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Rt Hon Sir Geoffrey Howe QC MP  
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15 May 1980

*Dear Chancellor,*

UNION LABOUR ONLY CLAUSES IN COMMERCIAL CONTRACTS

During the passage of the Employment Bill my attention has been increasingly drawn to the objectionable practice of client employers who require their contractors to employ only union members. This apparently is especially prevalent among public sector bodies like local authorities and nationalised industries. The CBI have asked that action be taken to stop it and the Federation of Civil Engineering Contractors (FCEC) have pressed the case for action most cogently and persistently. I have also received critical letters concerning the matter from John Hoskyns and Keith Joseph.

When we debated the issue at the Report Stage of the Employment Bill Patrick Mayhew indicated our strong dislike of the practice which can readily be seen as a way of forcing union membership on those who have no desire to join. He pointed out that this was a matter on which voluntary action by employers could help since what was generally involved was one employer imposing a union membership requirement on another as a condition of a commercial contract. We agreed with the suggestion made in the debate that since public sector authorities often imposed such conditions the Government could also help discourage the practice. Patrick said:

"I hope that the Government, through their various Departments, will act upon that advice. I see no reason why a Government who takes the view I have described about the closed shop as an institution should encourage it through these contractual provisions".

We have been pressing the FCEC to do what it can to resist the practice and I shall be similarly pressing the CBI. I also intend to include in the forthcoming Code of Practice on the Closed Shop a provision to the effect that any such practice is unreasonable. It is therefore very important if our views are to be taken seriously that we consider what comparable steps we can take in the public sector. Since it lies with you to coordinate policy on matters concerning public sector purchasing and contracts I should be most grateful if you



would give this question urgent consideration in conjunction with our colleagues who have responsibility for public sector bodies. It would be most helpful if we could make a general statement of the Government's position on this practice whilst the Bill is going through the Lords.

I might add here that in the context of the voluntary action by private sector employers, the FCEC itself has recently approached the Office of Fair Trading to see how contractors might combine together to resist the offending contract terms. The FCEC have since written to me to say that there appear to be serious practical and legal difficulties in the way of such action on their part because of the effect of restrictive practices legislation. I would welcome any comments John Nott might have on how to remove any impediment on that score.

I have also been considering the concern of the FCEC about the effect on them of extending in the Employment Bill the rights of individuals in the Closed Shop. They have made the particular point that their own position might be made worse by the Bill. This could happen in the following way. At present, when faced with the objectionable clause in a contract, the contractor can impose a union membership requirement on his own employees and still be protected against a possible claim of unfair dismissal if he dismisses an employee for not joining a union. In future the Bill will extend the protection of unfair dismissal legislation to non-union employees who are on the payroll at the time any union membership requirement is introduced. It will also require a ballot with an 80% majority of those entitled to vote before a new closed shop can afford the employer with any protection against unfair dismissal claims.

The FCEC is especially concerned that if commercial pressures from clients force contractors to comply, it will be the contractors and not the clients who must meet any compensation claim for unfair dismissal. The Federation suggest this is especially anomalous because, elsewhere, the Bill provides that where a union puts industrial pressure on an employer to dismiss a non-unionist, then the union may be joined in any resulting tribunal proceedings and made to contribute to any award of compensation. The FCEC complain that in the situation they have described the client employer who imposes the condition in the contract on the contractor cannot similarly be joined.

I am urgently exploring means of meeting this last point by amending the Bill during the Lords Committee Stages to provide a new right of joinder against client employers who insist upon the implementation of a term in a commercial contract requiring



the contractor's employees to be union members. If an employee who is not a union member is dismissed in consequence the contractor who is facing a claim on unfair dismissal will be able to join the client employer in the case and the latter might be required to pay a contribution towards any compensation awarded. He in turn if he had been induced to take this action through union pressure should be able to join the trade union concerned.

I am copying this letter to the Prime Minister, members of 'E' Committee, and the Lord Chancellor.

*Yours sincerely,*

*R T B Dykes*

R T B DYKES  
Private Secretary

/approved by the  
Secretary of State  
and signed in his  
absence/

