SECRET

Personal copy
Mr Lankester
Mr Hoskyns

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1. MR DIXON
2. CHANCELLOR OF THE EXCHEQUER

cc: Sir Douglas Wass
Mr Ryrie
Mr F Jones
Mr Monck
Miss Sinclair

Mr Davies (T. Sol).

INDUSTRIAL RELATIONS LEGISLATION

Following the meeting with the Prime Minister about steel on 28 January you asked for a draft which you might send as a pre-emptive letter to Mr Prior or a minute to the Prime Minister in order to stimulate Mr Prior to consider more radical alternatives for the new industrial relations legislation.

The attached draft, which is in the form of a minute but with a little amendment could serve either purpose, points to a number of measures which might be taken to strengthen the proposed legislation. It draws on information provided by Mr Hoskyns in his letter to you of 29 January, on Mr Abbott's letter of 5 January, and on material produced by the CBI. The Treasury Solicitor's Department have seen the draft, which does not of course purport to be a considered legal text but rather a catalyst for further work by Mr Prior. For this purpose, I have drafted it to include a large number of points which could be followed up. If, however, you consider that we should keep to the rather more limited aim of pressing Mr Prior to act on trade union immunities, I will gladly supply a draft to this effect.

The draft contains a paragraph suggesting that an interdepartmental group of officials should be set up to consider the matter further. This would probably be advantageous, as it would enable representatives of departments other than the Department of Employment to provide a continuing spur to a more radical review. If you consider this worthwhile, you will of course wish to send the draft as a minute to the Prime Minister.

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The draft does not contain any reference to the 1971 Act and to the other events of the time which, rather more than the Act, led to the defeat of the Heath Administration, but you may wish to include a reference to this on the basis of your personal knowledge of that time.

I understand that Mr Prior hopes to publish a consultation document on immunities next week, so that it is important that the minute should be dispatched quickly.

The draft does not refer to this, but you may wish to note that the proposal to confine immunity to actions where the sole or predominant motive was within the definition of a trade dispute could be of value in connection with the work of ECS on strikes with a political motive by civil servants.

If the attached draft does not reflect the points which you wished to make, I should welcome a discussion.

F A HEATON
1 February 1980

DRAFT MINUTE TO THE PRIME MINISTER

At E Committee on 15 January, when we discussed the question of immunities for trade unions, we agreed that, whilst in principle we would have preferred a more radical approach, for tactical and Parliamentary reasons it was best to proceed with the limited changes to the immunities proposed by Jim Prior.

But when we met in the House on 28 January there was considerable unease that, with the steel strike in progress, the measures which we are proposing might be considered patently inadequate. It was also argued that the present situation provided us with the best opportunity we were likely to ge to make the more radical changes to the law relating to industrial relations which we know to be necessary.

Jim has undertaken, in consultation with the law officers, to consider the possibilities, and in particular the scope for restricting the immunity of trade unions.

In my view, our decisions on industrial relations legislation will be amongst the most important which we shall take in this Parliament, and I am anxious to ensure that we have the opportunity to consider all the options. Thus, whilst the question of immunities for trade unions is probably the most important, and I refer to this first, I hope that we will be able to consider various other changes, many of which inter-act with the immunity issue.

At present the civil immunity of unions is absolute apart from actions for personal injury and damage to property, which means that their funds are protected.

Putting the funds of the big unions at risk would probably have a more salutary effect on them than anything else, including threats of imprisonment, and would also avoid the problem of martyrs. It could also be of genuine value to employers who suffer because at

present they are effectively prevented from seeking damages because individuals would be unable to pay.

not enough (1) One approach would be to limit the immunity of trade unions to acts done in contemplation or furtherance of a trade dispute; a more effective limitation would be to provide that, if (contrary to the amendment which we have already agreed on immunities) blacking extends beyond the parties to the dispute and direct suppliers and customers, and was ordered by one or more members of the Executive Committee of a union, the union itself should be liable. A different approach again would be to link immunity to action taken only after proceeding in accordance either with agreed disputes procedures or procedures prescribed by statute. This of course, would apply only in respect of official disputes.

not enough (2)

(3)

and trade unions

It would also, in my view, be worthwhile to look again at the ambit of immunities for individuals. At E we agreed to limit immunity for blacking to action taken against the first customer, supplier or provider of services. This would not, for example, have prevented participants in the present steel dispute from inducing employees of a steel stockholder who is the first customer of BSC to refuse to handle steel from a private sector source. Similarly, immunities would remain for attempts to induce railwaymen to black steel, assuming British Rail had contracts with BSC. Our aim should surely be to protect primary action, but to prohibit all secondary action. This could be achieved by amending the law to make it unlawful to take industrial action against a third party unconnected with the dispute who has not contributed material support to it. This was the formula employed (though never tested) under Section 98 of the Industrial Relations Act. But consideration would have to be given to whether the inducement of a breach of contract of employment between the third party and his employees should be unlawful. The Industrial Relations Act specifically excluded sympathetic action. We know that the CBI are concerned about sympathetic action, but it would be a very significant limitation on the freedom of trade unions to withhold immunity for sympathetic action.

remove immunity from (A)

(A)

Originally exempt from (A)

It is also for consideration whether we should further restrict picketing. Clause 14 of the Employment Bill confines peaceful picketing to attendance by a person at his own place of work or by a trade union official accompanying a member of that union at his place of work. One possible further restriction would be to permit such persons to picket for the purpose of peacefully persuading only those who also work at that place or for that employer and not, for example, a lorry driver employed by Esso and seeking to deliver fuel to the premises. Other possible restrictions would be to limit the numbers, or to have a procedure for the statutory authorisation and identification of pickets.

(B) difficult to enforce + not much help if the primary picketing is effective

A further area where the present law is clearly unsatisfactory is in regard to the definition of a "trade dispute". It would be possible to narrow the definition of a trade dispute by limiting it to a dispute between workers and their employer. This would limit the immunity to action taken directly against the employer in dispute, which would represent a considerable restriction on trade unions' existing freedom to take industrial action. There is also a case for saying that we should look again at the situation respecting the motivation of those who claim to be acting in contemplation or furtherance of a trade dispute, particularly in the light of the House of Lords decision in NWL Ltd v Nelson. As a result of this case, it now appears that action can qualify for immunity if there is some dispute over terms and conditions even if this is not the sole or predominant motive for the action. One possibility would be to confine immunity to actions where the sole or predominant motive was the advancement of legitimate aims in terms of the specific employment issues mentioned in Section 29 of the 1974 Act. An alternative possibility might be to re-introduce the provision in the Trade Disputes and Trade Unions Act 1927 (which was repealed in 1946) which declared that a strike was illegal if it was a strike designed or calculated to coerce the Government either directly or by inflicting hardship upon the community. A further means of making the law relating to the definition of trade disputes more rational would be to introduce an objective test for determining whether action was "in furtherance" of a trade dispute in substitution for the subjective test applied by the House of Lords in Express Newspapers v MacShane. The test

(C) attractive; ✓ X

(D)

(E)

(F)

would be that the action, viewed objectively, was reasonably capable of being undertaken in contemplation or furtherance of a trade dispute.

I recognise that the suggestions above are not necessarily consistent, but they are intended to provide a starting point for the more radical assessment which I now consider necessary. I still attach most importance to the proposals for restricting immunities, particularly those of trade unions, but I would hope that it would be possible to examine the other suggestions as well.

Given the crucial importance of this issue, there might be advantage in an inter-departmental group of officials, including members of CPRS, DOI and the Treasury, examining the possibilities before Mr Prior reports back to you.

JPL

This is of course policy and relevant too.

AD.

[GEOFFREY HOWE]