

PRIME MINISTER

The earlier clause was absorbed in the Working Paper - so the answer is yes.

Ans

Have it therefore

cc Mr Whitmore

Hand 100 2

Mr Wolfson

Mr Hoskyns

PA

MS 16/4

PRIME MINISTER

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deprec'd both of the Lord Chancellor's clauses?

The Lord Chancellor has agreed not to press his clause, and Mr Prior proposes to refer to the Code instead.

EMPLOYMENT BILL: Picketing

A 3 ms

At the meeting of E on 13 February the Lord Chancellor suggested adding some words to Clause 14 of the Employment Bill on the following lines:

MS 14/4

"A person shall not be treated as attending for the purpose stated in sub-section (1) above if while there (a) he is in possession of an offensive weapon or (b) he forms one of a group so numerous that by reason of its size it might cause reasonable apprehension in the minds of persons seeking lawful access to their place of work or (c) he obstructs the police or (d) he is insulting or offensive in his language or his behaviour".

He explained that this would be a largely declaratory provision and that its purpose would be to make it clear that S.15 of the 1974 Act provides no immunity for the criminal offences cited and that immunity for civil actions under S.13 is forfeited if a picket commits such an offence; and to remove immunity where pickets are present in such large numbers as to cause intimidation.

It was agreed at the meeting on 13 February that the Home Secretary should consult the police associations about an amendment on these lines. These consultations have now been completed. Broadly speaking, the police associations covering England and Wales were not enthusiastic although they said they would not oppose an amendment on these lines. The Scottish associations were opposed to such an amendment. They feared that, far from clarifying the legal position of pickets, it might create confusion about the respective roles of the civil and criminal law and misunderstanding about the duties of the police.

I am afraid that I have similar misgivings. It would not of course be practicable to list all the offences which might be committed by pickets but by citing particular examples we might create the impression that S.15 did provide some immunity for offences not cited. This difficulty might

well arise in the case of obstruction of the highway, where as you may know, the Opposition have been trying to take the line that S.15 does provide some significant immunity against criminal prosecution. I am advised that if S.15 does in fact confer any such immunity it is only in a technical sense and certainly does not extend to any actual obstruction of a person or vehicle trying to enter a factory. However if obstruction of the highway were added to the list of cited offences it might be necessary to provide a specific exemption to cover "technical" obstruction. This would be very difficult to draft and could create further confusion. The same difficulty would arise if the amendment simply referred to "any criminal offence" without specifying examples. Moreover, if we cited only a few specific offences there would almost certainly be pressure to add others, such as assault and obstruction of the highway, which may be thought particularly relevant to picketing.

Furthermore, a provision of the kind proposed might be misunderstood by employers who thought the sub-section provided a civil remedy against the offences listed. In fact, of course, it would simply mean that a picket had no immunity under S.13 of the 1974 Act from civil action for inducing a breach of contract if in doing so he committed a criminal offence. That is already the position under the existing law if the criminal offence is linked with the inducement.

The risk of misunderstanding is, I think, particularly serious if we were to single out mass picketing for special mention in Clause 14. To the extent that mass picketing is wholly or mainly secondary picketing the Bill already covers it. But the Bill, even with the proposed addition, deals only with the civil law, whereas mass picketing is essentially a matter for the criminal law. Public confidence in the Bill as a whole could be undermined if the wording of the picketing provisions aroused expectations about the future treatment of mass picketing which the civil law cannot, by its nature, fulfil.

However, I believe the most important reason for not now proceeding with an amendment on these lines, is the impact of Michael Haver's statement on the law on picketing on 19 February. His authoritative explanation of the

role of the criminal law in relation to picketing seems to have dispelled much of the public confusion and misapprehension about the legal status of pickets and to have changed the atmosphere in which this whole issue is discussed. His statement made it clear that pickets have no immunity for criminal behaviour and that "the police may limit the number of pickets in any one place where they have reasonable cause to fear disorder". I think the successful containment of the pickets at Sheerness last month - and the public reactions to it - have shown that most people do now understand that the law provides immunity only for "peacefully obtaining or communicating information or peacefully persuading" and that the moment a picket goes beyond that the law affords him no protection.

I believe therefore that there is now less of a case for a declaratory provision than we thought when we discussed this issue at E on 13 February. The purpose the Lord Chancellor had in mind - and which we all supported when he raised this issue at E - can, I now think, be better achieved in the Code on picketing. I intend that the Code should explain in detail how the criminal law affects picketing and how the criminal and civil law interact and that it should take a firm line on the issue of mass picketing.

I sought the views of Willie Whitelaw and George Younger on this. Willie Whitelaw feels that if we were to proceed with an amendment on these lines it would be better to confine it to numbers or mass picketing (since this is the issue on which the Police Federation feel most strongly).

George Younger shares my reservations about proceeding with any amendment on these lines and takes the view that we should try to keep the law in this area as simple as possible. The Lord Advocate is of the same view.

I have written to the Lord Chancellor explaining why, for all these reasons, I do not think that we should now proceed with an amendment of the kind we discussed at E. He has agreed not to press his suggestion. I do not therefore propose to table an amendment but I intend to make it clear at Report Stage that the Code on picketing will provide a comprehensive explanation of the relationship of the criminal law to picketing.

CONFIDENTIAL

I am sending copies of this minute to the Lord Chancellor, other members of E and Sir Robert Armstrong.

Department of Employment
Caxton House

JP
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