign from the union rather than take part in further two-day strikes. The proposed changes would not protect them. In firms where a closed shop operated they would lose their jobs.

# CONFIDENTIAL

12. Personal conviction. The proposal substantially widens the definition of those who can legitimately object to joining a union when a closed shop is in force. It does not however cover people who object to membership of a particular union - perhaps because they disagree with its policies. But no-one has yet found a formula which would cover them adequately.

13. Ballots. The 80 per cent test suggested by the Secretary of State should prove acceptable to the Committee, though it will be bitterly fought by the TUC.

14. Joinder. An essential part of the plan if unions are to be faced with the costs of their actions.

15. Code of Practice. As with the picketing code, introduction could be deferred. This seems sensible, to give things time to settle down after the legislation.

16. Arbitrary exclusion or expulsion. This ties in closely with the provisions on picketing but is very far-reaching. It takes away from unions the unilateral right to impose the final sanction of expulsion (and loss of job) in an industrial dispute, and thus strengthens the rights of the individual against his union. But it may also weaken the power of unions to control their more militant members. Nevertheless the Committee will no doubt feel that the protection of the individual is paramount. You may however also care to test opinion in Mr. Prior's tentative suggestion (paragraph 8 of the main paper) that there should be explicit protection against expulsion for union members crossing picket lines.

## Ballots (paragraphs 10 and 11 and Annex III)

17. This should be the least controversial part of the legislation, and you need not delay long on Annex III.

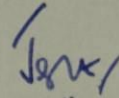
## Parliamentary Aspects

18. The Secretary of State goes into more detail on these in E(79) 44: you might defer discussion until the third item of the agenda. It is sufficient at this stage to give policy clearance to proposals in this paper, so that drafting can proceed. (Informally, it has already begun.)



CONCLUSIONS

19. It would be sufficient to record agreement to the Secretary of State's proposals as set out in his paper and Annex, subject to any contrary decisions reached in discussion, and to invite him to proceed with the preparation of legislation to give effect to them.



JOHN HUNT

25th September, 1979