Centre for Policy Studies

8 Wilfred Street · London SW1E 6PL · Telephone 01-828 1176 Cables: Centrepol London

The Rt. Hon. James Prior, M.P.,
Secretary of State for Employment,
Caxton House,
Tothill Street,
London SW1

12th March 1980

13 MAR 1980

Dear Jim,

We enjoyed our discussions and though we are still far apart on strategy it appears that on some tactical questions there is room for accommodation.

I thought it would be helpful to set out the areas in which our approaches fundamentally differ and also those areas where some modification might be acceptable to you.

We share your desire to avoid unnecessary confrontations with the trade union movement. We appreciate your concern to avoid a General Strike and we note that all at our meeting were agreed that it is arguably illegal at present and would certainly be illegal under your new proposals to ban action taken for 'extraneous' purposes. We feel that our proposals are no more likely to cause confrontation than yours, but that in the event of any confrontation the Government and industry would, under our proposals, be in a better position.

We fear that your approach of putting exclusive reliance on injunctions against individuals could lead to 'martyrs'. Your approach necessarily involves confrontation with the militant minority of trouble-makers on the picket line who are usually men of no financial substance who are only too anxious to be sent to prison for contempt of court for breach of injunctions.

We therefore advocate that legal action be against union funds rather than individuals. Legal action against the funds of large and rich organisations will not provoke the public sympathy and demonstrations that individuals, presented as victims of 'legal persecution', would receive. However, we noted that you were adamant against this proposal.

The Rt. Hon.James Prior M.P.

12th March 1980

On the second major issue of principle between us, we consider that immunities should be confined to the 'primary position', i.e. between employer and union(s) directly involved regarding their own trade dispute. You argued that this would ban sympathetic action. This is correct and we do not retreat from this. For the same reason that you wish to ban 'remote' and 'extraneous' action, we consider that sympathetic action is not justified. It causes widespread disruption and we believe that the public sympathy is confined to unions defending their own vital interests in their own dispute - not interfering in others'.

The third major disagreement of principle related to the use of the criminal law in picketing. Your letter of 10th March stated that you 'understood' and 'sympathised' with the thinking behind our picketing proposals, but foresaw 'considerable difficulties' with them. We are of the view that picketing cannot be tackled by civil law alone - especially when it is difficult for an employer to identify those concerned. We noted your assurance that future legislation would be considered in this general field and we commend these proposals to you if it turns out, as we predict, that in the period following the Employment Act 1980 picketing still poses a problem. In your letter you recognised some of the difficulties, but stated that trade union 'officials' are law-abiding and will obey injunctions. This unfortunately does nothing about picketing where unofficial strikes are concerned. Our proposals covered both official and unofficial strikes. They were designed to make the law more easily enforceable without creating martyrs by putting the emphasis on fines rather than imprisonment and clarifying the law to assist the police. We observe that the police themselves are in favour of fairly similar proposals.

Our following suggestions are designed,within the logic of your own approach, to make the Bill more workable. As it stands we are convinced that it is incomplete, unwieldy and productive of a legal minefield, which could bring the law into disrepute. We must emphasise that we still have great reservations about the efficiency of your fundamental approach and our suggestions, if adopted, are not able to remedy this. However, we commend them to you in the expectation that they will assist you in promoting the purposes to which you have limited yourself in this Bill.

1. Your Bill puts all the eggs in one basket - the basket being that of employers seeking injunctions. We therefore consider it vital not to put unnecessary restriction in the way of obtaining these injunctions. As you know it is at the interlocutory stage that industrial matters are usually thrashed out in the courts - and the first few days of the dispute are the most important.

The Rt. Hon. James Prior M.P.

12th March 1980

Section 17 of T.U.L.R.A. 1974 made it more difficult to obtain ex parte (interlocutory) injunctions. It was headed, appropriately, "Restriction on grant of ex parte injunctions and interdicts". All at our meeting were agreed that this section was designed to hamper the obtaining of injunctions by employers. There was disagreement as to how effective this section had been to date. You felt that it had not made much difference. We understand that it has and, more importantly, can do so once your Bill becomes law. You did not seem to have any objection in principle to removing this privilege which was introduced for the first time in 1974 and represented a sharp departure from the normal law regarding injunctions. We therefore urge you to add a sentence to your Employment Bill repealing Section 17 of T.U.L.R.A.

2. At the meeting we pressed you to tighten up clause 14 of your Bill by defining 'official' of a trade union (14 - (1) 15 - 1(b)) precisely. Otherwise you will have unnecessary disputes over its meaning and also, perhaps, the creation of large numbers of ad hoc trade union officials. We suggest reference to 'paid, permanent, full-time officials'. We were pleased to note that your mind was already moving in a similar direction and that you accepted that this was a weakness in your Bill as at present drafted.

Amendment being tabled on this

3. We noted with great interest and, indeed, enthusiasm, your statement that you were prepared to move 'more towards the primary' in relation to picketing which you described as the outward visible manifestation of industrial action. Your Bill certainly does this in relation to place of work. Your acceptance of the primary standard in the form of primary premises is unfortunately not matched by application of the primary standard in relation to the dispute. Yet for the same reasons that you wish to restrict picketing in respect of premises you should, as a matter of consistency, be prepared to restrict it to those directly involved in the dispute. Emboldened by your general acceptance of the primary principle in relation to picketing we urge you, once again, to apply it to the parties in dispute. We therefore re-submit the proposal we put to you in January (letter of 23.1.80) for amendments as follows:-

14. -(1) For section 15 of the 1974 Act there shall be substituted -

15. -(1) It shall be lawful but only for a person in contemplation or furtherance of a trade dispute and only for a trade dispute to which he is a party to attend -

a) only at or near his own place of work, or

b) if he is an official of a trade union, at or near the place of work of a member of that union whom he is accompanying.

Etc.

The Rt. Hon. James Prior, M.P. 12th March 1980

and to add as Subsection 4 on page 14:-

Save as provided for in subsection 1, 2 and 3 above, acts done in the course of picketing shall be actionable in tort. For the avoidance of doubt, it is hereby declared that the criminal law regarding acts done in the course of picketing is not changed by this section.

4. We welcome your evident disposition to think again about balloting. You were most anxious that your Bill should 'stick' and not become a political football. This search for consensus between the parties is most likely to be successful in the field of ballots - for no-one can argue openly and with great conviction against the obviously democratic nature of the postal/secret ballot. "The Times" recently reported that the unions had unanimously agreed in advance not to make use of the financial facilities for ballots provided in your Bill. You did not think this report was accurate. Our view is that if the ballot proposals are to have any effect and not merely give public money to trade unions for what they are already doing - there must be provision either for the ballots to be compulsory or, at the very least, for union members to be able to demand a ballot in certain circumstances.

The simplest and best approach to make your proposals effective is to make them compulsory instead of merely available. If there is merit in consulting the opinion of ordinary members - and we believe there is - then surely the case is overwhelming to ensure that the ballot is in fact adopted? The voluntary approach offers no guarantee that it will be adopted by a single union that does not have it already.

Failing the above, we would urge you at least to give individual trade unionists some democratic rights by writing into the Bill provision for a certain number or proportion of union members to call for a ballot in order to ascertain the democratic verdict. One of the main objectives must be to extend individual freedoms. There has been growing evidence since 1975 that union leaders are not fully representative of the rank and file: Cowley, Eastleigh, Dagenham, Corby, Leyland, South Wales miners and Hadfields are a few cases in point. We feel there is a growing weariness on the part of ordinary working people about constantly being called out on strike.

We are very strongly of the opinion that when a strike is contemplated or actually under way that there should at least be an opportunity for the workers affected to express their views in a secret ballot.

e Rt. Hon. James Prior, M.P. 12th March 1980

This can be achieved in the following way:-

An addition to clause 1 of the Bill as follows:-

1(9) If the Committee of management of a trade union or any body exercising the functions thereof should, in contemplation or furtherance of a trade dispute, authorise a strike or order industrial action, such strike or action shall not be proceeded with until a secret ballot is held of the entire membership of the union called upon to participate in such strike or industrial action. If, at any time between the authorisation of calling of this strike or action by the body in question and its inception, a petition call for a secret ballot is received either from not less than one hundred members of the union or by not less than five per cent. of the union's members, a ballot shall be held of all the members. Such a ballot shall be conducted by a body independent of the trade union nominated by, and under the general supervision of, the Certification Officer. The strike or industrial action shall not be proceeded with unless a majority of those eligible to vote authorise or approve the strike or industrial action that is contemplated.

1(10) If a strike or other industrial action should be in progress a secret ballot of those trade union members involved shall speedily be held upon a petition, presented by either not less than one hundred of these members or by five per cent of them, calling for the question to be put to all members eligible to vote as to whether the strike or industrial action shall continue. In the event that a majority of those voting do not vote in favour of continuing the strike or industrial action, the committee of management of the trade union in question or the body exercising its functions, shall be required immediately to issue notices instructing all members to discontinue the strike or other industrial action. The ballot shall be conducted by a body independent of the trade union nominated by, and under the general supervision of, the Certification Officer.

We feel that since public moneys are involved a responsible public official must have overall supervision of any ballots - including the conduct of them and the framing of questions to be put. In the Bill, duties, in relation to ballots, are laid upon the Certification Officer. Our committee agrees that he is the appropriate official and we consider that he is eminently qualified to discharge these further, and related, functions. There is no more case, where ballots have any sort of legal basis and in which public money is involved, to leave this total duty either to the trade unions or, for example, to the management. Industrial democracy, like Parliamentary democracy, must mean independent Returning Officers. Some trade unions, regrettably, do not maintain the high standards of democratic practice that most trades unionists require and expect of their unions.

The Rt. Hon. James Prior, M.P. 12th March 1980

5. Despite our valuable discussion we remain of the view that it would be wise to limit immunities to the primary position of the parties in dispute and exclude action against all suppliers and customers. However, we took note of your determination to ensure that certain forms of sympathetic and secondary action enjoyed legal immunity. In the light of this statement of intent we merely submit tidying-up proposals to restrict somewhat the extent of this wide immunity and clarify its nature. We noted that you were unhappy that big suppliers would be affected by the immunity for first suppliers. We agree with you that there is mileage in the 'substantial' amendment. We suggest the following as the new clause 15 of the Bill:-

Section 15 (on p.14) (New Section 15 of the Bill)

15 1) Section 14 of the 1974 Act is hereby repealed.

2) For Section 13 of the 1974 Act there shall be substituted:-

13 1) An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable in tort on the ground only:-

a) that it constitutes a breach or threat to break a contract of employment to which he is a party;

b) that it induces or is calculated to induce breach or threatened breach by another person of that other person's contract of employment with the same employer.

2) Further to the immunity granted in 1) above, an act done by a person in contemplation or furtherance of a trade dispute shall not be actionable in law on the ground only that it is taken at the behest of, or by, persons in a trade dispute with a given employer, in relation to an established or long-standing and direct current supplier of that employer provided that a substantial portion of the business of that supplier has for the previous year been with the employer concerned and provided that a substantial part of the business of the employer concerned has for the previous year been with the said supplier.

The Rt. Hon. James Prior, M.P.

12th March 1980

3) An agreement or combination by two or more persons to do, threaten or cause to be done an act which, if it were to be done by one person, would not be actionable in tort by virtue of subsections 1) and 2) above, shall not be actionable in tort.

We consider that something must be done to restrict or presently abolish Clause 14 of T.U.L.R.A. if it is not to prevent the Bill from achieving its effects.

We do most strongly urge you to adopt our suggestions in order to remove customers from the purview of the immunities. We noted that you were sympathetic to the idea of releasing customers from damaging secondary action.

I fully understand the political considerations that influence your pragmatism in the construction of your Bill. My fear is, as I have stated, that the Bill will not increase respect for the law but will add to the mythology surrounding the 1971 Act - that the law cannot be used to constrain the present excesses of the picket line.

I hope your cold is much better now.

Yours sincerely,

LEONARD NEAL, C.B.E.