

Industrial Policy

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P.0191

PRIME MINISTER

TRADE UNION IMMUNITIES

E(80)1

and letter from the Secretary of State for Trade
to the Secretary of State for Employment of 11 January

BACKGROUND

1. The Committee last discussed this subject in October (E(79)9th meeting), before the McShane judgement. At that time, Ministers agreed to confine legislative changes, so as to restrict the immunity of individuals taking part in or encouraging strikes, and to limit the scope for picketing. These proposals were embodied in the Bill introduced before Christmas.
2. Since then, both the McShane judgement and the conduct of pickets in the steel strike have caused a second look to be taken. The Secretary of State's new paper, E(80)1, proposes further changes. Unlike the earlier ones, these were not agreed with the Solicitor General, who was away. Both he and the Attorney General are attending this meeting.
3. You yourself saw the paper over the week-end. I believe you felt it might not go far enough to meet the Committee's wishes, and you also asked that Mr Prior should be prepared to spell out the exact implications of his proposals. He may circulate a further Note on this point. The Secretary of State for Trade (in his letter to Mr Prior of 11 January) has also criticised the proposals as not going far enough.

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HANDLING

4. After an introductory statement by the Secretary of State for Employment, I suggest you divide the discussion into four parts:

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the effect of the present proposals; whether they go far enough; other possible options; and the future timetable.

5. a) What would the present proposals achieve? It might be useful to test them against the circumstances of the current steel dispute and of the recent partial tanker-drivers' strike. For example:-

i. Would they allow the steel unions to picket steel stockholders?

ii. Would they allow similar picketing outside Hadfields in Sheffield?

|| iii. Would they allow picketing of alternative supplies of fuel oil to a hospital? ||

There are other similar hypothetical situations against which these proposals could be tested, no doubt these will emerge in discussion. You will want the views of the Attorney and the Solicitor General as well as of the Secretary of State.

b) Do they go far enough? Some of these hypothetical cases may throw some light on this question. You yourself were inclined to think they did not. Mr Nott's minute of 11 January takes the same line. (However, he backs Mr Prior over the special problem of the Nawala case). Against this, you have to reckon Mr Prior's judgement on the tactical situation he faces, in negotiation with the TUC and in getting the Bill through the House.

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c) What other options are available? Mr Nott's minute lists some of these. Otherwise the main contenders are:-

i. An attack on trade union immunities as well as those of individuals (despite its title, Mr Prior's paper is almost entirely about Section 13 Immunity of Individuals).

ii. The remoteness test. McShane has overturned the previous tests applied by the Courts. It is proposed to substitute a direct test: "Is the victim of picketing or blacking a party to the dispute, or in direct contractual relationship with such a party?" Is this "one-remove" concept good enough, or should the rights be restricted to direct parties to the dispute?

iii. Should immunities be limited, as they were in the 1974 Act, to action directed to a breach of contract of employment?

I do not think that the Committee can reach a final view on these, or any other, additions to the Bill not covered by the paper. They need a further note by Mr Prior setting out considered views on any proposals which look like starters.

d) Timetable. If Ministers feel that the present proposals do not go far enough, or want more work done, then you will have to ask Mr Prior to bring fresh proposals to a meeting of this Committee next week (Wednesday 23 January on present plans). Cabinet the following day is already over-subscribed with business. I do not think he can risk leaving it any longer, if he is to go through

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genuine consultation with the TUC and prepare amendments before the Bill comes to the end of Committee stage.

CONCLUSIONS

6. The conclusions of the meeting will either be:

i. To approve Mr Prior's proposals and invite him to arrange for Government amendments to be moved on these lines; or

ii. Ask him to consider further options for amendments to the law, and to bring fresh proposals to the Committee at its next meeting.



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14 January 1980