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8 February 1982

MR SCHOLAR

cc Mr Hoskyns
Mr Vereker

EMPLOYMENT BILL: LAY-OFF PROVISION

1. I attach a draft letter that you could send to Barnaby Shaw. I also attach for reference a copy of the minute sent by Lord Soames on 9 February 1981. I suggest that any letter you send should be copied to MPO because of Lord Soames' earlier involvement, Francis Pym's office because he was involved in the discussion this morning - perhaps the Chief Whip's office too - and to the Chancellor because he wrote to Norman Tebbit in the autumn urging him to include lay-off provisions in the Bill.

2. You should be aware that the Institute of Directors, who generally favour more radical action in the Employment Bill, are but one of a number of employer organisations who would resist the lay-off change. Walter Goldsmith has argued in the columns of the Times recently - and elsewhere - that the proper purpose of the Government's efforts to reform trade unions should be to make both sides of industry stick more firmly to their contractual obligations. Indeed, IoD would like to see procedure agreements made enforceable at law. He argues that the purpose of the lay-off provision would be to relieve employers of contractual responsibilities - ie ie precisely opposite to the direction in which he believes we should be moving.

3. On the other hand, EEF argue with equal conviction that the lay-off provision is necessary to meet two rather different sets of circumstances:
 - (a) to combat selective action;
 - (b) to prevent innocent companies being "bled to death" by strike action in key sectors of the economy.

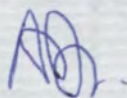
4. It is, of course, possible to argue that these circumstances should be anticipated in collective agreements, but the truth is that it would be very hard to negotiate sensible arrangements with unions used to large amounts of protection under existing contracts - explicit and implied. There is one idea which has increasingly struck me as an alternative approach to deal with problem (a) above: that is to make a more sweeping change than Mr Tebbit presently proposes vis-à-vis unfair dismissals during industrial

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action. If employers were free to dismiss anyone during a strike (at the moment they must dismiss everyone; in future all those on strike at the same time) then this could be an effective way of dealing with selective strikers. Indeed, the knowledge that an employer could dismiss anyone selectively, would do a good deal to deter selective strike action in the first place.

5. If the Prime Minister thinks that this idea might be worth exploring further, we could add a paragraph along the following lines to your Private Secretary letter:

"The Prime Minister has asked whether an alternative approach to combat selective strike action might be for employers to be able to dismiss striking employees selectively, without any provision for unfair dismissal. On the face of it, the knowledge that employers were free to act in this way could discourage selective strike action. This change would not, however, be subject to the criticism - as the lay-off provision certainly will be - that it seeks to override contracts which are freely arrived at. The Prime Minister would be grateful if your Secretary of State could consider whether further changes on dismissals during industrial action might offer an alternative approach."



ANDREW DUGUID

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DRAFT PRIVATE SECRETARY LETTER TO BARNABY SHAW

EMPLOYMENT BILL: LAY-OFF PROVISION

1. The Prime Minister had a brief word with your Secretary of State this morning about the desirability of adding to the Employment Bill provisions to permit the laying-off without pay of employees who were without work because of the industrial action of others. As you are no doubt aware, there have been suggestions in the press that the SDP may seek to introduce provisions along these lines during Committee.
2. Your Secretary of State said that if there was pressure to introduce such provisions, it might be desirable to yield to it, and that he certainly would not immediately oppose it.
3. The Prime Minister recalls that Lord Soames' minute of 9 February 1981 (copied to the Secretary of State for Employment) reported that two draft Bills had been drawn up in consultation with officials in the Department of Employment. One Bill covered all employees; the other was confined to the civil and public services. Since then, the Engineering Employers' Federation, among others, has advocated legislative change of two kinds: to enable employers to lay off employees prevented from working by selective action by some of their fellow employees; and to enable lay-offs during "national emergencies" caused by strikes in key sectors of the economy.
4. The Prime Minister would like to know whether the legislation prepared on a contingency basis was intended to cover both circumstances, and whether it could be grafted onto the existing Employment Bill without major difficulties. She would be grateful if your Secretary of State could arrange for this to be reviewed as a matter of urgency.
5. I am copying this letter to *John Kerr Jim Budge David Heyhoe* Treasury; MPO; Lord President's Office and Sir Robert Armstrong.

and David Wright.

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