



Prime Minister 2
 We have fixed the
 E meeting for
 Wednesday afternoon.

Treasury Chambers, Parliament Street, SWIP 3AG
 01-233 3000

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 4/2

PRIME MINISTER

IMMUNITIES FOR SECONDARY INDUSTRIAL ACTION

You will have seen Jim Prior's minute of 1st February and the working paper that he proposes ("subject to surrounding events") to publish on Thursday. This paper, as Jim explains, "puts forward the policy proposal agreed by E Committee on 15th January".

2. In the light of "surrounding events" - which include the recent legal proceedings in the steel strike and the resumption of "sympathetic" and secondary action against the private steel producers - I am very doubtful whether we can or should now restrict ourselves to the limited change agreed on 15th January. I hope very much that E Committee can meet to discuss this question before Jim goes ahead with publication of his working paper in its present form.

3. I fully appreciate and agree with Jim Prior's view that it would be wrong for us to "rush forward with instant solutions" as a reaction to any single dispute. So I am certainly not suggesting any speedy "one-off" legislation designed to deal with the present strike.



4. On the other hand, I believe it is important to ensure that the Bill now before the House is likely, by the time it reaches the Statute book, to deal effectively with the key problems. I am not convinced that it will do this, even as Jim now proposes to amend it - and recent events have tended to confirm that view.

5. I suggest that we need to deal more fully with at least two major points:

(A) Immunity of trade unions: Section 14 of TULRA, 1974

6. All the new remedies (and sanctions) so far proposed will be available only against union officials or union members, as individuals. Some of this (for example, the extensive widening of the restraints on picketing that is proposed) may be inescapable. But I do not believe we should, with our eyes open, create substantial (and unnecessary) opportunities for individual martyrdom. I believe we should at least make it possible to seek an injunction against a union to restrain acts that are being threatened or taken by union officials or executive committees on its behalf.



7. Jim Prior argued (E(79)44) that change on these lines would "threaten the very existence of a union". This is just not so. A union's funds would be (as they should be, I suggest) at risk to pay fines for non-compliance with injunctions. If we wished, they could also be liable (as with any company) to pay damages. In either case we could provide a maximum limit on fines or damages.

8. The only alternative is to confine the courts to making orders against individuals. In the last ten days both Scargill and Sirs have volunteered for going to prison in this role. As Tom Jackson has pointed out today, there would soon be a daily ration of trade unionists going to gaol. How much less difficult (and how much more sensible) to win public support for the exposure of trade union funds.

(B) Scope of immunity for secondary action

9. Should we not consider the withdrawal of immunity for all - or at least for a wider range of - secondary actions? Jim Prior's present proposal is to leave first customers, suppliers and providers of services without a remedy. If we were to give them a remedy, then (as Jim set it out in paragraph 8 of his paper, E(79)44) this "would be consistent with the line we took in Opposition; it would tackle directly the 1976 Act, which is thought by many to have encouraged recent union excess; it could be presented as a return to the position which existed between 1906 and 1971". (Not, it may be thought, a very radical objective.)

10. One relatively simple (and ^{legislative} ~~non-legislative~~) way of dealing with this was suggested in paragraph 29 of the Annex to E(79)44, as follows:



"An amendment might be on the lines that action in contemplation or furtherance of a trade dispute:

- (i) must not be principally for some extraneous motive; and
- (ii) must be directly in furtherance of a trade dispute; and
- (iii) must be reasonably capable of furthering the original trade dispute and not merely intended to do so."

Such an amendment, as Jim points out in that paper, would take the law no further than the Court of Appeal did in the "Daily Express" case.

11. An alternative approach to the same problem could be modelled on the recent Australian precedent described in the Annex to this minute. You will see that this also deals quite neatly with the problems of trade union structure.

12. In closing, I return to the political point. Public opinion is looking for effective change. Unless we do achieve such change we cannot expect to make a significant impact on our central economic problems. And we might as well not have fought (and won) the last General Election.

13. Jim has argued - and after my experience in 1971-4 I have good reason to understand his point - that we should proceed step by step, for the sake of winning the major prize of prior consent to a change in the rules. But it is now increasingly clear that any change which we propose and carry through will initially face unqualified opposition from the union hierarchy. The crucial test will be whether it is effective.



14. My fear is that if the present Bill becomes law in anything like the form so far proposed, disillusionment will swiftly follow. The "limited objectives" will not in practice be achieved. Yet union opposition - concentrating, as usual, on emotional issues - will be little different from what we might expect if we tried to deal with the really basic issues. If this is what happens, then I believe it is very doubtful that the path to a second Bill would have been made easier as a result of the first. The reverse could well be the case if it involved a second period of "massive confrontation" shortly ahead of the next General Election.

15. May we please have a further opportunity of considering what is probably the most important issue in the life not just of this Government but of the nation?

16. I am copying this minute to the recipients of Jim Prior's.

G.H.

(G.H.)

4 February 1980

Extract from CBI discussion paper on Trade Union immunities(vi) Secondary boycotts as restraint of trade

42. At common law, an agreement which restrains trade or competition is void and unenforceable unless it was at the time of the contract reasonable as between the parties and reasonable in relation to the public interest. The effect of many trade union rules is prima facie in restraint of trade, but in order to enable unions to enforce their rights by means of collective withdrawal of labour, backed by the sanction of expulsion of members who do not obey instructions to do so, the purposes of trade unions are regarded by statute as not in restraint of trade.

43. Australia has approached the problem of secondary action by using restraint of trade legislation. The Trade Practices Amendment Act 1977 at section 45 prohibits two or more persons from engaging in conduct that hinders:-

(a) the supply by a third person of goods or services to a company; or

(b) the acquisition by a third person of goods or services from a company where the company is not an employer of the person prohibited and the conduct has the purpose or effect of either

(i) Causing substantial loss or damage to the company's (or an associated company's) business; or

(ii) Causing a substantial lessening of competition in any market in which the company or any related company operates.

44. The penalty for a proven breach is a fine of up to A\$50,000 in the case of an individual and A\$250,000 in the case of a union. In addition a company suffering loss or damage as the result of a breach of the Act can recover the full amount of the loss or damage from either the union or the

individuals concerned. The remedy of an injunction is also available. A person has, however, a defence to an action taken by an employer under the Act, if he can show that the "dominant purpose" for which the industrial action was taken "substantially relates" to the "remuneration, conditions of employment hours of work or working conditions" of either himself or of another person employed by the same employer. In other words, the defence will only be operative where primary action is taken by employees in dispute with their own employer.

45. The Act also specifies that where the persons engaging in the prescribed action are union members, the union itself will be a party to that conduct unless it establishes that it took reasonable steps to prevent the boycott.

46. Since the amendments to the original laws on restrictive trade practices were enacted, a considerable number of actions have been initiated by employers against unions organising and conducting secondary boycotts. Many actions have resulted in voluntary settlement and the lifting of boycotts. In other cases, injunctions have been issued pending a full trial. There appear to have been no reported instances of unions defying the court and continuing an unlawful boycott.

47. An amendment along these lines in UK would be a restriction on trade unions' present legal status, and its success, as with many other suggested new remedies against secondary action would depend on employers' willingness to use it. Nonetheless it appears to have had some effect in Australia.