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SUBJECT

cc Madler



10 DOWNING STREET

bc A. Duguid.  
— Sir R. Armstrong  
Mr. Hoskyns  
Mr. Wolfson.

From the Principal Private Secretary

2 September 1981

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Trade Union Immunities

As you know, the Prime Minister held a preliminary discussion with your Secretary of State at 1000 today about further legislation in the light of the responses to the Green Paper on Trade Union Immunities. The Chancellor of the Duchy of Lancaster and the Chief Whip, Mr. Hoskyns and Mr. Duguid were also present.

The Prime Minister said that the summary of responses circulated by your office on 27 August showed the complexity of the subject. It was possible to claim some support for almost anything. The Government needed to identify what had most support and would be most effective in shifting the balance of bargaining power.

The Secretary of State for Employment said that the two measures which had the strongest Parliamentary support were further restrictions on the closed shop and the ending of union labour only agreements. His advice would be against making changes beyond these. The unions were in quite a good posture at the moment. They were not united. Further changes would provide them with a rallying point. No measures would have a real impact on bargaining power during this session. If more was attempted, the unions would ensure it did not work. Further measures should be proposed in the next Manifesto for action early in the next Parliament. This Sword of Damocles would encourage self-regulation by the unions, while giving time for the 1980 Act to settle down and to be further tested in the courts. It was working well so far, in a period of unprecedented industrial peace.

The Secretary of State had talked to the principal organisers of the backbench Early Day motion - Gerry Neale, John Loveridge and Angus Maude - who had also asked for periodic reviews of existing closed shops. He recalled that after much debate it had been decided not to include this measure in the 1980 Act, despite strong backbench pressure during the report stage, because parts of industry had regarded it as disruptive. There would still be objections but the case was stronger now. Legislation could provide for revalidation by ballot of existing closed shops within one year of the passing of the Act. Thereafter anyone dismissed from a closed shop where a ballot had not taken place would be able to seek compensation or reinstatement. There could also be provision for

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CONFIDENTIAL

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periodic reviews every three, four or five years. An alternative approach favoured by some would be to provide a right for a fixed percentage - perhaps 10% or 15% - of the workforce to trigger a review of a closed shop agreement. This would be regarded as more disruptive by industry.

The Secretary of State also proposed a new scale of swingeing damages. Where reinstatement was not sought, there could be a basic award of between £2,000 and £3,900 plus a compensatory award without an upper limit. Where reinstatement was sought in addition to the basic award, there could be a special compensatory award of 2½ times annual salary within limits of £12,000 to £20,000. Where an order of reinstatement was not complied with this element would rise to three times salary, subject to a maximum of £25,000.

The Prime Minister felt these scales were much too modest. In a breach of contract case a court might well award damages of at least 5-7 years' salary. She believed that redundancy payments for miners could be as high as £40,000. Where individuals had no alternative jobs to go to, the sums proposed seemed much too low. The Prime Minister also mentioned the merchant shipping case raised by the Secretary of State for Trade in correspondence. The Secretary of State for Employment did not think the problems raised by the Nawala case were acute. He thought they should be dealt with in merchant shipping legislation. To try and deal with them in industrial relations legislation would open up a very wide debate on questions of the definition of a trade dispute and the extent of immunities, arousing the opposition of the entire trade union movement. The Prime Minister pointed out that the main opportunity to use merchant shipping legislation had passed.

The Prime Minister said that many who had responded to the Green Paper seemed to want changes in the definition of a trade dispute, as well as alignment of S.14 Immunities with S.13 and enforceable procedure agreements. The Secretary of State said that he favoured the latter change in the longer term. But as an early change it was mainly supported by those - like the IoD - without responsibility for following it up. In fact almost no existing procedure agreements stood up to legal examination. Such a change would encourage trade unions to withdraw from procedure agreements with consequent damage to industrial relations.

The Chancellor of the Duchy said that the next bill should be seen as one stage in a larger programme of trade union reform. It should go as far as possible without precipitating a conflagration. There was conflict between what was logically desirable and what was practicable. Perhaps the Government should set out its intentions without necessarily acting on all of them now.

The Prime Minister thought this approach contained two disadvantages: it would give the unions advance notice so that they could mobilise opposition and it would emphasise the difference between the Government's beliefs about what was necessary and the action it had taken. She thought there was a strong case for taking at least one bold step, while avoiding very widespread change. The Chancellor of the Duchy said he favoured boldness. The mixed response to the Green Paper would provide a basis for explaining

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CONFIDENTIAL

- 3 -

that many desirable changes could not be made yet. Mr. Hoskyns thought there was a difference between employers expressing uncertainty about timing and Government doing so. Government had to be able to justify a decision not to act where the need was clear.

The Chief Whip thought it was very important that the Government's stance at the next election should be one of real achievement. It would be very damaging if others could argue that two legislative bites had changed very little. Some union opposition was necessary to offset the criticism from those who felt the Government had not gone far enough.

The Secretary of State said that history showed that the unions could defeat legislation if they wanted to. Even where their funds were affected, the Con-mech case showed they could resist paying. If opposition was raised to the point where progress was ended then the electoral stance would be worse. As matters stood the Government could point to changes which had stuck.

The Prime Minister said that no-one was suggesting a very wide-ranging, comprehensive change. But there must be enough progress to defeat critics. Lord Denning's judgement in the Hadmor case had been very critical of part of the 1980 Act. She asked whether the case was going to the House of Lords. The Secretary of State was not sure, but did not think the case was directly relevant. The important thing was to hold the opinion of moderates like Sir John Boyd, Frank Chapple, etc. and maintain the present period of industrial peace. In his view, moderate opinion could not be held if S.14 Immunities were affected at all. The Prime Minister pointed out that Frank Chapple regarded compulsory ballots for elections as a reform of overriding importance. If this was done it might help secure his tacit support for other measures.

The Prime Minister thought that exposing union funds in strictly limited circumstances could help reduce the chance that individuals would end up in prison when the 1980 Act came under more intense pressure. Although it might not be possible or essential to avoid the risk of martyrdom altogether, Mr. Hoskyns thought exposure of union funds would at least reduce the risk that legal action could lead to imprisonment of local trade union organisers. While electoral popularity was not the main criterion, he thought it important that any further change should be readily explained to the electorate and awkward for the Opposition to pledge themselves to changing.

The Prime Minister believed that the promise of further reform of trade unions had been and remained important to the electorate. She remained concerned that the proposed compensation awards from the closed shop were insufficient. She was also concerned that the 1980 Act had not restricted picketing to the employee's premises and to cases where he was in dispute with his employer. It was still possible for employees to engage lawfully in blacking incoming goods or mail where there was no dispute on the premises. At present it was possible for this type of blacking to be enforced or encouraged by pickets drawn from those who worked on the premises. An employer might not act to prevent this. (The Secretary of State considered that action like this would amount to a dispute with the employer.)

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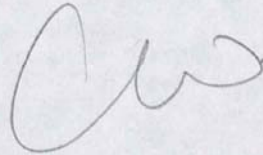
CONFIDENTIAL

- 4 -

The Secretary of State said he would have to put his views to E Committee later in the month after the TUC Conference. Others would be free to criticise his approach. He would give further consideration to the proposed levels of compensation for dismissals from closed shops. His strong advice would be against providing the spark for united opposition by attempting too much. He felt the 1980 Act had achieved far more than had yet been recognised. Further action on the worst abuses of the closed shop and union labour only agreements would consolidate the position. Most of the Parliamentary Party would support this.

In conclusion, the Prime Minister urged the Secretary of State to take account of colleagues' opinions in preparing his paper for E. It was very important to assure the public, including many trade union members, that something tangible was being done to alter permanently the balance of bargaining power and to offer real protection to innocent parties. At present the belief that the Government had done very little was far too widespread. The field should not be left open to others to put proposals which would secure electoral support. Many people had not forgiven the previous Conservative Government for surrendering the right to strike to essential public services. When the inhibitions on trade unions brought about by economic circumstances were lifted, the 1980 Act might prove less effective in restraining secondary action.

I am copying this letter to Davie Heyhoe (Chancellor of the Duchy of Lancaster's Office) and Murdo Maclean (Chief Whip's Office).



Richard Dykes, Esq.,  
Department of Employment.

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