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ROYAL COURTS OF JUSTICE,
LONDON, WC2A 2LL

25th September 1984



01-405 7641 Extn

S E C R E T

Prime Minister

TRADE UNION ACT 1984

You asked for further advice on the effect of the coming into force of the Trade Union Act 1984 upon existing strikes, taking into account a note of an opinion expressed in conference by Roger Buckley, QC.

He is reported as having advised that the Act will not be applied retrospectively; this is correct. He also advised that any further acts by a union exhorting their members to remain in breach of their contracts of employment, or urging (or intimidating) those who are working to come out on strike, would be without immunity unless supported by a secret ballot.

I agree with the advice concerning urging those who are working to come out on strike; I advised to the same effect in paragraph 8 of my minute about the dock strike.

The position is not quite so simple as regards acts addressed by a union, after 26 September, to those workers who are already participating in the strike. Whether such an act would be deprived of immunity in the absence of a supporting ballot will depend on the circumstances. It must amount to a fresh inducement to workers to continue to break their contracts or an intimidation of them with the same purpose: e.g. "Don't go back to work or you will lose your union card". It is unlikely that a

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mere exhortation, for example to "stick it out", would be held to be sufficient. Secondly, in order to be actionable (and thus to permit an employer, supplier or customer to claim an injunction) it would have to be shown that it was at least likely to have had the desired effect: for example that the strike was crumbling locally but that the renewed inducement stiffened it up. If a court were not persuaded of the probability of this, it is doubtful that it would grant an injunction.

You asked who might successfully bring an action and whether this would include union members who are on strike, but feel unable to return to work. A union member could not bring an action. This is because section 10 is framed in such a way that the effect of not holding a ballot is that the immunity from legal action given by section 13 of the Trade Union and Labour Relations Act 1974 to Trade Unions is lost. It is generally accepted that a union member cannot bring an action against his union for inducing him to break his contract. In Boulting v. Association of Cinematograph, Television and Allied Technicians [1969] 2 WLR 529 Upjohn L. J. said at page 551 -

"If A procures B to break his contract with C, C can complain because A commits a well established tort against C. But B has no right at law to restrain A from attempting to suborn him from his duty to C. He must resist A's efforts by strength of will. If B succumbs to A's blandishments and contracts with him in breach of his duty to C, B can have no right to complain of A's conduct if A performs his contract with B, which the latter has so wrongly entered into."

An action could be brought by the union member's employer, or by a person whose commercial contract has been broken



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or interfered with by the union, or threatened with such breach or interference. Such a person could be a supplier of goods or services to the employer or a customer of the employer.

Although a union member might not be able to bring an action under the Trade Union Act 1984, he might have a cause of action at common law; he might be able to prove, for example, the torts of intimidation or besetting his home.

I have discussed this minute with the Attorney General and he agrees with it.

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IND Pac: Relations # 11

