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PREM 19/804

SECRET

PART 8

MT

Confidential filing

Industrial Relations Legislation

The Employment Bill

INDUSTRIAL POLICY

PART 1: MAY 1979
PART 8: OCT 1981

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~16.10.81~~		26.2.82					
~~29.10.81~~							
~~23.11.81~~							
~~10.12.81~~							
~~4.1.82~~							
~~15.1.82~~							
~~14.1.82~~							
~~21.1.82~~							
~~25.1.82~~							
~~27.1.82~~							
~~17.2.82~~							
~~25.2.82~~							

PREM 19/804

PART 8 ends:-

MCS to Shaw, Emp. 26.2.82

PART 9 begins:-

J. Vereker to MCS 24.3.82

TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

Reference	Date
E(81) 103	21.10.81
E(81) 108	27.10.81
E(81) 30th Meeting, LCA, Minute	29.10.81
E(81) 12	6.11.81
E(81) 33rd Meeting, Minute 1	10.11.81
E(81) 33rd Meeting, LCA, Minute 1	10.11.81
C(81) 59	9.12.81
L(82) 15	21.1.82
L(82) 3rd Meeting Minute 1	27.1.82

The documents listed above, which were enclosed on this file, have been removed and destroyed. Such documents are the responsibility of the Cabinet Office. When released they are available in the appropriate **CAB** (CABINET OFFICE) CLASSES

Signed M Wayland Date 13 September 2012

PREM Records Team

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10 DOWNING STREET

From the Private Secretary

SECRET

26 February 1982

Employment Bill: Lay-off Provision

The Prime Minister has seen your letter of 22 February and your Secretary of State's letter of 23 February to the Chancellor on the same subject.

Subject to any views the Chancellor may have, she is inclined to accept your Secretary of State's view that the power to lay-off employees during selective strike action should not be pursued for the time being. But she has asked whether an alternative approach to the problem of selective strike action might be for employers to be given a freer hand to dismiss some or all of their employees who are taking selective strike action, without any risk of unfair dismissal proceedings. This would mean removing the constraints in the present Bill which require employers to give notice of intention to dismiss and then to dismiss everyone who is still on strike on the due day. Instead, there would be no question of any individual who was dismissed during a strike (when he is in breach of contract) being able to claim unfair dismissal. She fears that the constraints proposed will make it too easy for unions to implicate large numbers of people - or especially key personnel - in strike action on the day when notice falls due. She recalls that the EEF and Lord Weinstock drew attention to some aspects of this problem in their submissions to Mr. Tebbit on the latest proposals.

On the face of it, the knowledge that employers were free to act in this way should discourage selective strike action. This change would not, however, be subject to the criticism - as the lay-off provision certainly would 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 to the problem.

The Prime Minister welcomes the further work that your Secretary of State has commissioned on the possibility of legislation covering lay-off during national emergencies.

I am copying this letter to John Kerr (HM Treasury) and David Wright (Cabinet Office).

M. C. SCHOLAR

J.B. Shaw, Esq.,
Department of Employment.

SECRET

CS

Prime Minister (1)

25 February 1982

MR SCHOLAR

May I write as suggested?
MLS 25/2
Yes pls

EMPLOYMENT BILL: LAY-OFF PROVISION

1. My note below to the Prime Minister coincided with the arrival of two letters from Norman Tebbit's office setting out his views on the lay-off provisions.

2. Mr Tebbit is quite clear that he does not want to use the present Employment Bill as a vehicle for making any change affecting employers' rights to lay off their employees.

3. In any event, he says he is not attracted to legislation to permit lay-offs in response to selective strike action by some of the employees of the company concerned. If the Prime Minister accepts this conclusion, it would still make sense to consider the "freedom to dismiss" option instead. I hope, therefore, that the Prime Minister will agree to you sending a revised draft letter, asking Mr Tebbit to consider this idea.

4. Mr Tebbit is more willing to contemplate legislation covering lay-off during national emergencies. Obviously we should welcome some further thinking on this. As our earlier notes have indicated, we doubt whether Parliament could or should give Government the power to override contractual obligations in these circumstances. But there can be no objection to further study of the issue.

ANDREW DUGUID

CONFIDENTIAL

Prime Minister (2)

cc AD

MLS 24/2

Ind. Policy

SECRETARY OF STATE FOR EMPLOYMENT

Caxton House Tothill Street London SW1H 9NA

Telephone Direct Line 01-213 6400 GTN 213
Switchboard 01-213 3000

Rt Hon Sir Geoffrey Howe QC MP
Chancellor of the Exchequer
Treasury
Great George Street
LONDON SW1

23 February 1982

Dear Geoffrey,

EMPLOYMENT BILL: LAY-OFF PROVISIONS

Thank you for your letter of 17 February about lay-off provisions. You will have seen Barnaby Shaw's reply to Michael Scholar's letter of 8 February.

I too have some sympathy with the EEF whose members would like to arm themselves with a power of lay-off. Indeed the EEF's Policy Committee pressed me hard on their proposals at a meeting which I had with them last week. I still believe, however, that the objections are too great - the tactical objections, such as those argued by Walter Goldsmith, and the practical ones. I see great difficulty, for example, in building in the necessary safeguards to prevent abuse: I have considered the possibilities further, but I am not yet persuaded that satisfactory safeguards could be devised which would not render the power ineffective. I do not think it would be regarded as defensible to give employers generally total discretion or carte blanche in their use of the power.

From the Government's point of view I am sure that we are right to limit the Bill to the not insignificant changes in trade union immunities and the closed shop on which we have decided and for which we have clear support from employers generally. However as my Private Secretary said in his letter to No 10, I think that we would be justified in introducing legislation covering lay-off during national emergencies - the second of the EEF's proposals - at the time of a particular dispute if it was clearly seen to be in the national interest and the public supported it. I have therefore asked my officials to work up some policy proposals to this effect.

Given their general stance on industrial relations questions it would indeed be surprising if the SDP brought themselves to table amendments to the Bill on lay-off - although I recognise that some of our backbenchers may do so. No one on their side of the House, nor indeed on ours, spoke about lay-off during the second reading debate on the Bill, and as far as I know, there has only been one fleeting reference in the press to the SDP's examination of the lay-off proposals.

I am copying this letter to the Prime Minister.

Yours ever,
Norman


3 FEB

ks

SECRET

Prime Minister (2)

MLS 23/2

Caxton House Tothill Street London SW1H 9NA F
6400
Telephone Direct Line 01-213
Switchboard 01-213 3000
GTN 213

Michael Scholar Esq
10 Downing Street
LONDON SW1

22 February 1982

Dear Michael

EMPLOYMENT BILL: LAY-OFF PROVISION

Thank you for your letter of 8 February about the possibility 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 say, there are two draft Bills in existence - one covering the generality of employees and the other being limited to the civil and public services. Both Bills were designed to deal with the consequences for employers of selective industrial action by some of their employees. The Bills were therefore confined to provisions enabling employers to lay-off without pay any of their employees whose work was affected by the industrial action of other employees of the same employer or an associated employer. The Bills are necessarily of a draconian character and enable employers to lay-off their employees where their work is affected to any extent. Where the employer validly exercised the right of lay-off, statutory obligations would not be enforceable and common law rights, contractual obligations and collective agreements would be abrogated.

In answer to the Prime Minister's question, therefore, the contingency legislation was intended only to cover the circumstances of selective industrial action by employees of the same employer. This was in accordance with E Committee's remit (E(80)35th Meeting, Item 1) at the time. Nevertheless, my Secretary of State believes that it would be prudent now to work up policy proposals for similar contingency legislation to cover the other circumstance mentioned by the EEF, namely lay-off during "national emergencies" caused by strikes in key sectors of the

economy. He believes that it would be defensible to introduce such legislation at a time when it was clearly in the national interest and there was public support for it. Officials in the Department are therefore putting this in hand.

The Prime Minister also asked whether the contingency legislation already drafted could be grafted on to the existing Employment Bill without major difficulties. The contingency Bill applying to all employees runs to eight clauses and a schedule - which could be reduced to five or six clauses and a schedule as part of another Bill. There would therefore be no possibility of making provision for lay-off in the Employment Bill by simple amendments. If the substance of the contingency Bill were to be added to the Employment Bill, which now consists of 18 clauses and 3 schedules, it would therefore amount to more of a "transplant" than a "grafting".

My Secretary of State judges that it would be very surprising if the SDP came to advance amendments to the Employment Bill to provide for lay-off. If they or any Conservative backbenchers did so, however, Mr Tebbit would certainly express sympathy, but he would not wish to give them positive support in the context of the present Employment Bill. His view is that we should not depart from the conclusions reached by E Committee last October (E(81) 30th Meeting) when Ministers decided that lay-off provisions should not be included in the current legislation.

My Secretary of State has just received the letter from the Chancellor dated 17 February, and will be replying to it separately.

I am copying this letter to John Kerr (HM Treasury), Jim Buckley (Management and Personnel Office), David Heyhoe (Lord President's Office) and David Wright (Cabinet Office).

Yours

Barnaby Shaw

J B SHAW
Principal Private Secretary

22 February 1982
Policy Unit

PRIME MINISTER

EMPLOYMENT BILL: LAY-OFF PROVISION

1. You queried whether paragraph 2 of the draft letter represented the point at paragraph 3(a) below.

2. The letter was intended to raise a different point. Michael Scholar's earlier letter (see Flag A) has already made the distinction in paragraph 3 between lay-offs to combat selective action and lay-offs in response to "national emergencies".

3. I was trying to suggest that there was another way of tackling the selective strike problem - which could be pursued either in addition to changes in lay-off arrangements, or instead of such changes. I have redrafted the letter to make it clearer that the "freedom to dismiss" option is intended to be an alternative approach.

4. Paragraphs 5, 6 and 7 below outline this alternative approach.

5. Several months ago, the Department of Employment thought the "freedom to dismiss" approach was too radical. But now the climate has changed and we are seriously considering the lay-off provisions, which were also thought too radical at first. The purpose of the letter is - if you agree - to encourage the Department of Employment to consider whether "freedom to dismiss" might not be a better way forward. If employees knew that selective strike action might be met by selective dismissals, they might think twice about volunteering to participate in selective strikes.

6. Can Michael send the amended version of the letter?

ANDREW DUGUID

DRAFT PRIVATE SECRETARY LETTER GR / PM type bc AD

EMPLOYMENT BILL: LAY-OFF PROVISION

1. The Prime Minister has seen your letter of 22 February and your Secretary of State's letter of 23 February to the Chancellor on the same subject.

2. Subject to any views the Chancellor may have, she is inclined to accept your Secretary of State's view that the power to lay-off employees during selective strike action should not be pursued for the time being. But she has asked whether an alternative approach to the problem of selective strike action might be for employers to be given a freer hand to dismiss some or all of their employees who are taking selective strike action, without any risk of unfair dismissal proceedings. This would mean removing the constraints in the present Bill which require employers to give notice of intention to dismiss and then to dismiss everyone who is still on strike on the due day. Instead, there would be no question of any individual who was dismissed during a strike (when he is in breach of contract) being able to claim unfair dismissal. She fears that the ~~the~~ proposed constraints will make it too easy for unions to implicate large numbers of people - or especially key personnel - in strike action on the day when notice falls due. She recalls that the EEF and Lord Weinstock drew attention to some aspects of this problem in ~~his~~ their submissions to Mr. Tebbit on the latest proposals.

3. On the face of it, the knowledge that employers were free to act in this way should discourage selective strike action. This change would not, however, be subject to the criticism - as the lay-off provision certainly would 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 to the problem.

4. The Prime Minister welcomes the further work that your Secretary of State has commissioned on the possibility of legislation covering lay-off during national emergencies.

5. I am copying this letter to John Kerr and David Wright.

Prime Minister (1)

19 February 1982

MR SCHOLAR

Agree that I write as proposed?
MLS 19/2

cc Mr Hoskyns
Mr Vereker

EMPLOYMENT BILL: LAY-OFF PROVISION

1. You wrote on 8 February to Mr Tebbit's office recording the Prime Minister's brief discussion with him at which it was agreed that he should not rule out amendments to provide for lay-offs during strikes. Your letter also asked for an urgent look at the legislation proposed on a contingency basis a year ago.

2. The Chancellor has now written to Mr Tebbit suggesting that the Government should pre-empt the SDP by introducing lay-off provisions itself.

3. It is important to recognise that the EEF has made two lay-off proposals, designed to meet two rather different sets of circumstances:

   (a) to enable employers to lay off employees prevented from effective working by selective action by some of their own colleagues; and

   (b) to enable lay-offs during "national emergencies" caused by strikes in key sectors of the economy.

4. It seems to us that there is a stronger case for lay-off powers of the first kind than the second. Selective action is insidious, effective and growing. The present legal framework is almost tailor-made to encourage selective action by small and indispensable groups, like computer operators. (During the Civil Service strike, some of the handful of strikers actually received more take-home pay than when they were working - because although strike pay was 85% of normal pay, it is not taxable.) Ideally, companies should reach collective agreements about the circumstances in which lay-offs were possible. In practice, it is very hard to negotiate sensible arrangements with unions who are already used to large amounts of protection under existing contracts - explicit and implied.

5. But there is another way of combatting selective action which is worth considering, and could still be introduced as an amendment to the present legislation. This would be to remove any constraints on employers' right to dismiss strikers (who are, of course, in breach of their employment contracts). This would enable employers to fight fire with fire - ie selective dismissal as a possible response to selective action.

6. The present legal position means that if anyone is dismissed during a strike, everyone who struck must be dismissed. If this is not done, those dismissed can claim unfair dismissal. This could be highly inconvenient, especially if a one-day all-out strike was quickly called to implicate everyone in a large organisation. Mr Tebbit's Bill will improve matters a little. In future, employers will be able to give notice of their intention to dismiss everyone who remains on strike at a certain time, with no obligation to treat earlier strikers in the same way. But we think that even this could be thwarted by a quick all-out strike to implicate more people on the day dismissals were due. In any event, the employer may not want to dismiss everyone at a certain date - some key personnel may have a particularly high value. But he will be obliged to dismiss them if they are persuaded to strike, and he will be unable to re-engage them later. (Lord Weinstock drew attention to this restriction in his response to Norman Tebbit's proposals.)

7. A simple solution exists. That is to say that anyone dismissed during a strike - when he is in breach of his contract - has no claim to unfair dismissal. The employer would then have carte blanche to respond to selective strike action. This has the advantage over the lay-off provision that it does not involve legislation which, in effect, overrides contractual arrangements.

8. If the Prime Minister agrees that this idea is worth further consideration, we suggest that you should write to Norman Tebbit's office along the lines of the attached draft.

9. There remains the question of the wider lay-off provision, to prevent innocent companies being "bled to death" by strike action in key sectors of the economy. The best answer to this may be for companies to make provision for such circumstances in their collective agreements, or through negotiation when the situation arises. To give employers power to suspend contracts, or to give Government the power to trigger the right to lay off, perhaps with the safeguard of an affirmative resolution, would be open to strong criticism. It would involve power to override freely-negotiated contracts, which sets a dangerous precedent. The Department of Employment should be reporting shortly on the pros and cons.

ANDREW DUGUID

DRAFT PRIVATE SECRETARY LETTER

EMPLOYMENT BILL: LAY-OFF PROVISION

1. The Prime Minister has seen the Chancellor's letter to your Secretary of State of 17 February in which he suggests that the Government should consider pre-empting the SDP and adding something along the lines of the EEF provision itself. She awaits your Secretary of State's views with interest.

2. 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.

I am copying this letter to John Kerr and David Wright.

CONFIDENTIAL

cc AD

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

17th February 1982

The Rt. Hon. Norman Tebbit MP
Secretary of State for Employment

Prime Minister.

Dear Norman

EMPLOYMENT BILL: LAY-OFF PROVISIONS

I have seen Michael Scholar's letter to Barnaby Shaw of 8 February about lay-off provisions.

As you know from my letter of 16 October, I feel some considerable sympathy for the proposals put forward by the EEF. I argued then, partly on the basis of the experience of my Departments in the Civil Service dispute last year, that giving power to employers to suspend other employees without pay when their operations were being disrupted by a small group of workers could be an important step in redressing the current imbalance in industrial relations. We decided on balance not to include such a provision in the Bill. But the suggestion that the SDP may seek to introduce provisions of this sort during Committee leads me to wonder whether it would not be right to preempt them and add something along the lines of the EEF provision ourselves.

I am of course aware of the arguments used by Walter Goldsmith in his letter published in the Times on 2 February. There is no doubt that giving employers powers to lay off without pay runs contrary to the principle of binding legal agreements on both sides and could be divisive. But it seems to me that we are, even with the Bill, so far from legally enforceable collective agreements in practice that further measures to change the balance of industrial power are urgently needed. Their absence contributes to higher unemployment. The fact that it would be for the employer to judge in the circumstances of the particular dispute whether to invoke these powers should not be lost sight of.

I think therefore that provision on these lines would be a most useful adjunct to the present Bill. I would judge that unless there is a real risk that their introduction would risk losing it we should be prepared to grasp this nettle ourselves.

I am copying this letter to the Prime Minister.

Yours ever
Geoffrey Howe

GEOFFREY HOWE

JU39 CONFIDENTIAL

DEPARTMENT OF INDUSTRY
ASHDOWN HOUSE
123 VICTORIA STREET
LONDON SW1E 6RB
TELEPHONE DIRECT LINE 01-212 3301
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Secretary of State for Industry

16 February 1982

The Rt Hon Norman Tebbit MP
Secretary of State for Employment
Caxton House
Tothill Street
London SW1H 9NF

Dear Norman,

EMPLOYMENT BILL: CLOSED SHOP

Thank you for your letter of 8 February about the closed-shop and small firms.

2 I entirely agree that small firms should not be exempt from these provisions. I hope, however, that industrial tribunals will take due account of the resources of the small employer at least when apportioning an award between it and the union concerned. But I am content to leave this matter entirely to your judgement.

3 I am sending copies of this letter to the recipients of yours.

Yours ever

Patrick


17 FEB 1982

Orders of the Day

Employment Bill

Order for Second Reading read.

Mr. Speaker: Before I call the Minister I wish to make a brief ruling. The three Instructions on the Order Paper are out of order, but their general substance can be raised during the debate.

3.31 pm

The Secretary of State for Employment (Mr. Norman Tebbit): I beg to move, That the Bill be now read a Second time.

"Some people say that you cannot solve the problems of industrial relations simply and solely by the operation of the law. Every single member of the Government agrees with that . . . there is not a single law on the statute book that would work if there was not a general will to work it . . .

The trade union movement must now decide consciously whether it is right that the institutions which govern industrial relations are to remain the one absolutely sacrosanct set of institutions . . . No Government could possibly accept that limitation, least of all in a period of history when industrial production and industrial relations lie at the heart of the whole process of change.

I do not believe for one moment that the trade union movement as a whole and its membership takes that view. Trade unionists are people as well as organised factory or office workers. Their wives are consumers and citizens . . . To legislate on this is really not very different from asking a Government to legislate about working conditions, equal pay, a minimum wage, industrial training, or any of the many issues on which the trade union movement have been urging the Government to legislate in the industrial field . . .

It is the reality of Britain's position in the world which confronts the Government. It is a much harsher reality. It is about the real world in which we have to earn a living. It is about the way in which we can use new technology to lift our living standards.

It is about the protection of the human being in an age of undreamed of power which can so easily hurt people and in certain circumstances crush and destroy them."

I hope that the House will forgive me for sticking so closely to my text at this stage of a speech, but I wanted to be careful about what I said. Everything that I have said since I moved the Second Reading is a direct quotation from a speech made by the right hon. Member for Bristol, South-East (Mr. Benn) at Red Lion Square Holborn, on 19 April 1969. I hope that we will hear no more of the line that there is no role for the law in industrial relations.

Having established the common ground, on which I still stand, but from which the right hon. Gentleman and his friends have fled, I wish to come to the detail of the Bill—*[Interruption]*. The right hon. Member for Feltham and Heston (Mr. Kerr) may not think that the right hon. Member for Bistol, South-East treated these matters seriously I am doing the House the compliment of doing so.

Under the Labour Administration an unprecedented volume of employment legislation reached the statute book. They also re-enacted most of the earlier statute law, going back to 1871 and 1906. I hope that without being too controversial I can show some of the lessons that we should have learnt from that experience. In the first place, it followed the logic of the right hon. Gentleman and showed the impossibility of excluding the operation of the law from industrial relations—despite what the Labour Party and its owners say now, as they parrot their cry that "the law has no place in industrial relations".

Of course, the plain fact is that the laws which give trades unions rights are laws which take away the historic common law rights of the people. There is a case for so doing—within limits. But we have seen the folly of divorcing rights from obligations and power from responsibility. Unlimited immunity for industrial action leads not to peace and stability, but to conflict and stalemate, as we saw in the winter of 1978–79.

That experience demonstrated the injustice that is bound to result if the rights of the individual are totally subordinated to those of the group. The closed shop legislation of 1974 and 1976 led directly to the arraignment of the United Kingdom before the European Court of Human Rights. The consequences of the court's judgment in that case are matters to which I shall return later.

Mr. A. J. Beith (Berwick-upon-Tweed): Why did the Minister and his colleagues send the Solicitor-General to Strasbourg to defend the action of British Railways?

Mr. Tebbit: The Solicitor-General was sent to defend the Government's view that the 1980 Act had put matters right—*[Interruption.]* There is still a case for improving compensation for those affected. The Solicitor-General was not discussing the level of compensation under the 1980 Act. He was defending the Act itself. He was not defending the Labour Government's Acts of 1974 and 1976. That experience demonstrated that injustice is bound to result.

The Bill before us today, like the 1980 Act introduced by my right hon. Friend the Secretary of State for Northern Ireland, is a modest measure, in both size and purpose. We have not sought to transform the whole framework of industrial relations law. Nor have we fallen into the error of assuming that good industrial relations can simply be legislated into existence. We have not attempted root and branch reform on the lines of "In Place of Strife", nor the 1971, 1974 and 1976 Acts.

We have tried to provide specific remedies for real abuses, to provide effective protection where it has been shown to be necessary, and to redress the imbalance of bargaining power to which the legislation of the last Government had contributed so significantly.

Mr. Clinton Davis (Hackney, Central): How does the Minister equate what he is saying now with the words of Lord Denning in the Nawala case? He said :

"The only weapon . . . at the disppsal of the International Transport Workers Federation which they can use so as to ensure fair play for seamen and the like is the weapon of 'blacking'. If it were taken away in this case it would mean that it would be taken away virtually in all the cases in which they operate for the benefit of seafaring men."

Mr. Tebbit: The law of Great Britain is concerned with British citizens and actions on British property. It does not purport or set out to govern the conditions of work of people who express themselves perfectly happy with their conditions in countries abroad where those contracts are made. If they are not happy, it is for them to take strike action against their employers. That is not in question in the Bill. The point—the hon. Gentleman will forgive me if I return to it later—is the sort of dispute where outsiders come in when there is no disput between the employer and his employees.

We have not acted hastily. The Bill is the product of 12 months' consultation, first on the Green Paper of

PAYMASTER GENERAL

Trade Unions (Meetings)

36. **Mr. Christopher Price** asked the Paymaster General how often he has met representatives of the recognised trade unions relevant to his responsibilities since assuming office.

The Paymaster General (Mr. Cecil Parkinson): Since assuming office I have had one meeting, at Crawley, with representatives of all the trade unions relevant to my responsibilities as Paymaster General.

Mr. Price: Reverting to the question, and the discharge of all the multifarious responsibilities, both towards his office and towards his party, that the right hon. Gentleman has when sitting as a member of the Cabinet, will he congratulate Mr. Clive Jenkins on using Tory legislation to try to get some information about takeovers in some of the firms in which his members are affected? Will he repudiate all the scare stories in the press that the Government are amazed at the legislation that they have passed—allowing trade unions access to this information—and that they will ensure that the trade unions get no further information of any kind about this matter? Will he ensure that all trade unions get further information of this kind?

Mr. Parkinson: I am responsible for the activities of 982 people at Crawley. As far as I know, few of them, if any, are members of Mr. Clive Jenkins' union. One of the bonuses of my job is that I have never had to meet him or take much notice of what he says.

Privatisation

37. **Mr. Murphy** asked the Paymaster General whether he has any plans for privatisation in his Department.

Mr. Parkinson: The cost and effectiveness of my Department are subject to regular review and where it is found that a satisfactory service could be provided at lower cost by the private sector, this course is examined. For example, a recent review of my Department's night custody arrangements resulted in the transfer of these functions to a specialist security firm.

Mr. Murphy: I thank my right hon. Friend for that most encouraging reply. Will he undertake to commend to his ministerial colleagues the considerable advantages of privatisation?

Mr. Parkinson: It is not necessary to recommend to my colleagues the advantages of using the private sector. Whenever the opportunities arise, I know that that is what many of my colleagues do.

Mr. Ogden: Did the right hon. Gentleman say that during his period in office he has met one group of representatives of trade unions on one occasion? Will he place in the Library perhaps, the record of what he has been doing with the rest of his time?

Mr. Parkinson: I should be happy to do that, but the question asked how often I had met representatives of the trade unions whose members work in the offices at Crawley. I have met them on one occasion. Of course, the management of the Paymaster General's office has regular meetings under the umbrella of the Whitley Council with the unions which work in the Paymaster General's office.

Ministerial Consultations

38. **Mr. Adley** asked the Paymaster General with which bodies and individuals outside Government it is his practice to consult in the discharge of his ministerial duties.

Mr. Parkinson: It has not so far been necessary to consult any outside bodies in the discharge of my ministerial duties. I would, of course, be happy to meet any interested bodies if they wish to raise with me specific issues relevant to my duties.

Mr. Adley: Am I right in thinking that my right hon. Friend acts in the role of banker to the Government? Will he consider taking a lesson from the average bank manager who has a duty to tell his client—as my right hon. Friend might find it his duty to tell the Government and the people—that if one earns £1 and spends 95p one will be happier than if one earns 95p and spends £1?

Mr. Parkinson: My hon. Friend underlines a point that is brought home forcefully to me because the public expenditure on which the House votes translates itself in my Department to 35 million banking transactions and cheques. That shows that the public expenditure about which we speak in abstract terms involves a huge volume of transactions and that there is a limit to what the country can afford.

January last year and then on the proposals that I made on 23 November. Those consultations show that the proposals in the Bill command wide support in industry. Opinion polls have repeatedly shown that they have the approval of the majority of the electorate and the majority of trade union members.

For many of us the cause of liberty requires more commitment than to hold hands and sing the "Red Flag" once a year. For those concerned with freedom, the closed shop—trade union conscription—is a matter of deep concern. Therefore, more than half of the clauses in the Bill are concerned directly or indirectly with that subject. Indeed, that is why I toyed with the idea of calling it the "workers' rights Bill", but of course it goes beyond the rights of workers to the rights of the whole community.

Since we debated the 1980 Act proposed by my right hon. Friend we have received the judgment of the Europen Court of Human rights.

Mr. Frank Dobson (Holborn and St. Pancras, South): The list that I have here is from General Jaruzelski's speech.

Mr. Tebbit: I believe that the hon. Gentleman's party has more connections with East Europe than mine has. We have received the judgment of the European Court of Human Rights in the British Rail case.

Mr. Dobson: Does the right hon. Gentleman and his right hon. Friend the Prime Minister support the call of the Solidarity movement in Poland for workers' control of industry and no limitations on the right to strike?

Mr. Tebbit: We support the right of people throughout the world to free elections. That is denied in Poland. The arrangements made after free elections are matters for the peoples of the countries concerned. I hope that the hon. Gentleman will accept that the arrangements that we make in Britain after a free election are for Parliament and for Parliament only—not for outsiders to try to use muscle to break what Parliament has willed.

Mr. Greville Janner (Leicester, West) *rose*——

Mr. Tebbit: Since we debated the Act proposed by my right hon. Friend we have received the judgment of the European Court in the British Rail case. The court found the closed shop legislation, which was supported by the Labour Party and by Social Democratic Party Members who were then in the Labour Party, to be in clear breach of the European Convention on Human Rights.

The House would like to know this afternoon, as we have not yet heard, whether the right hon. Member for Chesterfield (Mr. Varley) supports that judgment or still thinks that it is wrong. Indeed, we should not mind hearing from the right hon. Member for Crosby (Mrs. Williams) on that, and we should be interested to read a letter in *The Times,* perhaps from Mr. Jenkins, who is such a distinguished supporter of the European ideal and the court.

Mr. Cyril Smith (Rochdale): If the Secretary of State considers my record on the closed shop, he will see that it leaves nothing to be desired. It leaves nothing to be desired from the Government's point of view on the closed shop. Will the Secretary of State say, since the closed shop is a contravention of human rights why the Bill continues to leave the closed shop as a legal institution?

Mr. Tebbit: The hon. Gentleman makes a fair point and is perfectly correct when referring to his own record and that of most of his Liberal colleagues on this matter. I do not know how they get on with their new colleagues, who were so firm in their support of the 1974 and 1976 Acts. Perhaps the clue is that they do not.

I regard the closed shop as a very unhappy arrangement. I am a practical man, who believes in reform step by step, as public opinion supports it. Since we have the closed shop institution, the best thing that we can do at present is to provide protection and redress for those who are damaged by it. I hope that I have the hon. Gentleman's support in going that far—in fact I know that I do—and that he would like me to go further.

Mr. John Prescott (Kingston upon Hull, East) *rose*——

Mr. Tebbit: I shall not give way. The point is that those who supported the 1974 and 1976 laws—the Labour Party and its Members who now belong to the Social Democratic Party—violated the convention to which successive Governments had subscribed since 1950. I should like to hear from the right hon. Member for Chesterfield whether he still wants to return to those laws and days and again break that convention.

Mr. Harold Walker (Doncaster): I remind the right hon. Gentleman that the first statutory provision for closed shops was introduced in the 1971 Act, on the initiative of his Government, to provide specific approval for closed shops in particular cases, such as the seamen and actors.

Mr. Tebbit: If I remember correctly, it was an agency shop and there was clear protection for many of those involved.

Mr. Prescott: Not in this Bill.

Mr. Tebbit: The official view of both the Labour Party and the trade union hierarchy is that to allow four part-time dinner ladies to give schoolchildren their lunches in Walsall would undermine the whole structure of the trade unions in Britain. That is the extremity of their position on the closed shop. The bigots of the big battalions refer to the dinner ladies as "bounty hunters" or "free loaders". Their suffering is brushed aside, in the words of a trade union official, Mr. Eric Faux of NALGO, who said

> "It may appear to be unfair, undemocratic and un-British, but it is not illegal".

What an attitude! At least we will give them some decent compensation for the damage done to them by creatures of that sort.

The cases of those dinner ladies and the British Rail employees who went to the European Court seeking justice that would be fair, democratic and British—however much that sticks in the gullet of some people—have struck the conscience of the nation. However, many others have been denied justice altogether. Therefore, clause 1 is a direct response to the suffering caused by the last Government's closed shop legislation.

It is not retrospective legislation. For example, it is not like the attempt by Mr. Roy Jenkins to claim a retrospective increase in television licence fees. That was struck down by the court of Appeal. It is not the same as the retrospective tax amnesty for Fleet Street trade unionists who had fiddled their income tax for years by using fictitious names. The clause creates no new rights or duties. It does not retrospectively declare unfair what the law then said was fair. It simply provides a power to be exercised at the Secretary of State's discretion, to compensate from public funds people sacked without the

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possibility of redress between 1974 and 1980, who would have been entitled to compensation if the main provisions of the 1980 Act had been in force.

It is no more retrospective legislation than, for example, the last Government's Pneumoconiosis Etc. (Workers Compensation) Act 1979, on which it is closely modelled. Nor is it any more of a constitutional novelty than the last Government's retrospective restoration of tax exemption to trade unions in respect of their provident funds, at a cost of about £10 million to the Exchequer. We cannot undo the wrongs of the past, but we can offer some restitution to those who suffered because the law gave them no protection at the time.

Mr. George Cunningham (Islington, South and Finsbury): Will the right hon. Gentleman give way?

Mr. Tebbit: Perhaps the hon. Gentleman will forgive me if I do not.

On 29 January the *Financial Times* reported that union leaders had drawn a comparison with legislation which "prevented convicted murderers from going to the gallows". The bigotry of the defenders of the closed shop is well illustrated by that kind of language. Of what crime are these people accused? It is that of defying the press gang that operated under the 1974 and 1976 Acts.

When I presented my proposals to the House on 23 November, I said that our aim was twofold: first, to safeguard the liberty of the individual from the abuse of industrial power—an aim referred to by the right hon. Member for Bristol, South-East in the quotation that I made—secondly, to improve the operation of the labour market by providing a more balanced framework of industrial relations law.

The proposals in clauses 2 to 11, all but one of which relate to the future operation of the closed shop and allied practices, illustrate that very clearly. The essence of the closed shop is that it gives a trade union control over who works for an employer and who does not work for him. At the worst, it means that an employer is forced to abdicate the right to decide whom he employs and even how many people he employs. The closed shop need not, but too often does, reinforce restrictive practices and inefficient working methods. It damages competitiveness, and therefore in the long run it destroys jobs.—[HON. MEMBERS: "Claptrap".] Then hon. Members must ask themselves why this is one of the few countries in the world whose legislation legalises the closed shop. It may have something to do with the fact that we have also been one of the poorest industrial performers in recent years.

That is not the only or the most serious criticism that we level against the closed shop. I have already mentioned the victims of Labour-controlled local authorities——

Mr. Stanley Orme (Salford, West): Lazy workers.

Mr. Tebbit: No, in many cases it is workers who want to get on and work more effectively but who are prevented from doing so. The right hon. Gentleman knows that perfectly well.

Mr. Allen McKay (Penistone): Will the right hon. Gentleman look at the history of the mineworkers who operate a closed shop in Northampton? What about the way in which they have increased production and slimmed down their industry to suit the prevailing circumstances? What about the way in which they have taken mechanisation to its full fruition? That is the result of a closed shop system.

Mr. Tebbit: I do not want to get into a tangle with the hon. Gentleman about the productivity of the miners. I said that the closed shop need not, but too often does, reinforce restrictive practices. I do not say that it does so in every case; merely that it too often does.

Mr. Prescott: Which cases?

Mr. Tebbit: For a start, the hon. Gentleman might look at parts of the engineering industry, where he might just possibly find the odd case or two.

I have mentioned—*[Interruption.]*

Mr. Speaker: Order. I remind the House that I have today had indicated to me one of the longest lists that I have seen since becoming Speaker of hon. Members on both sides of the House who hope to take part in the debate. I already know that many of them will be unable to do so, but we might as well listen to those who are fortunate enough to be called.

Mr. Tebbit: I shall, Mr. Speaker, try not to yield to the tempation of allowing interventions. That lengthens Front-Bench speeches, and I am one of the worst offenders in that respect.

I have mentioned already the victims of Labour-controlled local authorities that were ready to trample on the new rights that the Employment Act had provided for non-union employees. Walsall council was prepared to hound people out of their jobs, even though they worked for only an hour-and-a-half a day. We cannot guarantee complete protection against such bigotry and bullying, but we can ensure that those who indulge in it have to pay a heavy price—and those who suffer are properly compensated.

Clause 2 provides wide-ranging rights against unfair dismissal for the non-union employee in a closed shop. It reinforces the balloting requirement for new closed shops provided by the 1980 Act, with a balloting requirement for all existing closed shops. It considerably extends the right not to be unfairly dismissed for non-union membership.

I have no hesitation in saying that when the Bill reaches the statute book it will provide the most comprehensive and the most effective statutory protection for non-union employees that we have ever had in this country.

The present rates of compensation are too low. That is why the Bill contains an entirely new framework of compensation for closed shop dismissals at considerably enhanced levels. This framework is in substance no different from the proposals that I announced on 23 November, and is set out in clauses 3 and 4.

Briefly, it consists of a minimum basic award of £2,000, plus a compensatory award related to past and future loss of earnings, subject to the maximum now in force for the generality of unfair dismissals. The new elements are a special award of twice the annual salary, subject to a minimum of £10,000 if the applicant asks for reinstatement, but the tribunal does not order it, or an additional award of three times annual salary, subject to a minimum of £15,000 if the employer refuses to comply with an order to reinstate.

Perhaps I can best illustrate the effect of these changes by a simple comparison. Under the present rules, the median award for unfair dismissal in 1980 was just under

£600. Under the proposals in the Bill, someone unfairly dismissed in a closed shop would normally get a minimum of £12,000 even if the tribunal did not order reinstatement and a minimum of £17,000 if the employer refused to comply with an order of reinstatement.

In response to points put to me by the CBI and others during consultations, I have reduced the minimum special award from £12,000 to £10,000 so as to widen the gap between the special and additional award and thus increase the incentive for an employer to agree to reinstatement. I have also introduced a number of safeguards against abuse by people who might otherwise try to exploit the enhanced levels of compensation.

Clause 5 enables someone who is claiming unfair dismissal as a result of trade union pressure also to claim compensation directly from the union as well as his employer. At the moment "joinder"—as it is known—is available only to the employer.

I should make it clair that the enhanced rates of compensation apply both to dismissal for trade union membership and to dismissal for non-membership. There is no comfort in the Bill for the employer who tries to sack someone solely because he is a trade union member. We have been evenhanded in our approach. Under clause 6 I also propose to extend interim relief to those dismissed for non-membership, as well as membership of a trades union. The right hon. Member for Salford, West (Mr. Orme) may scoff, but I take it that he does not like those wo are sacked for non-membership or membership to be treated equally.

Clause 7 is designed to restore to employers the ability to make a credible and legitimate response when they are faced with a strike. Section 62 of the 1978 Act removed from industrial tribunals jurisdiction to hear complaints of unfair dismissal by employees involved in a strike. Tribunals retain jurisdiction to hear such complaints, however, unless all employees involved are dismissed—that is, even those who may subsequently have returned to work.

Clause 7 provides that if an employer has given the requisite warning notice to his employees and then dismisses all those still on strike at the end of the notice period, no employee can complain of unfair dismissal to a tribunal. The new provision does not affect the existing right of an employer to dismiss all employees on strike without notice.

Clauses 8 and 9 mirror the earlier closed shop provisions in term of action short of dismissal.

Clauses 10 and 11 deal with union labour only requirements in contracts. These are being widely used to extend the closed shop into firms where neither employer nor employees want it. The consultations on the Green Paper showed very widespread concern about these practices. Again, it is some Labour-controlled local authorities that have been most blatant in their refusal to award contracts to firms unless their work force is 100 per cent. unionised. In some cases they have refused to allow non-union firms even to tender for contracts. There is no doubt also a cost to the ratepayer of deliberately stifling competition in this way and, like all uncompetitive practices, the end result can be only a loss of jobs.

Mr. John Evans (Newton): The right hon. Gentleman is bringing back lump labour.

Mr. Tebbit: The hon. Gentleman may not like the lump, but, properly managed, it is a very effective institution. *[Interruption.]* If Opposition Members worry about tax avoidance, they should go down to Fleet Street.

The Bill therefore declares void any term in a commercial contract which requires only the use of union labour or only that of non-union labour. It makes it unlawful to exclude non-union or union firms from tendering lists. And it makes it unlawful to award or to terminate a contract on the ground that union or non-union labour will be used in performing that contract.

It may be that trade unions may try to frustrate these provisions by industrial action or the threat of it. Clause 11, therefore, would remove immunity from those who put pressure on an employer to contravene clause 10. And it would remove immunity from those who organised industrial action which interfered with the supply of goods or services on the ground that work done in connection with the supply of those goods or services is performed by non-union or union members.

This brings me directly to the issue of trade union immunities, which is dealt with in the four remaining substantial clauses of the Bill—clauses 12 to 15. I am conscious that this is an area of great complexity and I recognise that over the years some aspects of trade union immunity have acquired great symbolic and emotional significance both for employers and unions. That is why it is important that we should all be clear what the Bill will do and what it will not do.

When the general secretary of the TUC gave evidence to the Select Committee on employment he said:

"We only claim three rights: the right to combine in order to pursue the collective interest of our members, the right to be recognised by employers for collective bargaining purposes and the right to withdraw labour, that is to say the right not to work except on terms and conditions which have been agreed with an employer. These are the characteristic rights of free trade unions in all democratic countries".

I have no quarrel with that statement. If those are the rights that trade unions need to function effectively, they have nothing to fear from the Bill. There is nothing in the Bill that prevents trade unions from organising, gaining recognition, bargaining collectively or from organising industrial action by their members in pursuit of improvements in their pay and conditions or in defence of their jobs. Nor is there anything in the Bill that interferes with the internal organisation of trade unions, with their rules or the way they conduct their domestic affairs. It is important that that should be understood. Rightly or wrongly, I have not sought to use the law—this time at any rate—to reform the structures or internal affairs of trade unions, though there may come a time when there is great public pressure to do that. Indeed it is manifest already. Liberal and SDP Members will refer to the great pressure on me to do so. However, I have resisted that pressure, because to carry out such reform would raise many issues that would be best dealt with—if at all—in a separate Bill.

The Bill is not concerned with settling quarrels between members of unions and the unions over the way in which the latter are run. Nor is there anything in the Bill that would take trade unions back—as I have heard some of their leaders say—to the Taff Vale situation before the 1906 Act, when trade unions and their officials had no immunity at all and their funds were at risk for any and every strike or other form of industrial action. There is no comparison between that situation and the very wide

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immunity for organising industrial action which trade unions and their officials will still enjoy when the Bill reaches the statute book.

The Bill does two things. First, it provides for trade unions to have the same immunity as individual trade union officials and other organisers of industrial action have today: no more and no less. Since 1906 trade unions in this country have enjoyed virtual total immunity from civil actions even if they have acted unlawfully, quite outside a trade dispute. No other trade union movement in the world is outside the law in that way and, as the Donovan Commission pointed out in 1968, no other person or organisation—not even the Crown—has comparable immunity in this country.

We believe that there is no reason in logic or equity why trade union funds should be protected if officials of the trade union, acting with the authority of the union, act unlawfully. If the individual official is liable in those circumstances, why should the union be immune? What incentive is there for the union to restrain unlawful action by its officials if the union's funds are never to be at risk?

If the House feels that I am taking a hard or extremist line, it should consider what the 1906 Royal Commission—of which Sidney Webb was a member—said in the light of the Taff Vale case. I take it that his views hold some weight with Opposition Members. It stated:

"That vast and powerful institutions should be permanently licensed to apply the funds they possess to do wrong to others and by that wrong inflict upon them damage . . . and yet not be liable to make redress out of those funds would be a state of things opposed to the very idea of law and order and justice".

That was Sidney Webb, a member of the Royal Commission which produced that report. He did not dissent from it. *[Interruption.]* I have made my point plain. The House should consider what the Royal Commission—with Sidney Webb as a member—said in the light of that case. If Opposition Members were not listening, I shall repeat the point. Obviously Opposition Members think that they can sign a report and subsequently deny responsibility for it.

Let me repeat: we are not talking about the ability of a union to organise a strike of its members in pursuit of an increase in their pay or in defence of their own jobs. That is and will remain lawful. We are talking about action that is unlawful and may—even under the legislation of 1974 and 1976—make the individual official liable for damages but which, as the law stands, involves the union, on whose behalf the official was acting, in no liability at all. The disparity between the immunity of trade unions themselves and of their officials is and always has been an anomaly, and in our view a dangerous anomaly, because it has allowed trade unions to abdicate control over their officials when it has suited them to do so, safe in the knowledge that whatever happens their funds will be immune.

Mr. John Evans *rose*——

Mr. Tebbit: If the hon. Gentleman is fortunate, Mr. Speaker will no doubt call him to speak later.

Clause 12 corrects that anomaly. It brings the immunity for trade unions into line with the immunity for individuals and defines the circumstances under which trade unions are to be liable for the unlawful acts of their officials. Broadly speaking, unions will be liable for unlawful acts that are authorised in accordance with their rules or by the national executive or national officials. If the rules do not specify where the authoritiy to call industrial action lies, a union will be liable for unlawful acts authorised by any full-time official or the committee to which he reports, but in such cases the union can always escape if it genuinely repudiates the action. We thought it right to define the liability of trade unions not only to help the courts but also so that trade union and employers know where they stand.

We also thought it right to put limits on the damages payable by a trade union in any one case. The limits in the Bill are those I announced on 23 November, except that in response to representations from the Conservative Trade Unionists I have reduced the limit for unions with 5,000 members or fewer to £10,000 and for those with up to 25,000 members to £50,000. These limits are set out in clause 13.

Clause 14 makes it clear that union provident funds and also political funds which are not used to finance industrial action are not at risk. Let me point out that if a trade union wants to be sure that its funds remain untouched all it has to do is keep within the law—[*Interruption.*]—as laid down by Parliament. The union is at risk only if it procures or supports action which is of itself unlawful for individuals today.

The second main change in this part of the Bill is the tightening up of the definition of trade dispute in clause 15. Again some wild and misleading criticisms have been made of our proposals. Let me say straightaway that we are not proposing to outlaw political strikes for the simple reason that they have always been outside the "trade dispute" immunity in tort. The House will recall that the courts held that the TUC's so-called day of action in 1980 fell outside the definition of a trades dispute as defined in the legislation of the Labour Government. We are simply proposing that where a dispute is mainly political or mainly concerned with a personal grudge or some other non-industrial matter, and falls only marginally within the definition of a trades dispute, it should be treated as the law has always treated disputes that are wholly political.

Again, we do not propose that all sympathetic action should be made unlawful. Clause 15 applies to the postion where an employer and his employees have no dispute between them and everyone is working normally. It provides that, in that position, a trade union outside the company canot declare that it is in dispute with that company because it does not like the way that the company runs its business or because none of the employees is in a trade union. The effect will be that they cannot organise blacking or other secondary action against him. In other words, this change in the definition will effect only one sort of secondary action, although a particularly abnoxious sort of action.

It is clear that the Bill is widely welcomed throughout the country. I do not wish the Bill to be misunderstood. I do not wish the case for it to be overstated. It does not put the clock back to Taff Vale, whatever that means. I do not claim that it is the complete answer to poor industrial relations, low productivity and poor pay, which have characterised our economy for far too long. It is one step along the path to improving our performance in all those areas.

The House knows that I am far from reluctant to enjoy a little mild partisan controversy now and again, but it is not in that spirit that I turn to the Liberal-SDP alliance. Its

decision on the Bill will be a litmus test of its resolve to break the mould of British politics. It has set out to be the Left of Centre alternative in British politics. Now its Members must decide whether to continue as Social Democrats the marsupial relationship with the trade union establishment that they enjoyed as Socialists. They must decide whether to disentagle themselves from their history of subservience to vested interest. They must decide whether they wish to return to being financed or controlled by the trade union movement. *[Interruption.]* Opposition Members can look for a block vote being traded in back rooms at the Conservative Party conference, but they will not find it. They had better get themselves video recordings of the debates about the deputy leadership of the Labour Party——

Mr. Leslie Spriggs (St. Helens) *rose*——

Mr. Tebbit: —and consider whether to re-run them.

Mr. Spriggs: On a point of order, Mr. Speaker. This has been a most unusual Second Reading debate. In the time that I have been a member of the House, Ministers have generally given way for questions on Second Reading. On this occasion the Secretary of State has shown that he does not have the guts to give way.

Mr. Speaker: Order. The right hon. Gentleman has given way so often that he has cut out one person who would have been called to speak.

Mr. Tebbit: The right hon. Member for Crosby must decide whether she wishes to set the clock back and go out on the picket line again. She knows that what she did at Grunwick would be unlawful now. She must make up her mind whether she wishes to change the law so that she can go back on the picket line or whether she is content with the law as it has been enacted in this Parliament. She and her former Labour Party colleagues voted for "In Place of Strife". Their new ally, the Liberal Party, voted against it. The right hon. Lady and her Labour Party friends voted for the 1974 and 1978 Acts. Their partner, the Liberal Party, voted against them. They must get their act together. If we are to avoid ping-pong politics in this area they must come forward in full support of the central provisions of the Bill. Of course, they may wish to go further in some matters, but let us proceed one step at a time. I say at once that I have no doubts about the hon. Member for Rochdale (Mr. Smith).

Perhaps an even heavier responsibility lies upon the Labour Party. I accept that it opposes the Bill. Its relationship with the trade unions bureaucracy and its money will ensure that. For Labour Party Members the question is where do they oppose it—here and at the next election as democrats—or will they join those who threaten to use industrial power to overrule Parliament?

Parliament willing, the Bill will receive Royal Assent no more than 18 months before the next general election. Some trade union leaders have said that they will not be content to leave its future to be judged by the electors through the ballot boxes. I repeat, because the hon. Member for St. Helens (Mr. Spriggs) was talking instead of listening, that some trade union leaders have said that they will not be content to leave the future of the Act to be judged by the electors through the ballot boxes. Above all, it is the responsibility of the right hon. Member for Chesterfield to repudiate such talk and to pledge himself to oppose any talk of political strikes against the Bill, or the Act as it becomes law. He deserves to be regarded in a dismal light if he does not have the courage to do that.

The Bill may be my Bill, but if it is enacted it will be Parliament's law. It will be the people's law to be changed only by Parliament. I expect the right hon. Gentleman to make his position plain about that.

4.19 pm

Mr. Eric G. Varley (Chesterfield): When the 1979 Employment Bill was placed before the House in December of that year I said that the then Secretary of State for Employment was the sacrificial victim who was required to lead the ritual Tory war dance against the trade unions. That Secretary of State knew that the use of the law in the sense that it is to be used in this Bill was likely to bring about an increase in industrial conflict and that it was not a means of resolving such conflict.

That Secretary of State was defeated by his colleagues because the Bill was not to their liking, and it was amended in Committee. The then Secretary of State had to produce a Green Paper out of which came the main proposals in this Bill. The Prime Minister knew that if she was to have her way and carry through her hostility and prejudice against the trade union movement she had to remove the right hon. Member for Lowestoft (Mr. Prior) and to replace him with someone who was a far nastier piece of work, both personally and politically. The present Secretary of State falls naturally into that category.

The Prime Minister has a willing servant, as the Secretary of State has displayed today in his own inimitable style. He has introduced a Bill which is designed only to weaken trade unions and which will be damaging to industrial relations.

The trouble is that the Tories have not learnt a thing. I remember the right hon. Member for Sidcup (Mr. Heath) speaking in the debate on Second Reading of the Industrial Relations Bill. He was then Prime Minister and he said:

"there is nothing so strong as an idea whose time has come. The ideas in the Bill have been widely discussed and carefully prepared. The time has now come to carry through this reform which the people overwhelmingly demand."—[*Official Report*, 15 December 1970; Vol. 808, c. 1143.]

That Bill reached the statute book. The Secretary of State is probably right, this Bill might reach the statute book, although we shall do our best to prevent it. Four years after the Industrial Relations Bill was passed there had taken place a national postal strike, a gas workers' strike, an electricity workers' strike, a railway strike and two national coal miners' strikes. It was even worse—five dockers had been imprisoned and a national dock strike had been averted by the frantic activity of that obscure functionary, the Official Solicitor who got the men out of gaol.

The Amalgamated Union of Engineering Workers was sued by Con Mech and consequently called a national engineering strike. The industrial relations court ordered the sequestration of all the union's assets. To the Government's huge relief an anonymous group of rich business men paid the large compensation and fines for contempt involving a total of £122,000. After that the engineering strike was called off.

The whole sorry episode ended in 1974 with the Director General of the CBI telling the nation that the Industrial Relations Act had soured and sullied industrial

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relations in Britain. The Act was repealed and sensible Conservative Members pledged that they would never go down that road again.

Our attitude is that trade unionism is a right to be enjoyed and exercised responsibly. To impose vexatious legislation on the trade unions while totally ignoring their representations is to remove from the trade unions their obligation to contribute voluntarily to improve industrial relations and trade union practice. When government, out of dogma, says "We will legislate", the natural reaction of the unions especially if their representations are ignored, is to reply "Get on with it. Do your worst, but do not expect anything from us."

What are the facts about industrial relations in Britain today? Last month the Department of Employment trumpeted the news that working days lost through industrial disputes were at the lowest level since 1941. There is one reason above all others for that reduction in industrial disputes. It is that this Government's unique and perhaps only achievement is to turn the whole country into a depressed area through mass unemployment.

It is instructive to study the working days lost in 1981 from a variety of different causes. Working days lost through strikes in 1981 totalled 4,196,000. Working days lost through sickness totalled 371,450,000 and through unemployment 780,300,000. Strikes accounted for about 4 million lost working days but unemployment accounted for 780 million. Those two statistics alone highlight the irrelevance of the Bill in tackling the real economic and industrial problems that face Britain today.

It is tragic that Parliament should be asked to devote so much time to a Bill which, if enacted, can make our problems only devastatingly worse. We might take the Government seriously if they were really concerned about workers' rights and freedoms.

Mr. Tony Marlow (Northampton, North): Will the right hon. Gentleman give way?

Mr. Varley: No, not at this stage.

If the Government had a strategy to reduce the dole queues they might carry more credibility. We shall not take lectures from them about individual rights. Within three months of taking office they had laid before the House a statutory instrument which denied the right of over one million workers even to go to a tribunal to claim unfair dismissal. In addition they removed the right of hundreds of thousands of employees to advanced notice of redundancies. In thousands of cases they have made it impossible for workers to bring and win unfair dismissal cases. That is a massive denial of workers' rights. It must be seen alongside the proposals in the Bill to help people who have lost their jobs through union membership agreements.

It is fraudulent to claim that the main purpose of the Bill is to improve and protect individual employees. The position of workers is very weak in relation to that of the employer. Large companies have developed. The financial strength and the colossal power of trans-national companies are enormous compared with the power of the individual worker. Workers can improve and protect their living standards only through trade union organisation. The basis of trade union organisation is to strive for 100 per cent. membership.

The Government's motive as set out in the Bill springs not from a desire to enhance job protection, but from a desire to weaken trade union membership agreements and weaken the trade unions. If the Bill becomes law, denying thousands of individuals the right to go to industrial tribunals, we shall see whether the Government will give the opportunity for a few to go to tribunals on the basis of enhanced compensation, paid in some cases out of trade union funds. There is no doubt that that concept in the Bill will increase the financial incentive to drop out of trade union membership. That is probably what the Secretary of State wants.

It is no wonder that the Institute of Personnel Management, the principal professional organisation engaged in personnel management said:

"High levels of compensation . . . offer too much scope for exploitation by the unscrupulous individual who exists in almost every large organisation and who would be attracted by the money."

In other words there will, according to the institute, be bounty hunters.

Even Sir Terence Beckett of the CBI expressed doubts about higher compensation saying that it

"could cause real damage to industry. It is conceivable that small firms could be bankrupted in the event of a high award. If the compensation is pitched at too high a level it could lead to abuse by individuals without a genuine grievance."

Mr. Tebbit: Will the right hon. Gentleman also quote what Sir Terence and the CBI have said since they have seen the Bill and given it their full support?

Mr. Varley: Sir Terence does not give full support to that part of the Bill. I do not know whether I should be diverted into a discourse on the pros and cons of the CBI. I know that it has changed considerably over the past two years, when it was prepared, apparently, to take on the Prime Minister in bare knuckle fights.

There are sincere people who have deeply held and genuine conscientious objection, or religious objection, to belonging to a trade union, and they have rights too. However, the Department of Employment discovered about a year ago, by means of a specially commissioned piece of research, that overwhelmingly in union membership agreements provision has been made for individuals to keep their jobs. Anyone who has worked on the shop floor knows of the deep resentment of trade unionists to the free riders, the men or women who take all the benefits of trade unionism but do not contribute a penny to the organisation.

Mr. Peter Viggers (Gosport): When the European Court of Human Rights condemned the previous Government's legislation was it right or wrong?

Mr. Varley: The Solicitor-General went to the European Court of Human Rights and put the Government's case. He said that what had been done was right. I repeat that everybody resents the free rider. He is resented even by the Government. It is a general resentment that is well known.

Mrs. Elaine Kellett-Bowman (Lancaster): The right hon. Gentleman has not answered the question of my hon. Friend the Member for Gosport (Mr. Viggers).

Mr. Sydney Bidwell (Ealing, Southall): Does my right hon. Friend realise that the Secretary of State, when he was an official of the British Air Line Pilots Association, deplored the free rider?

Mr. Varley: I do not know whether he did. However, I have read the history of BALPA over the past few days, and it is clear that it would not have been possible for that organisation to have been set up if the legislation that the right hon. Gentleman is now trying to put on the statute book had existed at that time. The Secretary of State shakes his head. I shall send him the research work that has been undertaken and he will have the evidence chapter and verse. I repeat again that there is resentment in any organisation when there are free riders.

The case was put for the Government in November 1981 by the Under-Secretary of State for Scotland. In a Statutory Instruments Standing Committee he proposed that there should be a compulsory levy on seed potato producers to set up a development council. He anticipated that he might be asked why the council could not be established by a voluntary levy. He replied:

"The answer is simply that producers who pay the levy for the benefit of all are unwilling to allow those who do not pay the levy to benefit at their expense, from the general effort."—[*Official Report, Third Standing Committee on Statutory Instruments, &c.*, 18 November 1981; c. 4.]

When it comes to farming interests in Scotland, the Cabinet has no qualms about establishing a closed shop.

There will be a detailed examination of clauses 10 and 11 on union membership requriements in Committee. I merely observe now that many legal advisers have great doubts about whether the proposals can be enforced. I bet that that is the advice that has been given to the right hon. Gentleman. The lawyers will have a field day on clauses 10 and 11. Whoever loses aut when the Tories introduce anti-trade union legislation, the lawyers always win.

It is not clear whether workers would be in breach of the legislation if they refused to handle work from non-union companies as well as refusing to work alongside non-unionists. There are many employers who admit, especially in the civil engineering and construction industries, that union-only contracts have ensured that time-served, properly trained and competent skills are employed and that safety standards are reached.

The most dangerous legislative concept in the Bill is contained in the clauses that deal with trade union disputes and the repeal section 14 of the Trade Union and Labour Relations Act 1974. The concept of making it possible to sue trade unions for injunctions and damages—putting trade unions funds at risk, threatening unions with bankruptcy and making them liable to fines of up to £250,000 in any one case if they have a membership of over 100,000—takes the clock back to the Industrial Relations Act 1971 and the Con Mech case, and even further back to 1901 and the Taff Vale case. It is a squalid and discredited approach that has been tried before and has failed. It ignores entirely the purpose, function and democratic structure of the free trade union movement in Britain. It is a misplaced idea and the damage that it will do to the sound development of industrial relations is underestimated.

The threat of fines will not deter men and women in highly charged working environments when they feel that they have a genuine grievance. There is a misconception about the financial resources of trade unions. Total funds per member in all trade unions are on average only £22. There is no pot of gold there. It is thought that it is possible to hold trade union leaders totally responsible for every member of the unions. That is staggeringly naive. The prize for stupidity must go to the man who put this gem on the Government's Green Paper, which stated:

"Such a change in the law, would, it is suggested, induce unions to reform their structures and rule books and to turn themselves into more authoritatian organisations".

Is that what we are trying to do? Do we want more authoritarian organisation?

Mr. Tim Renton (Mid-Sussex) *rose*——

Mr. Varley: No, I shall not give way. You have said, Mr. Speaker, that many right hon. and hon. Members wish to take part in the debate. I do not think that I should give way any more. I have given way already to two hon. Members and I think that I had better make progress.

Mrs. Kellett-Bowman: The right hon. Gentleman has not answered any questions yet.

Mr. Varley: The Government fail to understand the trade union movement. Trade union leaders are not generals leading armies. Mr. Bill Keys, the chairman of the TUC employment and organisation committee, told the Select Committee on Employment two weeks ago:

"We are not in a position to point gatling guns at people, whether they be shop stewards or ordinary lads and lasses on the shop floor."

The Prime Minister should understand this difficulty more than most. She cannot get 22 members of her Cabinet to speak and act in unison. The Lord President of the Council is always ready to break ranks and blurt out the truth. The right hon. Lady is aware of the difficulty. She sacks one or two members of her Cabinet from time to time and then finds that the difficulty manifests itself in another direction.

If the trade unions could become "authoritarian", to use the language of the Green Paper, the result might be counter-productive. Splinter groups would form, rival organisations would come into existence and key sectors of workers would take independent action and strike terror into the office of the industrial relations director. That has already happened. The Institute of Personnel Management has already said:

"much of the support for the legislative action is based on misconceptions about the structure of trade unions and the fallacious belief that legal pressures will force union officials to assume and use powers over their members which they do not in reality possess."

The repeal of section 14 of the Trade Union and Labour Relations Act will create catastrophic problems for unions, employers and the Government. It will mean a re-run of the Industrial Relations Act 1971. It will revive the bitter conflicts of the period before 1906. That conflict will be heightened by the narrowing of the definition of a trade dispute.

In the Government's eyes, disputes between workers and workers are to be unlawful. Very few, if any, disputes between workers and workers do not involve management. Demarcation disputes may be about which skill should be used in the application of new technology or about differentials and grading, but managements are not innocent bystanders in such disputes. I fail to see how the blunt instrument of injunctions and damages will improve worker-worker disputes. Indeed, resort to the law might exacerbate the problems. In fact, demarcation disputes are hardly a problem at all. They account for less than 1 per cent. of all disputes.

But there is real anxiety in other cases, as my hon. Friend the Member for Hackney, Central (Mr Davis) said.

[Mr. Varley]

He told us about the concern of the International Transport Workers Federation. If he catches your eye, Mr. Speaker, he will point out how unscrupulous shipowners will be able to sail their ships under flags of convenience. They will be able to exploit the changes proposed to the detriment not only of seamen but of the British shipping industry.

The most vindictive aspect of the Bill is that it will prevent British workers from taking action to support workers in other countries. It will try to prevent trade unionists taking action to support workers in sister companies overseas, even though such action may ultimately reflect their own terms and conditions. They must be the only Government in the world to try to disinvent the multinational company.

That aspect of the Bill has other implications, too. The Prime Minister took part the other day in President Reagan's inspired television spectacle about the oppression of trade unions in Poland. If the Bill becomes law, British workers will be prevented from taking industrial action to support their Polish brothers and sisters. It is all right for the Prime Minister to take action, but dockers would be prevented from doing so. That is a fine example of double standards.

But we should not be surprised about the Government's double standards and their hostility to the trade unionists. Before the last election the Prime Minister boasted that she was ready to confront anybody. Conservative industrial relations policy is based on confrontation.

Mr. Cyril Smith: How will striking against British employers assist Polish workers?

Mr. Varley: It may be planned to export a piece of equipment from Britain to assist the Polish military regime, and British dockers may not wish to handle it. Under this legislation they would be prevented from taking any action.

Mr. Raymond Whitney (Wycombe): Will the right hon. Gentleman give way?

Mr Varley: No. I shall not give way again.

Mr. Whitney: Favouritism.

Mr. Varley: Favouritism for the Liberals, yes.

The right hon. Lady has said on more than one occasion that she is prepared to confront anybody.

We are not surprised by the Government's attitude, but most of us are surprised at the speed with which the new Social Democratic Party has come round to supporting the Government in bringing forward anti-trade union laws. Only two years ago hon. Members who now form that party, marched into the Lobby against the then Secretary of State for Employment's Bill, which was bad enough but was milk and water compared with this Bill.

Not all the SDP Members will be voting with the Tories. I understand that the hon. Member for Islington, Central (Mr. Grant) will not stand on his head. I would be utterly amazed if he did. He sat with us for 100 hours in Committee fighting the 1980 Bill.

I understand that even the right hon. Member for Crosby (Mrs. Williams) has doubts about the action which her party has taken, but, nevertheless, she will vote for the Tories. Is that the same right hon. Lady who was the heroine of the Grunwick picket line? Is that the same right hon. Lady who sat in the Cabinet Room at No. 10 with my right hon. Friends and me when the Labour Government approved the Trade Union and Labour Relations Act, which the Bill will get rid of?

Mr. John Grant (Islington, Central): The right hon. Gentleman is normally more fair-minded and certainly rather more so than the Prime Minister's pet piranha. In addition to the time that I spent in Committee on that Act, I spent a great deal of time, particularly during the previous Labour Government, defending the right hon. Gentleman, his right hon. Friend the Deputy Leader and other leading members of the then Government from the very same charges of union bashing. He should be a little careful when making charges.

Mr. Varley: The hon. Gentleman is maintaining his long-standing and consistent objection to such legislation. He is taking an honourable course and will not go along with his new party. I admire him for that, but *The Guardian* on Saturday reports him as saying that there might be "poitical mileage" in supporting the Government. Is that what it is all about?

Mrs. Shirley Williams (Crosby): There were certain abuses of corporate power which justified some of the actions which the Labour Government took in introducing the Trade Union and Labour Relations Act. Does the right hon. Gentleman deny that certain abuses of trade union power led a previous Labour Government to introduce "In Place of Strife"?

Mr. Varley: The right hon. Lady sat in the Cabinet Room when we approved the Act which gave trade unions certain rights provided that they exercised them responsibly. She is now voting to get rid of the legislation. [HON. MEMBERS: "Shame."]

The Social Democratic Party is engaged in nothing more than opportunism. I expect that the writ will be moved any day by the Patronage Secretary or his deputy for the by-election in Glasgow, Hillhead. This high-powered, holier than thou, whiter than white, mould-breaking party, is not above putting a bit of vote-grubbing before principles. Mr. Roy Jenkins believes that the best way of getting a seat in the House is as the Secretary of State's poodle. I hope that Mr. Jenkins will be proud of himself in the coming weeks when he tells the 97,000 Glasgow unemployed how his colleagues in the House scurried into the same Lobby as the Tories to support the "bovver boy" from Chingford. SDP Members will doubtless be in Hillhead in the coming weeks campaigning on their bicycles.

The SDP attitude is contemptible. The Bill is a disgrace. It is fraudulent to call it an Employment Bill. It has nothing to do with creating employment. For how many of the 3 million registered unemployed will it find jobs? Not one. Even this Government will rue the day that they introduced the Bill. Through it they will blunder into one of the most bitter and divisive periods of industrial relations that many of us have experienced.

Free trade unionism is an essential ingredient of our free society. It is a safeguard of our liberties. We shall fight the Bill at every stage and do the very best that we can to prevent it reaching the statute book. If it reaches the statute book, we shall remove it at the first opportunity.

4.49 pm

Mr. William Rodgers (Stockton): Were I and my colleagues to be judged by the company that we keep, we would much prefer to be in the Lobby tonight with the right hon. Member for Chesterfield (Mr. Varley), despite the rather rough remarks that he made towards the end of his speech. *[Interruption.]* However, I see that we have already flowed over into the old-style cat and dog fight. [HON. MEMBERS: "The right hon. Gentleman should know".] I am happy to encourage right hon. and hon. Members on both sides to behave in the traditional way, looking neither at the merits of the Bill nor at the broader issues. I shall address myself to the Bill and the major issue of trade union reform.

I say to both sides of the traditional House that if Conservative Members could think less of the party political advantage, as they see it, of attacks on the trade unions, and if Opposition Members could consider carefully the merits of the issue and the power and abuse involved in trade unionism today, we would not have this sort of argument across the Chamber and would probably agree on legislation that would ensure a stable period ahead.

We have an intolerable Government, objectionable in principle and disastrous in their record. They are incompetent at managing the economy and their attitude to unemployment is shameful. Having said that, however, we should not fail to judge the issues put before us on their merits.

Mr. Tristan Garel-Jones (Watford) *rose*——

Mr. Rodgers: No, I shall not give way yet.

The idea that the Bill will destroy the trade unions is farcical. I and my right hon. and hon. Friends would never support it if that were the case. There is a conspiracy to deceive on both sides of the House. It is in the interests of the Government, despite what the Secretary of State said about it being a modest Bill, to pretend that this is a major measure which will change the face of industrial relations. It is in the interests of the right hon. Member for Chesterfield to argue that the Bill will do great damage to the industrial fabric of the country. Neither argument is true. We should look at the individual proposals within the Bill as well as the major issues behind it.

Mr. Tebbit: I think that the right hon. Gentleman may have written his speech before he heard mine. I made it plain that I was not overselling the Bill as an enormous reform. I said that it was a modest reform, and that is what all my right hon. and hon. Friends have been saying. Why cannot the right hon. Gentleman listen to what we say? Perhaps he has been listening to the argument in his own party—the cat and dog fight.

Mr. Rodgers: I listened to every word that the right hon. Gentleman said. He used the phrase "a modest Bill", but in his nauseating manner he made it clear that he thought that the Bill was a very important part of his attack on the trade unions. No one who heard the right hon. Gentleman—I agree that he made an ugly speech, because he is an ugly man—could come to any other conclusion. As a Bill concerned with industrial relations, this is a flimsy measure. That is why my right hon. and hon. Friends and I have placed on the Order Paper, by way of Instructions, proposals on how the Bill might cover a larger area. *[Interruption.]*

Mr. Speaker: Order. In the House, we believe in fair play. The right hon. Gentleman is entitled to put his point of view, and he must be allowed to do so.

Mr. Rodgers: As I understand it, the effect of your ruling, Mr. Speaker, is that we shall be free to seek to amend the Bill in the direction indicated by the instructions that we have placed on the Order Paper.

I shall describe what we have in mind, as these matters are very important and I believe that they should win the support of at least some hon. Members on both sides of the House.

Mr. Garel Jones *rose*——

Mr. Rodgers: No, I shall not give way. I wish to make some progress.

First, we make it clear that we regard it as wrong that there is nothing in the Bill that would make for the fuller participation of workers in workplace decisions. Industrial democracy is a large subject and I should like to think that there are right hon. and hon. Members on both sides of the House who would support an amending proposal of that nature. Certainly we look to them for their blessing.

Secondly, in our Instructions and therefore in any amendment that we propose we make it clear that there is a need to provide for internal trade union ballots. I remember a motion many years ago in which a considerable number of Members made it clear that in their view ballots were a highly desirable development. That must surely be the common view among Members on both sides of the House who believe in the importance of trade union democracy.

Mr. Frank Haynes (Ashfield): Did the right hon. Gentleman say that in the past when he was looking for sponsorship?

Mr. Rodgers: I hope that many hon. Members will believe it right to amend the Bill to provide for trade union balloting.

Thirdly, referring to matters on which we might seek to amend the Bill, there is a proposal which I should have thought would commend itself to at least some Conservative Members. I referred earlier to a conspiracy. One aspect on which there is a conspiracy is the political levy and the nature of contracting out and contracting in. As has been made plain on previous occasions, there is now an overwhelming case for changing to a system in which individual trade unionists would choose to contract into rather than out of the political levy.

Mr. John Evans *rose*——

Mr. Rodgers: I shall give way in a moment.

Mr. John Evans *rose*——

Mr. Speaker: Order. The right hon. Gentleman has made it clear that he is not giving way. He wishes to make his speech.

Mr. Rodgers: I said that I would give way in due course, Mr. Speaker.

Mr. Speaker: Order. I do not know what "due course" is.

Mr. Rodgers: If there are Conservative Members who believe that a change in the political levy system is desirable, I hope that we shall have their support when the moment comes.

Mr. Haynes: The right hon. Gentleman did not say that when he was a sponsored Labour Member.

Mr. John Evans *rose*——

Mr. Rodgers: I give way to the hon. Member for Newton (Mr. Evans).

Mr. John Evans: If the right hon. Gentleman wishes to avoid the charge of hypocrisy, will he tell the House how many times, when he was a Member of Parliament sponsored by the General and Municipal Workers Union, he argued for a change in the status of the political levy?

Mr. Rodgers: I have long taken the view, which I have expressed before now—[HON. MEMBERS : "When?"]—that the system of contracting out is wrong. I should also make it clear that nothing in such a proposal for the political levy would affect the right of trade unions to sponsor Members of Parliament if they wish, so sponsored Opposition Members who are getting worried need not be anxious on that account.

I wish to comment, as did the Secretary of State and the right hon. Member for Chesterfield, on some specific provisions in the Bill. I greatly welcome clause 1, because it remedies an injustice. I also generally welcome clause 2, although I believe that the percentages—80 per cent. and 85 per cent.—are far too high. I should much prefer a trigger mechanism, which I hope will be discussed in Committee, based on, say, the wish of 20 per cent. of the workers, for a subsequent ballot.

I generally welcome clause 3 and those following it, although the level of compensation seems lavish compared with the sums paid to those unfairly dismissed as a result of sex or racial discrimination, and there is apparent scope for abuse.

I should like to hear more from the Secretary of State about clause 7. Although he referred to it, some very difficult questions of interpretation arise.

There are also serious worries—here I think that I join the right hon. Member for Chesterfield—about the extent to which clause 10 may be a charter for cowboys on construction sites. There may be a way of restricting the clause to the public services where political reasons rather than industrial relations can be the motive for labour-only contracts.

Clause 12 and the subsequent clauses should also be examined in Committee. Among other questions is whether there could be a series of separate legal actions arising from a single dispute which would result in the bankruptcy of a trade union. If that is the intention of the Secretary of State, it is indefensible.

There are no grounds for objecting to the provisions in clause 15 concerning political strikes and, contrary to what the right hon. Member for Chesterfield said, overseas disputes, but in other respects the clause needs careful examination for its effect on industrial relations. I wish to be absolutely honest with the House——

Mr. Haynes: The right hon. Gentleman should be ashamed of himself.

Mr. Rodgers: If the hon. Member for Ashfield (Mr. Haynes) would stop shouting, he might learn something from what I have to say.

Mr. Haynes: I am learning all the time.

Mr. Speaker: Order. The hon. Member for Ashfield (Mr. Haynes) must give the rest of us a chance to learn. Perhaps he will control himself for a while.

Mr. Rodgers: I am a recent convert to legislation of this type.—*[Interruption.]*

Mr. Speaker: Order. The House must allow the right hon. Member for Stockton (Mr. Rodgers) to proceed.

Mr. Rodgers: I am not ashamed of saying that there are many matters on which all of us, in the light of the evidence, should examine our views. In my mind the events of the winter of 1978-79 were decisive. I never believed that trade unionists would refuse to grit and sand roads when life and limb were at risk. I never believed that trade unionists would prevent people from entering a hospital when they were in need. I never believed that trade unionists would refuse to bury the dead. But all those things happened in the winter of discontent. When trade union abuse has reached that level, it is necessary to look at the scope for legislation in order to ensure reform.

Mr. Garel-Jones: The right hon. Member for Stockton (Mr. Rodgers) opened his remarks by showing a high-minded contempt for the seeking of party political advantage. Does he agree that perhaps the greatest potential party political advantage would be for a party, at the end of the debate, to have hon. Members in the "Aye" Lobby and, the "No" Lobby, and to have abstentions? That is precisely what his party will do.

Mr. Rodgers: I would not judge that to be the case. I should prefer all my right hon. and hon. Friends to be in the same Lobby this evening.

Mr. T. W. Urwin (Houghton-le-Spring): The right hon. Member appears to be trying, not very successfully, to hedge himself around with reasons why he and some of his colleagues should vote with the Government. Having regard to the fact that everything that the right hon. Gentleman is and has, in a political sense, he owes to the Labour Party and the trade union movement, why did he not reject the money supplied to his constituency party so that he could fight successfully elections in Stockton on behalf of the Labour Party? How can he salve his conscience in the light of that experience over many years?

Mr. Rodgers: I do not doubt, I have never doubted, and I am trying to say, that the trade unions have made, and will continue to make, a massive contribution to the life of this country. Nevertheless, although I am in favour of strong trade unions—in no way do I renege on that view—I have, in the light of events, changed my mind about the desirability at least of minimum legislation.

Trade unions should be strong and I welcome the extension of their membership in recent years, but I do not believe that they should use industrial muscle for political ends or that the rights of individuals can be subordinated to the power of a trade union, irrespective of the consequences.

Over the years I have desperately hoped that the trade unions would reform themselves. I was closely involved, during that winter three years ago, with the problems that trade unions brought to this country. I hoped then that trade union leaders would learn the lessons—that they would have secret ballots, recognise the nature of the national interest and speak out in favour of individual and human rights. I thought that there would be a change, but there has been no change. Far from there having been a change for the better, I have seen correspondence between

trade union leaders and the TUC recommending a course of action on the Bill which, again, would be profoundly damaging to the country and would also——

Mr. Arthur Lewis (Newham, North-West): On a point of order, Mr. Speaker. Although it may be true, I do not think that it is in order for one of my hon. Friends to call the right hon. Member for Stockton (Mr. Rodgers) a twister. I distinctly heard——

Mr. Speaker: Order. It was fortunate that I did not hear that expression. I have sufficient faith in the hon. Member for Mansfield to think that he would not have used such an expression.

Mr. Haynes: All that I say, Mr. Speaker, is that I am the hon. Member for Ashfield and not Mansfield.

Mr. Speaker: And I hope that that is all that the hon. Member will say until the right hon. Member for Stockton has finished. It is in the interests of us all and of the good name of the House that the right hon. Gentleman be allowed to state his case and submit his argument.

Mr. Rodgers: I am grateful for support even when it comes from the most unexpected place.

Mr. Arthur Lewis: I wanted it on the record, that is all.

Mr. Rodgers: I do not believe that the Bill should be opposed except through the proper political processes in the House and elsewhere. If trade union leaders and the TUC seek to organise and lead their membership in strenuous opposition to what the Secretary of State chooses to call this modest Bill, they will be disappointed.

The plain fact is that on all the available evidence, including, for example, the MORI poll and the "Panorama" programme, a significant majority of individual trade unionists believe in the Bill's provisions. A significant majority of individual trade unionists believe that there is an overwhelming case for trade union reform. They want ballots, but their leaders do not. They believe that there should be greater freedom within and without the closed shop, but their leaders do not. Trade union leaders should look to their own members and judge what they want. Only when they do that will they embark upon the steps that make legislation of this kind and any further such legislation unnecessary.

I regret the necessity for the Bill, although I am prepared myself, and would so advise my hon. Friends, to vote in favour of it. I hope that, apart from the matters to which the Instructions we have placed on the Order Paper relate, there will be no need for further trade union legislation and that we shall be able to return to the voluntary principle, secure in the knowledge that the trade unions will reform themselves.

Unlike the Government, my colleagues and I want an open and constructive dialogue with the TUC. We would be happy to receive representations and if necessary to meet a deputation from the TUC general council to discuss the detailed provisions of the Bill. If the Bill is to be amended in Committee or on Report, it is reasonable that all hon. Members should have the best advice that may be available, whatever conclusions we may reach.

I have welcomed the extension of trade unionism to many new groups in recent years. Representative trade unions have an immensely important part of play in our national life. I say to the Secretary of State that there is much that we should admire in British trade unions and in the fair mindedness, the ability, the talen and the dedication of many of their officials. It must be said again, however, that the trade unions have made themselves immensely unpopular. They cannot be above criticism. They cannot be above the law. There is nothing anti-trade union in saying that.

Mr. Speaker: Order. Before calling the next hon. Gentleman, I wish, like the hon. Member for Newham, North-West (Mr. Lewis), to ensure that something is placed on the record. It is out of order to call any hon. Member a twister. One cannot be a twister and an hon. Gentleman.

Mr. Ian Mikardo (Bethnal Green and Bow): On a point of order, Mr. Speaker. May I point out, with the deepest respect, that "twister" is an honoured and ancient occupational term in the textile industry?

Mr. Speaker: Order. Everyone must speak for his own industry.

5.12 pm

Mr. Tim Renton (Mid-Sussex): I am glad, Mr. Deputy Speaker, not to have your job or Mr. Speaker's. Chests bared in shame and in agony over past misdoings are always a pretty miserable sight. The sight of the bared chest of the right hon. Member for Stockton (Mr. Rodgers) is no exception. If the right hon. Gentleman was so distressed at the sight of trade unionists closing hospitals, and if he was so disturbed at the misuse of trade union power in 1978-79, why did he not then resign from the Cabinet? Why did he not show his independence at that time rather than support the cause of trade union reform now because he realises, as he stated, that it is popular. It is supported in the public opinion polls.

I agree, however, with the right hon. Gentleman that there is widespread disquiet over the abuse of trade union power. In this regard, I found the speech of the right hon. Member for Chesterfield (Mr. Varley) most distressing. The right hon. Gentleman spoke in terms that indicated no worry anywhere in the country about trade unions and how they exercise their power. One would have thought that the rail strike was not happening and that ASLEF, a closed shop, craft union, was not using its power in an inter-union dispute to bring the whole rail system to a halt and severely to damage the economy. The right hon. Gentleman has forgotten nothing and he has learnt nothing. That was painfully plain.

All Conservative Governments tread carefully in the sphere of trade union reform. My right hon. Friend the Member for Chingford (Mr. Tebbit) behaves no differently from my right hon. Friend the Member for Lowestoft (Mr. Prior). My right hon. Friend has followed the step by step approach. He puts one more step carefully in front of the step taken by my right hon. Friend the Member for Lowestoft in 1980. There is little that individuals such as the right hon. Member for Chesterfield and the general secretary of the TUC can find wrong with the detail of the Bill. They indulge in rhetoric against the principle of so-called union bashing and in vilification of my right hon. Friend who is fortunately well able to stand up to such attacks.

I have no doubt that the Bill accords with the general mood of the British people. It is what the vast majority of trade unionists want. They have no quarrel with the principle of the Bill. I am all for the principle, although

[Mr. Tim Renton]

I find certain details worrying. I also find certain things omitted that I would have liked to see included. Like the right hon. Member for Stockton, I should have liked to see the Government do much more to promote industrial democracy, profit sharing, worker participation in factory decisions and employee share ownership. I accept from my right hon. Friend that this may not be the right Bill for these measures. I hope, however, that in the 1982-83 Session, it will be possible to bring forward such a Bill. It would receive widespread support on the Conservative Benches.

I note with interest the Instructions—a novel way of trying to get a Bill amended at this stage—that the Social Democratic Party has tabled. The right hon. Member for Stockton must have been reading literature issued by Conservative trade unionists. I have the honour to be their president. The same three points were discussed in great detail at our recent conference. I welcome the right hon. Gentleman as a convert to our literature. If he wishes to receive regular copies of our news letter, I shall be pleased to ensure that.

The Government have a great responsibility to help trade unions to become more responsible, more democratic and more accountable to their members. Certainly in the election of the deputy leader of the Labour Party, no one can say that the Transport and General Workers Union Executive acted either responsibly or democratically or accountably. The wishes of the membership of the TGWU, when polled, were clearly expressed in favour of the right hon. Member for Leeds, East (Mr. Healey) as first choice and then, at some stage, for the right hon. Member for Deptford (Mr. Silkin). None the less the TGWU executive cast its vote—by far the largest vote at the Labour Party conference—for the right hon. Member for Bristol, South-East (Mr. Benn). No one can call that a democratic process.

But Conservative Governments have always shied away from legislating to cause internal reform within the workings of trade unions. They have preferred to see that happen voluntarily within the trade union movement itself. The Employment Act 1980 of my right hon. Friend the Member for Lowestoft was an example of that approach. My right hon. Friend made public funds available for secret ballots within the union movement, either for the election of national officials or before the calling of official strikes. Since the Act, the sad fact is that no single union has made use of these funds, although public funds are being used for the training of trade union officials.

I must conclude that our attempt to step back and wait for voluntary reform within the trade union movement is not succeeding. I believe therefore that trade union leaders, out of pride or prejudice, will not reform themselves.

Mr. John Evans *rose*——

Mr. Renton: With respect to the hon. Gentleman, I would prefer to continue with my speech. Many hon. Members wish to speak. I hope that the hon. Gentleman will be successful in catching Mr. Deputy Speaker's eye.

Mr. Evans: I was about to put the hon. Gentleman right on the point he has made.

Mr. Renton: I believe that the Government should seriously consider legislating to make secret ballots mandatory in the election of all national union officials. That should come within, say, three or four years, and thereafter such elections should take place every five years. The ballots would be paid for out of Government funds and they would be supervised by an independent body.

Clive Jenkins, one of the most vociferous of trade union leaders, has never been elected as general secretary of the Association of Scientific, Technical and Managerial Staffs. He is there simply as a result of a merger between two unions, and he never will be elected to the job.

Mr. Mikardo *rose*——

Mr. Renton: I shall not give way. I, too, was a member of ASTMS for several months until Clive Jenkins managed to throw me out. I know a certain amount about that union. Equally, Arthur Scargill has recently been elected president of the National Union of Mineworkers by a large majority, but he will be there for 22 years without another vote. Is that right? I very much doubt it. I think that he and any union official should be willing to stand for election every five years on a secret ballot, just as Members of Parliament do. I hope that my right hon. Friends will seriously consider taking that further step.

Throughout the Bill, we must take great care not to give the Left wing ammunition to stir up the massive majority of moderates in the trade union movement against us. It is against that background that I tell my right hon. Friends that I have considerable doubt about the way in which regular ballots on existing closed shops—for which clause 2 provides—will work. I am all for the principle but I have difficulty in seeing how it will work in practice.

We can explore clause 2 further in Committee, but I shall put some questions for my right hon. Friends to think about in coming weeks. For example, what will happen if there is only 75 per cent. vote in favour of the continuance of an existing closed shop so the closed shop ceases to be official? What will then be the position of the one union that has the wage bargaining rights with the employer? What will happen to an employee who is dismissed because of his trade union activities whan his trade union is still the wage negotiator but no longer has an official closed shop? Will that be fair or unfair dismissal? More particularly, what will happen to the trade unionist who actively tries to get more people to vote at the next ballot in favour of the closed shop and who is dismissed because of his trade union activities?

Those are some of the questions that will inevitably arise. All of us want clause 2 to work. I suggest that my right hon. Friends should think carefully about what will be fair and unfair dismissal in the sort of case that I have predicted.

Mr. Tebbit: No doubt there will be a good deal of time to discuss some of these matters, but I should say straight away that the issue of the closed shop, and the ballots on it, does not affect the bargaining rights of the union with the employer.

Mr. Renton: I take that point. Equally, one can imagine circumstances in which 25 or 30 per cent. voted against the closed shop who at that stage would want their own union to take part in the bargaining process, which it had not done before. How would that then relate to the question of what is fair and unfair dismissal?

Clause 13 relates to the damages that can be levied in a civil action against individual unions. As my right hon.

Friend said in his opening speech, the Conservative Trade Unionists asked him to reduce the amount of damages on the smaller unions. We are very grateful that he has done that, but I do not think he has gone far enough. The clause weighs still more heavily on the small union than on the large union. To give one example, if the Transport and General Workers' Union, with 1,886,000 members and an annual income of £28·5 million—this sad little union that the right hon. Member for Chesterfield (Mr. Varley) was so worried about—were to suffer the maximum fine, that would still represent under 1 per cent. of its annual income in one action. *[Interruption.]* I stand corrected. The damages would be 0·88 per cent. of its annual income. But the National Association of Colliery Overmen, Deputies and Shotfirers—a small union known familiarly as NACODS—with 18,000 members, has only £122,000 of annual income, and in its case the maximum damages would take 40 per cent. of its annual income, as opposed to under 1 per cent. for the Transport and General Workers' Union.

We should accept that very often it is the smaller unions which have harder fights and which will need careful consideration in regard to the question of maximum damages.

Clause 12 and the subsequent clauses deal with the very important question of removing immunities for trade union funds in civil actions in civil courts.

I was struck that on Wednesday evening the hon. Member for Keighley (Mr. Cryer)—who, unfortunately, is not in his place—said in an intervention that trade unions require their immunities to make them work. That is a remarkable statement, and to be convinced of its truth we need very much firmer evidence than anyone has yet given—firmer evidence than the right hon. Member for Chesterfield gave us in his opening remarks today.

It is extremely hard to see why a large organisation such as the Transport and General Workers Union, with an annual income of £28½ million, needs immunities for unlawful action which neither its members nor its union officials have.

These are not like the days of 1908, when the immunities were first given, largely for the purposes of protecting very small unions with very small assets. That position does not apply today. If the comment that striking at immunities really strikes at the heart of the trade unions is to be taken seriously, we shall need very much more serious evidence than has yet been presented. It is no good either Opposition Members or trade union leaders just going about the country saying "We wuz robbed" and "They are taking our money away from us". Any of us would obviously like to have immunities from action for debt, and immunities in civil courts concerning moneys that we have in the bank. I have heard no valid reason advanced for any longer continuing the trade union immunities nowadays.

I should like to remind hon. Members on each side of the House of the old saying that it is excellent to have a giant's strength but it is tyrannous to use it as a giant. Individuals throughout the country—trade unionists and non-trade unionists—have, unfortunately, come to regard unions as tyrannous giants, out of touch with many of their members. The purpose of the Bill is in part to rectify that position. It is to enable unions—which are, of course, a vital part of our society—to take their place not in the last century but in this century's industrialised society in Britain.

5.29 pm

Mr. Charles R. Morris (Manchester, Openshaw): As the debate has proceeded we have heard the charges that trade unions press-gang individuals into union membership, that they exercise industrial muscle unduly, and that what we witness on so many occasions is the use of unbridled trade union industrial power.

The Secretary of State said that the Bill is merely one small further step to rectify what he termed the imbalance of power between worker and employer. Such phrases may well be the exchanges of parliamentary debate, but they bear little relation to the exercise of power which exists in so many industries and so many companies in terms of idustrial relations in Britain.

I want to mention a dispute in my constituency, which has been going on for more than 10 months. I want to highlight the relevance that the Bill will have to that industrial dispute at Lawrence Scott Electromotors in Openshaw, Manchester. One would imagine that the major issue now facing the nation was the closed shop and union membership agreements. I do not know how many right hon. and hon. Members have looked at the *Employment Gazette* for 1982 to see the disputes that arise from what are termed union matters. The January issue of that publication contains statistics which show that 8 per cent. of disputes arise from union matters—demarcation issues, and the like—but there is nothing in it to show that any disputes have arisen as a result of union membership agreements or closed shops as such.

In his speech today the Secretary of State did not say how widespread was the problem of union membership agreements and the exclusion of individuals. He quoted three cases. I saw a report in *The Times* of 30 January that 400 disputes had arisen from the application of the closed shop and membership agreements. That seems a large number, bearing in mind the reality of the situation, but let us assume that it is right. One should bear in mind that union agreements now cover 5·2 million workers. If there have been 400 cases in which individuals felt that they were dealt with harshly as a result of those agreements, that number of cases represents only ·008 per cent. of those covered by the agreements. But I am not seeking to justify cases where people have been dealt with unfairly——

Mr. Marlow: Perhaps it would help the right hon. Member to look at the matter the other way round. How many nuclear wars have arisen from the possession of nuclear weapons? Union membership agreement affects the balance of power, just as nuclear weapons do. It does not mean that many disputes have to arise out of it.

Mr. Morris: I shall come back to the balance of power when I take up the point made by the Secretary of State that the Bill is designed to rectify the imbalance of power.

First, however, I come to what I was saying about the dispute in my constituency, which has been going on for over 10 months. The power in that dispute has reposed virtually in the hands of one man. Lawrence Scott was taken over in October 1980. The assets of the company were valued at the time at £18·4 million. Mr. Arthur Snipe, the managing director of Mining Supplies, acquired Lawrence Scott for £5·8 million and gave the workers the usual undertaking that their future employment prospects were assured and that they would continue to be employed on terms and conditions that were no less favourable than at that time. That was the undertaking that was given.

[Mr. Morris]

Three months later, on 10 February, the same managing director decided to close the plant. The plant was profitable. Its orders were mainly from the Ministry of Defence and the National Coal Board. He closed the plant in order to transfer the work elsewhere, without any consultation or discussion with the 650 individuals who had invested their lives and skills in that enterprise, which was regarded in the greater Manchester area as a centre of industrial excellence. Today we have heard about the exercise of industrial power. Trade unionism was absolutely powerless to deal with that situtation.

Since then the bailiffs have come in with sledgehammers and repossessed the factory. Then we had what I can only describe as helicopter hooliganism, when helicopters were used in a heavily urbanised area to negotiate the picket lines. People talk about the use and abuse of industrial power. There is nothing in the Bill that will rectify that imbalance in terms of the exercise of power between an employer who refused to consult and negotiate with his workers, and workers who have now been in industrial dispute for 10 months.

I see no justification for the proposals in clause 7 regarding the closed shop and membership agreements. Nor do I believe that there is any justification for clause 15, which narrows the definition of trade disputes. It has been said that the long-running dispute at Lawrence Scott has been engineered by political extremists from outside. It is possible that some political extremists from outside support the 650 workers, but those workers are not mindless militants. I have visited the factory over many years, and in the past I have had the greatest difficulty in persuading the workers there to take any interest in politics. They are not mindless militants. Rather, they are victims of what I can only describe as an asset-stripping exercise by a commerical entrepreneur.

That type of problem will not be helped or solved by this legislation. In my view, legislation that deals with trade unionism and industrial relations will come only through agreement between the two sides of industry.

5.38 pm

Mr. John Browne (Winchester): At the last general election, millions of working men and women, many of them trade union members, voted Conservative. They did so as a cry for help. They wanted protection—yes, protection—in many cases against their own bully-boy trade union leaders. Specifically, they voted for an end to unions-only contracts, an end to the closed shop, an end to opting-in—rather that the opting out—of the political levy, and the introduction of a voluntary shop floor secret ballot. Those were all basic democratic issues.

I believe that history will show that the Bill, as amended, will be a most important Bill, and that it will be widely heralded as a workers' charter. In effect, it will be a modern Magna Carta, bestowing protection on working men and women. I believe, without hesitation, that my right hon. Friend the Secretary of State will soon be seen as the champion of workers' freedom. In a few years' time, I believe that working men and women in this country will say to their friends and families "That man Norman Tebitt is our champion; he's our lad!"

Our national weaknesses since the Second World War reflect, above all, the weakness of successive Governments. It is weak government more than any other single factor that has allowed the great abuse of power by trade union leaders. It has allowed trade unions leaders—not all, but in some serious cases—to bully their members. It has allowed them to be elected to office for life. As my hon. Friend the Member for Mid-Sussex (Mr. Renton) said, in some cases, such as that of Mr. Clive Jenkins, the leaders are not even elected. Yet they masquerade as though there had been a democratic election. It has allowed trade union leaders to use gross rather than net—that is, actual net votes approving their action—block votes to force action, yet still call it democratic.

Even more serious, Government weakness has allowed trade union leaders to come between management and the shop floor. Indeed, managers in many companies are barely allowed to talk to their employees. As is demonstrated on television and in the newspapers, trade union leaders give their version of what management wishes to say to the shop floor. This unhealthy abuse of trade union power has come between management and workers. The result is restrictive practices, closed shops, intimidation and a general lack of competitiveness. The final result is that Britain now has one of the worst paid work forces in the developed world.

Mr. Mikardo: I wish to take up the hon. Gentleman's point about trade union officials coming between management and the shop floor. Is he aware that last week the management of the trucks division of British Leyland refused to talk to shop stewards and demanded a meeting with national officials? It is a pity that the hon. Gentleman followed the advice of his hon. Friend the Member for Mid-Sussex (Mr. Renton) about the election of officials. We do not elect the permanent secretary to the Department of Employment because the elected Secretary of State is responsible. We do not elect a town clerk because the elected council is responsible. My union did not elect Mr. Clive Jenkins because he is the servant of an executive that is elected each year.

Mr. Browne: In the interests of brevity, all I can say is that that is a matter of opinion. The hon. Gentleman cited British Leyland. One cause of its present demise is the practice that I have outlined. That may not be happening now under the present leadership of British Leyland—I hope that it does not happen again—but that is not to say that as an unhealthy generality, it does not happen.

In my opinion, the three key clauses in the Bill are clause 15, which redefines a trade dispute, updates it and makes it more honest; clause 10, which deals with the abolition of union-only contracts; and clause 12, which renders trade unions liable for the unlawful acts of their officials. That last provision is especially critical—I hope that the hon. Member for Bethnal Green and Bow (Mr. Mikardo) agrees with me—because it will encourage the voluntary internal reform and modernisation of trade unions. It will reduce unofficial action—the scourge of our modern industrial relations. It will also reduce the propensity towards martyrdom by individuals putting themselves in a position where they can be sent to jail, which caused so much of the industrial trouble that we saw in the early 1970s. The provisions of those clauses are good, but they are long, long overdue.

I have four specific reservations about the Bill. I am amazed and hurt to learn that the Conservative Party still

accepts the legitimacy of a closed shop. Even if we accept the existence of the closed shop, a point of detail arises in this proposed legislation concerning the voting rules for ballots. Rather than providing that the agreement should apply if not less than 85 per cent. of those who voted were in favour—which leaves the whole position wide open to intimidation—should we not restrict the provision to section 58A(1)*(a)* and delete section 58A(1)*(b)*? This would then provide that the agreement should apply if not less than 80 per cent. of those entitled to vote were in favour.

The limitation of trade union immunities is a major step to protect trade union members. However, many outdated immunities will still exist when the Bill is passed. I urge my right hon. Friend the Secretary of State to introduce new clauses to tie the existence of the continuing immunities, on a tit-for-tat basis, and urge the unions to agree procedures and accept formal agreements. We should then no longer have the ridiculous position that has arisen in the ASLEF dispute—a dispute which is causing untold damage to the nation, and the railways and to the jobs of railway trade union members. That dispute arises from an obvious twisting of an agreement reached a year ago. The Secretary of State should require that procedures and formal agreements are adhered to in return for allowing some of the less damaging trade union immunities to continue in existence.

My next point concerns the political levy. I agree with the right hon. Member for Stockton (Mr. Rodgers) that it is imperative that the Secretary of State should legislate against opting out and in favour of opting in. Such a provision is long overdue. I shall press for a new clause to deal with that point.

I am disappointed and amazed that no measure has been taken to introduce a voluntary shop floor secret ballot. It is a basic democratic right for shop floor workers. I urge my right hon. Friend the Secretary of State to reconsider his position and to introduce a clause to deal with the matter. I shall press for that because it is a key issue. Whether or not electors read the Conservative Party manifesto, many of them voted for the Conservative Party because they believed that it would abolish the closed shop and introduce a voluntary secret ballot. The Government have not yet done either of those things.

In general, I strongly support the Bill. I urge my right hon. Friend to act on the four points that I have raised: the closed shop; a formalisation of agreements and the observance of procedures; the political levy; and the voluntary shop floor secret ballot.

Everyone in our country, especially trade union members and working people, not only expect that to be done, but have the right to expect it to be done—especially by a Conservative Government.

If he does these things, I am sure the cry really will go out "Norman Tebbit is our champion and our lad".

5.51 pm

Mr. Stan Crowther (Rotherham): I must make it clear at once that I am a sponsored member of the Transport and General Workers' Union and proud to represent the biggest union in Britain. Unlike the right hon. Member for Stockton (Mr. Rodgers), according to what he told us recently, I still support my union. He was evidently happy to accept the sponsorship of his union long after he concluded that the trade union movement ought to be subjected to crippling legislation. I am sorry that he has departed, because I would have liked to say that in his presence.

I was interested to hear the hon. Member for Winchester (Mr. Browne) explain the reasons behind the misguided actions of certain trade unionists who voted Conservative in May 1979. He gave a catalogue of the things that they were voting for. Unfortunately, he did not tell us whether they were also voting to have nearly 2 million of their members added to the dole queue.

Mr. John Browne: Of course not.

Mr. Crowther: It is a pity he did not mention that. Were they voting at the same time to have their factories closed and firms made bankrupt? Those were the major factors which occurred, according to him, as a result of what they did, if he is right in saying that they voted Conservative.

I certainly do not say that there is no place for law in industrial relations. Of course, there is a place for law—to protect the rights of working people to organise themselves in the defence of their vital interests. However, the legislation of this Government, in the Bill and in the 1980 Act, takes away their rights to organise and defend themselves. That is why we are so strongly opposed to the Bill.

Admittedly, there is little of surprise in the Bill. We were given ample warning in the Green Paper and the consultative document that the Government were preparing a further savage attack on the rights of trade unionists, but clause 1 is surprising and astonishing.

I wonder whether the Secretary of State appreciates the dangerous ground on which he is treading. He quoted what he believed to be a number of precedents for this sort of "retrospective compensation", but they were not really precedents at all. For example, to suggest that the Pneumoconiosis Etc. (Workers' Compensation) Act 1979 is a precedent for this measure is pure nonsense. That Act was to assist people who had contracted an appalling disease while at work. They did not ask to get pneumoconiosis; it was not the result of their deliberate decision. However, the people to be compensated out of public funds under the Bill lost their jobs as the result of a deliberate conscious decision not to join a trade union—not to join their fellow workers in contributing to the union protecting their interests. People are entitled to take that decision, but is it right to pay £2 million out of the public purse to those who put themselves into that position? There is no possible comparison with the Pneumoconiosis Etc. (Workers' Compensation) Act 1979 or anything similar to it.

I am much more concerned about the next part of the Bill—the further serious attack on union membership agreements. The Secretary of State was right to resist the strident demands of his right hon. and hon. Friends to make the closed shop illegal. However, he has come within an ace of doing so, and has made it almost unworkable by the proposals in the Bill. The Secretary of State is providing not only a charter for freeloaders, to which my right hon. Friend the Member for Chesterfield (Mr. Varley) referred, but a positive inducement—a huge financial incentive—to trouble-makers. That aspect needs to be considered a little further.

Unless I have completely misread clause 2, it will be possible in future for a person who is already a trade union

[Mr. Crowther]

member with a firm which has a union membership agreement merely to say that he does not intend to remain a member—the phraseology in clause 2 is

"to refuse . . . to remain a member"

—knowing full well that, as a result, he will be dismissed. The employer may be pleased to get rid of him, because he may have caused disruption in the firm anyway, but that dismissal will be regarded as unfair unless the agreement has been approved by an 80 per cent. vote of all those eligible to vote, if it is the first ballot, or an 85 per cent. vote of those voting if it is the second or subsequent ballot on the agreement within the preceding five years. If that has not happened, it will be unfair dismissal. that will be an open invitation to irresponsible people, tempted by the huge sums available—possibly more than £30,000 in certain circumstances—to create trouble for their employer and union. I believe that I am properly interpreting clause 2. If I am wrong, no doubt the Secretary of State will tell me.

Mr. John Gorst (Hendon, North): An alternative is that those in the closed shop could agree to allow the individual not to belong to the union and to work alongside him. Therefore the situation about which he is worried will not arise.

Mr. Crowther: I shall come to that point shortly. In the meantime, I am concerned about what has been provided for under the Bill. It appears that the day after a ballot has produced an 84 per cent. vote in favour, people intent on causing trouble can take action of the kind to which I have just referred. On a first ballot, 80 per cent. of the eligible voters must vote in favour. Let us suppose that 79 per cent. vote in favour, 1 per cent. against, and, for various reasons, 20 per cent. do not vote at all. One would think that a 79 per cent. to 1 per cent. vote would be a handsome majority. However, it would not be enough of a majority to prevent the hypothetical trouble-maker immediately resigning from the union, getting the sack, and suing for £30,000 for unfair dismissal. The Secretary of State is leading us into that sort of situation. Therefore, he ought to reconsider that aspect.

I am not surprised that many employers are extremely worried about clause 2. I do not understand why so much heat or righteous indignation is generated about the closed shop. We hear much talk about the rights of minorities. Do the majority not have any rights? The closed shop is about the rights of the majority.

I believe that it is universally accepted that, but for the strength of the trade union movement over the years, the standards of all working people, whether trade unionists or not, would be much worse than they are today. I know of no one who seriously disputes that. If so, what is so immoral about a group of trade unionists saying that if someone is not willing to pay his share towards the cost of maintaining and trying to improve not only wages, holidays, working hours and conditions, but standards of safety, welfare, health and all the other matters with which trade unionists are properly concerned, they do not wish to work with him?

Mr. Peter Lloyd (Fareham): The hon. Gentleman asked whether anybody seriously disputes that unions have increased their members' standards of living. In general, that is easily disputed. Unions certainly succeed in increasing the money earned by their members, but it is doubtful whether they increase real wages because that can only be achieved by increased and improved working methods and efficiency which are seldom brought in, but are often opposed, by unions.

Mr. Crowther: I am sure that if the hon. Gentleman seriously studied social history in this century, he would not put forward such a foolish argument. There is no doubt whatever that only the existence of trade unions has improved the standard of living of working people during the present century and even before. Many employers fully understand the case for the closed shop and, indeed, welcome union membership agreements.

The Bill will place both employers and unions in serious financial jeopardy merely for pursuing a sensible policy that has brought greater order into trade union negotiations.

As my right hon. Friend the Member for Chesterfield said, there is considerable fear that small companies could be put out of business by these new unfair dismissal provisions. All that is needed is a few actions by the kind of troublemakers to whom I have referred and they could be placed in serious difficulty.

The most savage attack on the trade union movement is in the latter part of the Bill, under which trade unions will become liable to crippling financial penalties for pursuing what have always been regarded as normal industrial practices.

There is no recognition in the Bill, the Green Paper or the consultative document of the fact that disputes frequently begin as a result of bad management decisions. Apparently, it is always the workers who are to blame. I heard nothing from the Secretary of State to suggest that disputes are the fault of anyone other than the trade unions, but they are often the fault of someone else. The right hon. Gentleman should recognise that and not try to pretend that the fault always lies with the workers or the trade unions.

The Secretary of State said that he was tempted to call this a workers' rights Bill, but there is nothing in it about workers' rights. For example, where in the measure are the rights of workers protected in a lock-out? The right hon. Gentleman talked a great deal about strikes but never once mentioned lock-outs, yet from time to time workers are locked out. That could well arise because of secondary action by an employer. Once again, this matter needs to be clarified.

The Government's attitude to trade unions has reached the level of paranoia. The great majority of trade union members and officers are sensible, level-headed people who want peace in industry. They want to see the economy back on its feet. They do not welcome disputes, they do their best to create satisfactory and workable negotiating machinery. Above all, they want to conduct their affairs around the negotiating table rather than in the court room. The right hon. Gentleman must understand that even the most moderate of people may react angrily if they are pushed too far. It was wise of his hon. Friend the Member for Mid-Sussex (Mr. Renton) to warn him of that fact. I hope that he will take note of his hon. Friend's remarks.

The Secretary of State may believe—I believe that he does—that the mass unemployment created by the Government, the ever-present threat of redundancy in so many industries and the spectre of closures have so demoralised the trade unions and their members that they

will tamely accept this further erosion of their rights to defend their interests. He may be greatly mistaken in that belief.

This is not a modest Bill, as the Secretary of State likes to describe it, but a deliberately provocative measure that is utterly irrelevant to the problems that beset British industry. It will meet the strongest possible opposition, both inside the House and outside. The Secretary of State and the Prime Minister—whose appointment of the right hon. Gentleman to his post was a calculated insult and challenge to the trade union movement—must bear the responsibility for the damage that results.

6.5 pm

Mr. Gerry Neale (Cornwall, North): I shall return to some of the points made by the hon. Member for Rotherham (Mr. Crowther).

I congratulate my right hon. Friend the Secretary of State on introducing the Bill and on its form, substance and practicability. Last Session I marshalled a campaign for further laws on the subject, which attracted the support of 180 right hon. and hon. Friends. In particular, I pay tribute to the main signatories of my early-day motion. I am, therefore, delighted to be able to make a few comments on Second Reading.

It is tempting to pick out various points in the Bill and devote one's speech to those aspects. I shall deal quickly with those before commenting on the main opposition from Labour Members. I am delighted to see the compensation element in clause 1. The point that came over clearly in my right hon. Friend's submission to the Select Committee was that at last we were acknowledging the fact that the right of a person not to join a union is sacrosanct and is worthy of proper compensation if it is lost or surrendered because of the use of pressure.

I represent a rural constituency with many small businesses, many of which have told me of the problems they have faced as a result of being blacked by certain trade union agreements. I am, therefore, pleased that trade union only clauses in contracts are to be outlawed.

I also feel strongly about the recurring ballot for closed shops. While I welcome the various provisions in the Bill, I regret that they fall short of mandatory ballots, which I would have preferred. I share the views expressed by several hon. Members about secret ballots on wider issues in the union movement.

It is evident that Labour Members believe passionately and sincerely in the aims and objects of their respective unions. It is only right that they should. It is only right that on an occasion such as this the hon. Member for Rotherham should speak for his own union. However, while Labour Members may challenge the Bill in Committee, one senses that the opposition is not now, or to be, in the particular. It is to be a frontal assault on the Bill itself.

That frontal assault seems to have two thrusts to it. The first is that Labour Members believe that it will do nothing for industrial relations, and therefore that it is an irrelevance and a waste of time. My right hon. Member rightly pointed out that the Government and all Conservative Members are well aware that we cannot by law require, and obtain, any employer or employee to get on better together. It just cannot be done. Such a requirement is not in the Bill, but it is crazy to go on to say that no law at all is required.

The hon. Member for Rotherham was good enough to admit that there is a place in industrial relations for some legal provision. I openly admit that in an area such as North Cornwall there is very little union activity—[HON. MEMBERS: "Ah!"] Labour Members may judge that to be my only experience, but I am a director of a public company that employs more than 2,000 people and have run small businesses and employed people who were previously involved in larger industries and trade unions. When they joined those small businesses they realised the different attitude that could prevail in a small business from that in a large company—trade union environment. I am also a lawyer, who has advised on employer-employee relations.

Mr. John Evans: The Law Society is a closed shop, is it not?

Mr. Neale: It seems to be argued that if we cannot guarantee that legislation will make drivers drive well and safely, we should not legislate to protect those who suffer as a result.

Mr. John Evans: Rubbish.

Mr. Neale: You say "Rubbish", but you may well be a member of a trade union——

Mr. Deputy Speaker (Mr. Bernard Weatherill): Order.

Mr. Neale: However, it would be as well if hon. Members like yourself realised——

Mr. Deputy Speaker: Order. I should be extremely grateful if the hon. Gentleman would leave me out of his speech.

Mr. Neale: I apologise, Mr. Deputy Speaker. The main thrust of the Opposition's assault against the Bill, which is emotionally and no doubt sincerely stated, is that the Bill removes legitimate trade union rights. They mean the almost unfettered rights and the complete immunity that have been cherished and lauded since 1906. Indeed, those rights are presented almost as if they were divine and incapable of change or even of reassessment. Although the great majority of the public hold the contrary view, it is dismissed as ill-informed. Although the majority of trade union members have been shown to support such legislation, that has been dismissed.

When we talk to Labour Members and union leaders privately, they often confess to the difficulties that the Bill seeks to cover. However, as soon as Labour Members are in a public forum—in a conference or in the Chamber—they seem to become blind and to adopt different positions. A blind eye is turned to the evolution of our law since 1906 and to the evolution in our industry, commerce, production processes and technology. That blindness tries to blot out the development in the competitive skills of those countries that we must trade with and development in the codification of, and commitment to, national and international human rights.

Opposition Members promote a sense of unreality about the economy. They dispute the essential relationship between the ability of an employer to meet a wage claim and the effort and input on behalf of the employee, and that only adds to the difficulties. Labour Members have pointed out some of the things that trade unions have done. There is no doubt that trade unions have made a phenomenal contribution to many aspects of British industry.

[Mr. Neale]

Recently I spoke to a leader of one of our nationalised industries and he explained how the unions had co-operated and increased production by 80 per cent. in the past 12 years. He explained that manning levels were not nearly as high as people imagined and that manning had been reduced from about 10,000 to 6,200. He also said that the number of customers had increased. The unions played a part in that increased productivity. When I asked the general manager why he did not make more of that, he said that the unions did not want him to. It is ridiculous that people will not accept that the two sides of industry have a role in common.

Like millions of others in the country, and a few SDP Members I welcome the Bill. However, the employment spokesman for the SDP threatens to demonstrate the leadership qualities for which the party is becoming renowned for and is apparently going to lead SDP Members into the "No" Lobby, while the rest of the party go into the "Aye" Lobby. Parliament cannot continue to ignore reality. It is not only trade unionists, but the public as a whole, who want rights. To many of the public it is self-evident that if certain institutions and individuals have virtually unlimited rights and little or no liability in the exercise of them, those affected must, by the very nature of things, not only suffer a diminution of their rights, but must be prevented from obtaining the recompense for loss available to them through the courts.

There is undoubtedly some apprehension among Conservative Members about the limited nature of the Bill. My right hon. Friend the Secretary of State will not need reminding that the Bill falls short of the expectations of the various declarations and conventions on human rights, such as article 20 of the Universal Declaration of Human Rights, article 8 of the International Covenant on Economic, Social and Cultural Rights, and article 11 of the European Convention on Human Rights. My right hon. Friend deserves considerable congratulation on having taken us a stage nearer to meeting those expectations. However, I hope that he will not let the Bill be the last word for several years on the reform of employment law.

During the Conservative Party's campaign at the last election my hon. Friend the Member for Winchester (Mr. Browne) made it clear that we believed in a step-by-step approach to employment law. In the Green Paper on trade union immunities, published by the then Secretary of State for Employment, now the Secretary of State for Northern Ireland, that approach was reiterated. Conservative Members were spurred on towards supporting the campaign for more legislation last Session by the fear that the Government might be committed to a jump-by-jump approach—one jump in each Parliament.

Many Conservative Members are still apprehensive about the gap between the law—including the Bill's provisions—and the expectations of those who believe that the closed shop and the immunities in respect of action taken by trade union members against those other than their immediate employers are wrong. The hon. Member for Rochdale (Mr. Smith) referred to his commitment, and the House well knows how strongly he feels.

That apprehension could be reduced immediately if my right hon. Friend—with his customary candour and common sense—would confirm his determination to keep employment law under continual review. I am sure that he has seen the submission made to the Select Committee on Employment on 8 April 1981 by the Lord Chancellor. In his submission the Lord Chancellor pointed out that in the last century company and trade union law had threatened the fundamental principles of British law. Company law has undergone a far greater evolutionary change than have trade union and industrial law. The balance must be redressed.

The Lord Chancellor said:

"The scene of industrial relations is not static. If existing rights or immunities are abused, either to the detriment of individuals, groups or the public, Parliament will demand that they be modified and public opinion will support that demand, once the nature of the mischief is identified, the remedy defined and seen to be effective."

My right hon. Friend the Secretary of State will be aware that certain mischiefs have been identified and that remedies have been defined, yet they are not included in the Bill. However, my right hon. and hon. Friends will be much more relaxed about their absence when they hear the reassurance that this legislation is not my right hon. Friend's last word on employment law relating to employers, their employees and particularly those represented by unions.

6.19 pm

Mr. Ron. Leighton (Newham, North-East): The Secretary of State, like many ill-fated people before him, is wandering into a mine-strewn quagmire. They all became stuck and regretted it and I believe that he and his right hon. and hon. Friends will come to regret this legisalation. Why is the Bill being brought before us now? It is not so long ago that we had the Employment Act 1980. Some hon. Members spent the best part of a year listening to Ministers then extolling the virtues of that measure and telling us that they had got the balance right. Are they now saying that, after all, they got the balance wrong? Is that the meaning of bringing forward more legislation even before the ink on the 1980 Act is dry?

Mr. Tebbit: First, I have a deep sense of symmetry and 1978, 1980 and 1982 seems an attractive theme. Secondly, I am a progressive.

Mr. Leighton: I wonder in what direction the Secretary of State is progressing. Before the ink is dry on the 1980 Act and before we have had a chance to consider its effects here come the Government with new legislation. Is the Secretary of State, as a progressive, saying that that Act was defective, useless, misconceived, a mistake and that we all wasted our time? Is it a vote of no confidence in the previous legilation and the previous Secretary of State? If the provisions of this legislation were so necessary and so patently obvious to the Conservative Party, why did it not put them in the 1980 Act? I see the hon. Member for Hendon, North (Mr. Gorst) smiling wryly.

Mr. Gorst: The hon. Gentleman is a printer, so he will know that if the print is rather faint it is necessary to have another edition. To use the vernacular of Conservative Members, the footprint of the first step was not well-trodden and therefore it is necessary to have one that makes an impression.

MR. Leighton: I am grateful for that help and clarification. I remember that the hon. Gentleman was in a minority of one in Standing Committee which considered the previous measure. It now appears that he is in the majority. All the Ministers who extolled the virtues of the

1980 Act were wrong and he alone was right that the footprint was defective. Now the hon. Gentleman's point of view prevails in his party.

The Secretary of State at Question Time not too many days ago boasted of Britain's good industrial relations. He said that less days are lost through industrial disputes than 40 years ago. In that case, why do we need his new legislation? Of course, there are some difficulties. The ASLEF dispute has been mentioned, but would the Bill affect that dispute in any way? It would have no effect upon it at all.

Mr. Garel-Jones: For the time being.

Mr. Leighton: We keep hearing the phrase "for the time being". The Conservative Party is saying that this is only one bite of the cherry and that they will be back later for a much larger bite. I see Conservative Members nodding their heads. I wonder what my erstwhile colleague the hon. Member for Leicester, East (Mr. Bradley) thinks about that.

Is another reason for the legislation that the trade unions are now relatively weak? They have been weakened by unemployment. They do not have the political influence and muscle that they had before. Do the Government believe that they can now give full rein to their bitter prejudice and animosity towards the trade unions? Does the Secretary of State believe that one should kick a man when he is down and that, now that the trade unions are down, that is the time to kick them? Is that what motivates the Conservative Party?

Was it because the previous Secretary of State believed that this measure was unwise and that it would be imprudent to embark upon punitive legislation that he was sent across the Irish Sea into exile? Not only was he sent into exile—no doubt the hon. Member for Hendon, North will smile again—but all the Ministers who were on that 1980 Act Committee have disappeared. One has been moved sideways. The hon. Member for Beeston (Mr. Lester) has been sacked altogether. We have new faces to do the dirty work.

With what sort of faces are we confronted? I quote a *Daily Mail* editorial about the new Secretary of State. I emphasise to the Secretary of State that they are not my words. He might believe that I am being slightly rude, but he knows that unlike him, I am not. The *Daily Mail* stated

> "His trademarks have been the sneer, the snarl and the predatory prowl".

The *Daily Mail* was not criticising the Secretary of State for that, but was praising him. It wished to see more of it. The editorial went on to say:

> "This is not the time for him to show his nice side."

I am bound to say that he has been remarkably successful in carrying out that advice.

We are still in some mystery about why we are having this legislation. Perhaps it is the easy option of inserting what we might call a cheap political gimmick. The right hon. Member for Stockton (Mr. Rodgers), from the SDP, who has disappeared, as is their wont, quoted the Mori poll. It would seem that unions tend to be unpopular and unloved. Is the attack on the trade unions seen as a diversion to deflect attention away from other matters such as 3 million unemployed and the state of the economy? Is it an attempt to make the unions the scapegoats and to depict them as monstrous tyrannies that are causing all the problems? Is this the Government's opportunity to injure, main and shackle and the unions while they have a majority?

It is clear from the legislation that the screw is to be tightened by major steps in the Government's offensive against trade union freedoms. We have had all sorts of inane and uninformed talk about so-called immunities, as though the trade unions were above the law. I do not know whether the hon. Member for Winchester (Mr. Browne), formerly with an honourable regiment and now usefully employed as a banker, is familiar with such matters. The so-called immunities derive from statutes passed in the House, so how can the unions be beyond the law? Such talk is mischievous and misleading.

Our British system is not based on a written constitution which lays down rights, but on common law. The immunities are statutory safeguards against common law liabilities when carrying out legitimate trade union activities. If we translate the word "immunities" into plain English that anybody can understand it means rights and freedoms—the inalienable rights of free men. They distinguish us from slaves or serfs. Sometimes freedoms and rights are inconvenient. We see that in the ASLEF dispute. Throughout the world societies either accept those rights or they rule by the bayonet. I know the way that I want Britain to go.

Mr. Garel-Jones: Do any other organisations enjoy such so-called rights?

Mr. Leighton: We recently discussed the Lloyd's Bill, when the word "immunity" was given great prominence.

This Bill is a major assault on historic rights and freedoms. Through the unemployment levels the Government are taking us back to the 1930s. In many important respects the Secretary of State is taking us back to before 1901 and to the nineteenth century. I am interested in the SDP and Liberal attitude because the Asquith Liberal Government of 1906 gave the so-called immunities or rights and freedoms to trade unions.

The Secretary of State says that he wants to neuter the effects of the closed shop. Yet voluntary negotiated union membership agreements are an integral and accepted part of industrial relations in many industries. They are often welcomed and accepted by employers as well as workers. They apply as naturally to plumbers and printers as to doctors and lawyers. They often promote a sense of community at shop floor level. They safeguard standards, job qualifications and safety.

Such agreements are here to stay. The Industrial Relations Act 1971 made them illegal, but they remain—they will not go away. The Secretary of State says that he is a man of the world and will not be misled by people who say "Let us make them illegal". He knows that that is not possible. What will he do? First, he will remove immunity from refusing to work with non-union labour. Secondly, he will offer huge financial inducements, possibly at trade union expense and perhaps to people with a grudge against the trade union movement, not to become or to cease to be trade union members. With the sums involved I should be surprised if some people did not try it on. I should be surprised if some people were not persuaded by others to try it on. The Bill is a bounty hunter's charter and a recipe for disruption.

As my right hon. Friend the Member for Chesterfield (Mr. Varley) said, the CBI is worried about the high levels

[Mr. Leighton]

of compensation because some small firms could be bankrupted. Members of the CBI are practical men of affairs and they see the damage that could be caused.

I turn to the biggest blockbuster of all. I have bad news for the Secretary of State. He will come a cropper. I refer to the curtailment of section 14 immunity under the doctrine of vicarious liability which would expose union funds to colossal damages by causing unions to be held responsible for their members' actions. Damages of up to £250,000 could be awarded in each case. A union might be involved in four cases, so £1 million could be at stake. Theoretically, employers would be able to bankrupt unions.

Let us imagine the scenario. The Secretary of State and the House should think about it. There will be injunctions and then contempt of court charges. Sequestration will occur. Does any hon. Member think that British workers will allow that to happen? That is stretching credibility too far.

We remember what happened in the Con Mech case when enormous damages were involved. The union called a national strike and anonymous donors became involved. The unions have already said what they will do if the Bill is passed and fines are levied against them. They have said clearly, so that we know where we stand, that they will not pay. They have said that they will oppose them by taking industrial action.

The Secretary of State might have been misled by public opinion polls. That is always a danger for politicians. The SDP will come unstuck by studying the opinion polls, finding out what the people want and offering it to them. The polls have always shown that the unions are unloved and unpopular. There is nothing new about that. In real life things are different.

I am a member of a union and I know that members feel the same affinity and loyalty to their union as some Conservative Members feel to their regiment. Union members have the same gut reaction to their union which they might have joined at 14 years of age and which has given them a livelihood.

Mr. Garel-Jones: Nonsense.

Mr. Leighton: The hon. Member for Watford (Mr. Garel-Jones) does not understand, but there is so much that he does not understand. He will have to learn.

Mr. Arthur Lewis: I thought that my hon. Friend would refer to the way in which the Government locked up the five dockers and how the Official Solicitor had to get them off the hook. Will the Government have to provide another batch of official solicitors to get them off the hook again?

Mr. Leighton: I was about to remind the Secretary of State of the Pentonville five. I was about to say that when union officials are imprisoned and when the sequestrators move in and take away the furniture and typewriters there will be real resistance. There will be real grievances. He can forget the opinion polls.

Whether or not the Secretary of State is snarling and whether or not his minions are on their bikes, any attempt to destroy the unions will fail. The Secretary of State should remember the ill-fated 1971 Act. He should remember the election that the right hon. Member for Sidcup (Mr. Heath) called to decide who rules. I believe in the rule of law. We should not endanger it by bringing the law into disrepute with such absurd legislation. It is dangerous. Respect for law is essential. Parliament is sovereign and supreme.

There are only two limitations. The first is that this Parliament is sovereign and the same status will be enjoyed by its successors. That Parliament can undo this legislation and I am positive that it will do so if it is enacted. The second restriction on our apparently unfettered sovereignty and supremacy is that if we pass laws that are so ludicrous or offensive that they are not obeyed by the people there will not be enough policemen to arrest them all if they show that they are willing to take the consequences. There will not be enough gaols to put us all in. We have law and justice by consent.

We shall try to save the Government from themselves. We shall try to prevent them making asses of themselves and an ass of the law. However, if they insist on enacting this measure, we shall fight it all the way in the House and in industry outside the House. It is the right of the British people so to do and we shall do it. There is no need for any ambiguity or dubiety. We shall fight the Bill in the House and outside with all the forces at our disposal.

Mr. Tebbit: Is the hon. Gentleman setting out as the policy of his party that he wants people to break the law if they do not like it?

Mr. Leighton: If fines of £250,000 are levied on the trade unions and if their very existence is set at risk by the Government's foolish and mischievous actions, they will have a right to defend themselves. That is a right that extends to anyone else who is under attack—and it is a right that is enjoyed here as well as in Poland.

6.43 pm

Mr. Peter Lloyd (Fareham): I take up the remarks of the hon. Member for Newham, North-East (Mr. Leighton) with a sense of déjà vu. I listened to the hon. Gentleman at considerable length on many occasions when we considered the Employment Bill in Committee. He may wonder whether what he said then was a waste of time as we are now considering another employment measure. As my right hon. Friend the Secretary of State said, the previous Labour Government introduced industrial relations measures in 1974, 1976 and 1978. If we are to follow that practice, we are due for one more employent Bill before we catch them up. Nevertheless, I hope that this will be the last Bill on industrial relations to be introduced in this Parliament.

The hon. Member for Newham, North-East discussed immunities. He seemed to suggest that the Bill will remove all immunities, or that there is a desire on this side of the House to remove all immunities from trade unions and individuals in industrial disputes. That is not so. We are discussing exactly what the immunities are and how far they should extend. It is extraordinary that in speech after speech from Opposition Members in the House and from others outside the question is never directed to what the law should be. There is an ideological assumption that there can be no change in the law without damaging the freedom of individuals who may wish to associate with a trade union or belong to it.

The hon. Member for Newham, North-East rightly spoke of the loyalty that members feel for their trade

unions. That may not apply to every member or to every trade union, but many trade unionists have a deep loyalty, respect and affection for their union. They feel comfortable, warm and cosy in it. I know that that is often the feeling of those who have come to this House through the trade union hierarchy. That is admirable, but it would be healthier if trade unions relied on the loyalty and support of their memberships rather than legal immunities that are enjoyed by no other group or organisation.

I am pleased to see the Bill before the House and I support most of its provisions. It is shrewd. It builds on the 1980 Act and continues the latter's essentially non-ideological objective. I note that some Labour Members are laughing. The only ideology we have heard in the House is from them to the effect that no law is to be considered other than that which is presently on the statute book unless it is a proposal to increase union immunities still further.

The Bill deals with specific abuses of which the public are well aware even if the right hon. Member for Chesterfield (Mr. Varley) and his hon. Friends are not. Some of my hon. Friends see the Bill making good what they regard as omissions in the 1980 Act. I think that my hon. Friend the Member for Cornwall, North (Mr. Neale) has that idea but I do not agree with him. The 1980 Act was well thought out and appropriate for the time of its introduction. However, to put industrial relations law on a just and sound footing after at least two generations of false starts and one-sided decisions will take two or three Bills and will spread over two Parliaments. These matters are far too important and complex to be passed through the House without detailed consideration and reflection at each stage. It is a mistake to try to do too much at once.

It is too easy to construct a complex legal house of cards that could come tumbling down if a major element happened to be misjudged. Time is needed for managements, unions and the community generally to absorb what has been done at each stage. The reception that greets each instalment inevitably modifies the next one. That is the special achievement of the 1980 Act. It is now possible to argue industrial relations legislation on its merits, although that is not possible with some trade union leaders or Opposition spokesmen. However, it is now possible outside the House to argue generally whether a proposal is good or bad and what its effects might be.

Before 1980 the main question used to be "Is it possible to legislate other than to extend still further immunities for unions?". Change was seen inevitably as forming a one-way street. We were glad to have SDP support for the Bill, convoluted and half-hearted though it might be. We are conscious that its support might have been given only because it thinks that the Bill reflects where the bulk of public opinion lies. It must have been disagreeable for the SDP to descend from the clouds of generalised good will and to make a firm policy choice.

Mr. Mikardo: Have all the SDP Members made the choice?

Mr. Lloyd: We shall not know until we see how they vote in the Division. It will be interesting to note what effect its decision to support the Bill will have on its special commitment to a statutory incomes policy. After tonight's vote benevolent neutrality from trade union leaders will not be an option. It has been shown in the past that brute legislation cannot work. We are left with the ingenious Heath Robinson devices of Professors Layard and Meade. They may sound good in sixth-form discussions and at Liberal and SDP conferences, but they would buckle and collapse in any real live pay dispute.

I understood the right hon. Member for Stockton (Mr. Rodgers) to complain that the Bill will do nothing for industrial relations and efficiency within industry. The law does not create good industrial relations. Most of us on both sides of the House know that. Only managers and employees between them can achieve good industrial relations and efficiency.

Mr. Michael McGuire (Ince): Is the hon. Gentleman aware that a number of employers are saying "We would like more time to enable the 1980 legislation to be experienced and developed. Do not start destabilising now"? Does the hon. Gentleman not hear that type of comment from employers in his constituency?

Mr. Lloyd: I do not. However, I have read that some employers take that view. I have heard others express the hope that many of the provisions contained in the Bill will find their way on to the statute book. I have received letters to that effect. Many of them regret that certain measures that are set out in the Bill were not part of the 1980 Act. There is a range of opinion throughout industry.

It is foolish to expect the law to improve industrial relations, but it is sensible to look to industrial relations law to provide a healthier framework for such relations. The Bill modestly does that by increasing the remedies for those injured by unlawful and unfair conduct. Presumably that is why the SDP is giving the Bill reluctant and complicated support.

Clauses 10 and 11 should assist industrial efficiency. Union pressures will no longer be able to prevent management from using efficient outside suppliers and contractors which may not be acceptable to the unions because they are not unionised.

Mr. Mikardo: Cowboys.

Mr. Lloyd: That is what the unions may call those who may do the job more profitably and efficiently than their members.

Mr. Mikardo: And less safely.

Mr. Lloyd: Unlike the previous Conservative Industrial Relations Act, the underlying merit of the 1980 Act and this Bill is that they are activated only when there is a victim suffering from unfair action and where a wrong is apparent to the public and should be put right. It is appropriate that under clause 1 the Secretary of State can compensate victims of the 1976 closed shop legislation. It is a salutory reminder of the fact that when unions' legal privileges were at their zenith some unions, probably to the regret and shame of others, used their apparent powers spitefully and small-mindedly.

Mr. John Evans: In equity and fairness, does the hon. Gentleman believe that workers who were sacked because they wanted to join a union, such as at Grunwick, should also receive retrospective compensation?

Mr. Lloyd: I am not sure that that is why the employees at Grunwick were sacked. The only gain from that episode was to crystalise the public's view that reform was necessary. It also destroyed any moral authority that the unions might have to resist it.

Mr. Tebbit: Had the workers at Grunwick been sacked for being members of a trade union, there was a remedy in law. They could have gone before a tribunal.

Mr. Lloyd: I presume that none did, so either they did not feel that they could justify their case, or that was not the reason that they were sacked.

Clause 12 makes union funds liable and brings union immunities into line with those for individuals and employer organisations. Unions should not be beyond the law. It has not benefited them. It has done their reputation no good. They would have to endure far less hostility and criticism if they had to work within the law, like the rest of the community.

I have a number of questions about the clause, but some have been raised already and most of the others are best left to the Committee. The right hon. Member for Chesterfield (Mr. Varley) mentioned the Green Paper, saying that some people may hope that by making unions liable for the actions of their officials they will increase discipline and their control over members, but it would be wrong for the law to bolster union leaders at the expense of members, and full-time officials at the expense of shop floor representatives.

Will the Minister confirm that unions will be liable for their officials acting unlawfully only where they carry union authority according to the rules and are not repudiated? If so, the requirement of the law is essentially negative, and so if a union visibly and in good faith withdraws its support and approval from an official's unlawful act, it should be I presume sufficient to make it immune from damages. Therefore, there is no requirement to discipline or expel an erring official to avoid damages.

It would be a pity if the law encouraged the habit of taking away union cards. Unlike my hon. Friend the Member for Mid-Sussex (Mr. Renton), I am chary of using the law, even inadvertently, to influence the way that unions conduct their internal business.

I have reservations about clause 2, which concerns dismissal for non-union membership in pre-1980 closed shops unless 80 per cent. of those affected or 85 per cent. of those voting have supported its continuance. To put it at its mildest, it is unsatisfactory that an individual's rights at law should depend on how his colleagues vote. He should either have protection and remedy at law or he should not. The matter should not be conditional.

My hon. Friend the Member for Mid-Sussex mentioned a practical problem. What happens if there is a 75 per cent. vote for continuation? The preference having been given and then ignored, it would justifiably cause considerable resentment.

The position is different with a new closed shop. That is why I accepted the proposal in the 1980 Act. It is reasonable to demand a weighted majority to alter the status quo. But clause 2 allows a minority to alter the status quo. It is the one part of the Bill that could create a conflict without a victim, the need for whose protection would be apparent and which would justify it to the public. A management anxious to oblige a union with which it has had a long-standing membership agreement might seek to ensure that the closed shop is sustained at a ballot by pre-entry vetting of job applicants or canvassing and influencing employees before a ballot.

I am sorry that my right hon. Friend has gone down the ballot road. I fear that it may produce awkward problems without ending the closed shop. It would have been preferable to have left the proposal out of the Bill. My right hon. Friend could have then produced for the election manifesto a carefully thought out proposal to extend the undertaking to make dismissal for non-union membership, like dismissal for union membership, unfair in all circumstances, with the exception of perhaps the seamen's union and Equity, where there is a strong case to retain it.

6.58 pm

Mr. Cyril Smith (Rochdale): In the 10 years that I have been a Member of the House I have heard many discussions on employment legislation. Employment legislation is never-ending. The previous Government specialised in such Bills and this Government seem to be doing the same.

I detected a possible split in the Tory Party. The hon. Member for Fareham (Mr. Lloyd) said that he hoped that this was the last such Bill in this Parliament, but previous Tory speakers called for more, and more appear to be possible.

The arguments are always the same. We were promised that the 1980 Bill would be fought through the House. It has constantly been said in this debate that certain SDP Members have left the House. Despite the tremendous fervour of the official Opposition, only about 13 Labour Members have been here so far throughout the four hours of the debate. I do not criticise them, but I do not get the impression from that that they are in a lather and will fight the Bill all the way with red banners flying and heaven knows what.

Mr. Mikardo: There will be more of us about when the hon. Gentleman has finished speaking.

Mr. Smith: The truth is that most of these measures have little to do with employment as such and even less to do with good industrial relations. It is for the latter reason that I consider the Bill to be ill-timed. At a time when the economy is flat and struggling—whatever the Tory propagandists say, that is certainly the experience in my area—yet another Bill is introduced which contains important features, but not features to which a sensible Government would give priority at such a time.

In the current situation, we should be attempting to create an industrial strategy which will lead to economic survival, and that strategy must include improved industrial relations. Industrial relations should be based not upon fear of the dole queue, which is the Government's attitude, but upon creating a structure based on a mixed economy which recognises that both capital and labour are essential ingredients in the mix of both sides of that economy.

In our view, a Bill calling for worker participation in industry, which has been Liberal policy since 1928, greater profit sharing and incentives for profit sharing and legal recognition for works councils would have been more appropriate to present needs. A Government concerned to create partnership and which showed a proper understanding of the relationship of pay, prices, investment, productivity, employment and good industrial relations to a successful economy would be a very different Government from that which we now have. The Tory Government not only attack the trade unions, or so it is alleged, but constantly insult British industry by propounding the myth that those of us concerned with British industry were all grossly inefficient until they came to power.

Nevertheless, we are stuck with the Government and we must therefore deal with circumstances as we find them. We are also stuck with the Secretary of State for Employment, who is scarcely noted for his compassion. Indeed, there are those who would argue that the right hon. Gentleman is more noted for his arrogance and his desire to go down in history as the champion of the Tory Right than as the upholder of consensus views, and perhaps also more noted for an apparent belief in his own infallibility than for a desire to lead on a team basis.

It seems that the Secretary of State has chosen to forget his past. There was a time when he believed in wider worker participation. In 1974, for example, he called upon the Government to recognise that

"capitalism, if it is to survive, must undergo some major changes."

There were times, too, when he apparently bitterly opposed the closed shop. On 9 December 1975, speaking about the closed shop, he said:

"The importance of liberty is infinitely greater than the importance of 100 per cent. membership."—[*Official Report*, 9 December 1975; Vol. 902, c. 329-30.]

He seemed to have forgotten that when, on 23 April 1980, his hon. Friend the Member for Hendon, North (Mr. Gorst) moved an amendment, for which I voted, to give people in a closed shop established before the 1980 legislation the right to vote on whether they wished the closed shop to continue, he voted against that amendment. The right hon. Gentleman's actions in 1980 and today provide a perfect example of what ministerial office can do to a person's conscience and views and the way in which he votes.

The Liberals, as a minority party, have very few rights, and the ability to determine the business of the House is certainly not one of them. Bills and motions are put before us and we must vote for or against them. If we abstain, we are mauled by the press—the tool of the Tory Party—for indecision. Abstentions are not recorded. If we vote with the Government, we are accused of being their puppets. If we vote with the Opposition, we face similar criticism.

After almost 10 years as a Member of the House, that no longer bothers me. I judge an issue on its merits and vote accordingly. It is tempting to vote against the Bill because one is highly suspicious of the Secretary of State's motives, but if I vote against the Bill purely on that basis I should be committing the very fault for which I criticise the Government and the Opposition—judging the issue not on its merits but on the basis of its source. On its merits, I believe that the Bill should be supported, and I shall certainly support it. Moreover, lest there be any misunderstanding, I put it on record that early last week—I stress those words—after careful consideration and much internal party consultation, I advised my Liberal colleagues to do likewise.

Mr. Sydney Bidwell (Ealing, Southall): No one is surprised.

Mr. Smith: I take the hon. Gentleman's comment as a compliment. So far as I know, all my colleagues will be voting in the Lobby with me. Incidentally, if some of them did not do so, I should interpret that not as a split in the party but as a manifestation of democracy—people exercising their individual right of thinking for themselves and refusing to be party political puppets. I should see that as a welcome distinction in party politics and a wind of change to be applauded.

I said that I would vote for the Bill on Second Reading. I shall do so, first, because I welcome its proposals on the closed shop. They are certainly better than nothing. I have never made a secret of my hatred for the closed shop. I am probably the only hon. Member who in the past two years at his own expense has gone to the High Court for an injunction against a local authority to try to prevent a closed shop being introduced. I hate the closed shop. I consider it to be a gross infringement of individual liberty. I believe that any person must have the right to belong to a trade union, but equally I believe that any person must have the right not to be a member. I took that line throughout the discussions on the 1980 Bill, and I take it now.

Let it be said—indeed the Secretary of State conceded it—that the Bill does not make the closed shop illegal. Despite all his bravado and flag-waving at the last Tory Party conference, the Secretary of State has ducked that one. He has not made the closed shop illegal.

Mr. Tebbit: The hon. Gentleman is being very fair. He will recollect that for many years, whenever I have said anything about the closed shop, I have made plain my dislike of it. Equally, I have made plain my belief that, certainly until now, we could not legislate effectively to make it illegal. That is why I have introduced the proposals in the Bill. Like the hon. Gentleman, I feel that they constitute a reasonable step to protect people against the worst excesses of the closed shop.

Mr. Smith: I accept the latter part of the Minister's intervention and his personal view in the first part. Many of the problems stored up in the Bill—such as who will and who will not receive compensation, the amount of that compensation and the fact that people can be encouraged to go for high sums of compensation—would not exist if we had a clause saying that closed shops are not in accordance with the law and are an infringement of human liberty.

The Bill goes way to helping those who are affected by a closed shop. I welcome and support that part of it. I am prepared to listen to arguments for a variation in the percentages for closed shop agreements—80 per cent. or 85 per cent. of those voting. I may or may not be convinced by the arguments, but the principles involved are good and should be applauded.

Equally, I share the worry that has been expressed by Opposition Members about the amount of compensation for dismissal. I am in favour of a high figure, but we must be careful to guard against unscrupulous individuals and those who may attempt to engineer dismissal to obtain high compensation.

I also welcome the clause that outlaws union labour-only contracts. Such contracts are detrimental to small businesses and the self-employed.

I support those clauses that repeal section 14 of the Trade Union and Labour Relations Act 1974. I would consider supporting a lowering of the financial penalties proposed against union offenders, but, again, I believe that the principle of taking away immunity is correct. Those clauses might have more chance of success if unions were more decentralised with strong local officials. While not disagreeing with clause 15, I regret that its interpretation will not be assisted by any requirement for effective consultation.

There is much in the Bill with which I agree. Overlooking its timing, and judging it solely on its merits,

[Mr. Smith]

I and my colleagues will support it in the Lobby. Some amendments to the Bill are needed. That is why we have Committee stages. However, in its present form, I do not see it as a bad Bill. I do not believe that it will destroy the trade union movement. I reject the notion that it is a union bashing Bill.

I believe in a strong trade union movement, properly led, democratically based, and seeking to improve the industrial lot of its members. I wish to see people encouraged to join their unions, but not bullied or compelled to join by law or by actions that will lead to their losing their jobs if they do not join. I see nothing in the Bill that is incompatible with those views and I see provisions in the Bill that are compatible with more individual liberty and choice. For those reasons, I shall support it.

Mr. Deputy Speaker (Mr. Bryant Godman Irvine): Mr. Michael Shaw.

Mr. Mikardo: On a point of order, Mr. Deputy Speaker. I raise this point of order with some diffidence, because I am aware that the selection of speakers is entirely within the discretion of the Chair. I respectively point out that we shall have had three speakers in succession in favour of the Bill without an intervening one against and that earlier in the debate, we heard two speakers in succession who were in favour of the Bill without an intervening one against.

Mr. Gorst: Further to that point of order, Mr. Deputy Speaker. It may be that the wisdom of the Chair represents the view in the country as well.

7.14 pm

Mr. Michael Shaw (Scarborough): We have had the usual robust contribution from the hon. Member for Rochdale (Mr. Smith). Most hon. Members certainly on the Conservative Benches, welcome his judgment of the Bill. I found his judgment a little less convincing when he seemed to detect a split on the Conservative Benches because of a difference of opinion that was apparent in two speeches. On the other hand, with regard to the possible action of his colleagues in going through different Lobbies, he seemed to detect not a split but a manifestation of democracy. Had he not made that distinction perhaps I would have taken more seriously some of his other remarks.

I regret the hon. Member's critical remarks about my right hon. Friend the Secretary of State when he quoted to him what some of the newspapers had chosen to say. Having sat through the whole debate, I believe that my right hon. Friend has taken a reasonable attitude to all interventions and, indeed, the whole of his speech was a reasonable contribution to our consideration of the Bill. The difference between the hon. Member for Rochdale and the right hon. Member for Stockton (Mr. Rodgers) was that the hon. Member for Rochdale made his criticisms with a smile, and we all knew what was going on. I regret to say that the smile was absent in the other case.

Mr. Tebbit: The right hon. Gentleman was being consistent.

Mr. Shaw: Perhaps he was being consistent, but we react differently to the way that views are expressed. We are in for a period when views will be expressed and, perhaps reluctantly, decisions taken by SDP Members as to which way to vote. While they are making up their minds on the merits of the case, they will be at pains to show how distasteful is the company that they will will have to suffer when they go through the Division Lobbies.

While I was coming down in the train—I am glad to say that the train came down in good time from Yorkshire, and that the difficulties at Grantham seem to have been overcome—I had a chance to read in *The Times* an article by Mr. Brian Capstick. There were nearly five columns of criticism of my right hon. Friend's Bill and, it said—this was tucked away in one sentence—that on balance, the feeling of the SDP is that it is in favour of it. I felt that that was an extraordinary article. I hope that, in coming to these decisions, the members of the SDP will be more generous in their acceptance of the merits of the Bill and of those who put them forward. I took exception to the descriptions that were made of my right hon. Friend. I can only think that they were devised when the right hon. Member for Stockton was shaving this morning and something gave him cause to think along those lines.

The Bill has already aroused considerable comment, particularly in the trade union movement. The hon. Member for Rotherham (Mr. Crowther) said that it is a savage attack on trade unions. It has been said elsewhere that we are out to destroy trade unions and that people will work actively against such a law and be prepared to take the possible consequences. I am waiting, like my right hon. Friend, to hear whether the full consequences of such a statement are to be applied and to be apprehended.

I have also heard the statement that trade unionists are likely to be prepared to break the law if the Bill reaches the statute book. I hope that some clarity will emerge to show whether such a statement is true. I hope that it is not true. I do not seek to impugn the integrity of people who feel strongly about the Bill. I simply do not believe that such comments are justified.

The trade union movement of today represents one of the most powerful and influential sections of our community. I hope that it may long continue to be so. I have always felt, as I have remarked on several occasions in the House, that the economic life of this country depends very much on close collaboration involving the unions, the employers and also the Government who represent the interests of the public as a whole. I am equally convinced that collaboration must take place within a fair framework of law that must be subject to change.

The contents of the Bill, particularly the modification of trade union immunity rights, arouse strong feelings. From time to time, Parliament examines such matters as company law. There have been changes in the status of shareholders, the obligations of directors, the manner in which accounts are presented and the rights of employees and the public at large to information. The law relating to monopolies and international companies is relevant in considering trade unionism today. One also needs to take account of consumer legislation. In all these areas it is regarded as right and proper, as, indeed, it is, that changes should be made from time to time. It must therefore be right that from time to time hon. Members should examine and where necessary revise the law relating to trade unions and all aspects of industrial relations.

Under the Bill the Secretary of State is empowered to pay compensation at his discretion to certain people

previously dismissed for non-membership of a trade union where there has been a union membership agreement. This power would relate to cases of dismissal that occurred after the 1974 Act and before the coming into force of the 1980 Act where such a dismissal would have been unfair had the 1980 Act already been in existence. This gives rise, I believe, to consideration of retrospective legislation.

I have always been opposed to retrospective legislation, with one proviso. I have always regarded it as absolutely acceptable, and, indeed, desirable if it is for the righting of a clearly identifiable injustice. This injustice, in the view of Conservative Members, was put right as soon as the Government came to power. Confirmation of our view that it was an injustice was contained in the judgment of the Strasbourg court which came into effect, I think I recall correctly, shortly after the Government came to power. The court decided that the circumstances surrounding the dismissal of the three railwaymen had put us in breach of our obligation under the European Convention on Human Rights. Since it is possible to identify both the injustice and the individuals upon which it has been perpetuated, I welcome the new proposal.

As some of my hon. Friends have averred, the main changes in the Bill—those limiting the immunities, affecting compensation, unfair dismissal and the like—may not cover as many matters as some would wish. I believe that they are important changes. Above all, they are relevant to modern conditions of industrial and commercial life. They cannot be regarded, as Opposition Members have sought to show, as an attempt to destroy the trade unions. They are in fact a means of making the trade union movement more effective and, indeed, more powerful. They are in addition a continuing recognition of the great changes that have come about in the strength and status of trade unionism.

I stated in the debate on the Queen's Speech that the Government were right to adopt a step by step policy. I expressed my feeling that the 1980 Act should have been a rather bigger step than it was. However, our having taken that first step, it is right that this next step should result from proposals that have been given the widest possible consideration. It should not be forgotten that the present Secretary of State for Northern Ireland produced the Green Paper for further moves. To say that my right hon. Friend the Member for Lowestoft (Mr. Prior) has been banished to Northern Ireland is insulting. Anyone going to Northern Ireland to work out that great task for the people of this country deserves full credit for all that he is doing. My right hon. Friend the present Secretary of State for Employment took up the Green Paper and produced, I am glad to say, a further consultative document. Now he has produced the Bill. There has been the widest possible consultation.

Mr. Bidwell: With the memory of the Donovan report, a massive study, in the background, has the hon. Gentleman allowed it to enter his mind that trade union officials could lose control of an industrial situation? I am not fully aware of the hon. Gentleman's experience of industry. Is he aware that workers could act on their own and that a breakaway situation might result from the Bill?

Mr. Shaw: I would not say that the situation has been 100 per cent. proof in the past. This is a matter that can be discussed in Committee.

While the Bill may be changed in detail during its passage through the House, I believe that it already represents a reasonable and necessary measure of reform. I hope that the debates that take place upstairs and on Report will be conducted in a reasonable and constructive manner. The subject deserves that sort of consideration. It is of the utmost importance that the Bill is treated in such a manner. In support of my hon. Friend the Member for Fareham (Mr. Lloyd), I believe that the country should have time to digest the measures when they have gone through the House. Unless there are the strongest possible reasons, I believe that we should not seek to amend the law again during the life of this Parliament.

7.29 pm

Mr. Ian Mikardo (Bethnal Green and Bow): I hope, Mr. Deputy Speaker, that you were not offended by the point of order that I raised a short while ago. Since the debate began we have had a little over 150 minutes of speeches for the motion before the House, and 78 minutes of speeches against the motion. In over 30 years in the House I cannot recall a single previous occasion—whatever the motion and whatever the merits—on which one side of the House had double the time that the other side had in a debate on a motion.

The Secretary of State is not here at the moment, but he has been here nearly all the time and I do not make any criticism. Has he noticed, as I have—if he has, he will be grinning to himself, as I am—where his support has come from? The only support that he has had—some of it modified, some of it rather critical—from Conservative Members for a Bill that touches the heart of industrial relations and the heart of our industry has come from the great, teeming, throbbing centres of British industry—from Mid-Sussex, with its great roaring steel mills belching out colour into the night; from Winchester, with its massive shipyards and all its workers; from North Cornwall, with its great textile industry and its looms bashing away; from the shipyards of Fareham, presumably on the edge of Porchester Creek; and, above all, from the coal mines of Scarborough. That is where his support has come from.

Mr. Tebbit *rose*——

Mr. Mikardo: I should be glad if the right hon. Gentleman would wait. I know that he cannot resist responding. Does the right hon. Gentleman attach any significance to the fact that he has not had any support from any Conservative Members from Sheffield, Newcastle, Manchester, Liverpool, Birmingham?

Mr. Churchill (Stretford) *rose*——

Mr. Mikardo: What have we had? We have sat here and listened to lectures from the Conservative Benches on how working men behave, what they are like and what they feel, from two company directors, one accountant, one banker, and one lawyer who is a member of the tightest closed shop in Great Britain. They have been telling us what working men are like and how working men think. The right hon. Gentleman must attach the same significance to that as I do.

Mr. Tebbit: As the hon. Gentleman knows, I never can resist these things. I cannot resist pointing out to him that I am happy that at least there are rather more Government supporters behind me than there are Labour supporters behind the hon. Gentleman, despite all the talk of the outrage and fury that the Bill would cause. The South of England has a very good record of industrial

[Mr. Tebbit]

relations. Most of the great new modern industries are not springing up—unfortunately, in my view—in those areas in the North to which the hon. Gentleman has referred but along the Thames Valley and down into Bristol and South Wales. There may be some significance in that.

Mr. Mikardo: That is a very good try. The right hon. Gentleman is a good trier. He will be the first to recognise that what he said is stretching the elastic a bit tight. The right hon. Gentleman has been here throughout the whole of the debate. He is entitled to the drink for which I think he is just departing.

A few days ago I spent an evening drafting some amendments to the Bill. The first amendment that I drafted was to the title. The Bill should never have been called the Employment Bill. It has nothing to do with employment. There is a great deal to talk about at the present time regarding employment. Indeed, if all the time that will be wasted in the House and in Committee on the Bill were devoted to putting our heads together about the real problems of employment—especially about how to reduce that hideous total of 3 million unemployed—we should be better occupied.

What is there in the Bill about employment? There is not a line in the Bill that will provide a single job for any of the 3 million unemployed. It is an affront and an offence to those 3 million people that the Bill, which is a mechanism for carrying out--as we have heard from Conservative speakers—a piece of extreme Right-wing Tory ideology, should be called the Employment Bill. It is a calculated offence to every one of the 3 million unemployed.

The first amendment that I have drafted to the Bill is to the title—to delete "Employment" and insert "Anti-Trade Union"—because we ought to have an honest and accurate description of the Bill instead of the dishonest and inaccurate one that we have.

Mr. Arthur Lewis: My hon. Friend may not have been present to hear the acting leader of the Liberal Party say that four new jobs will be created by the Bill. As the hon. Member for Rochdale (Mr. Smith) is a former member of the Labour Party and a former Labour mayor, I am assuming that he is correct. It will make a big impression, will it not, on the figure of unemployed? There will be four new jobs.

Mr. Mikardo: I am deeply grateful to my hon. Friend for pointing out that four new jobs will be created in the Department of Employment. That will be absolutely marvellous.

Mr. Whitney: On the very important question of employment, would the hon. Gentleman care to comment on the experience in the United States? In the "right to work" States—the 20 States in which the closed shop has been outlawed—employment has been increased by over 1 million in the last few years. In the 30 States in which the closed shop still operates, employment opportunities have been destroyed and jobs lost.

Mr. Mikardo: I would comment on that intervention if I had made a deep study of employment in all the States. I do not believe that any one factor can account for changes of that sort and differences of that nature. I fear that that analysis is as superficial as most of those made by the hon. Gentleman.

What worries me is not only that the Bill will not create employment but that it may reduce the economic health of the country as a result of all the friction and the dislocation that it will cause.

I can now see very clearly why the right hon. Member for Lowestoft (Mr. Prior) was moved out of the Department of Employment. He would not have introduced this Bill. I notice that he is not one of its sponsors. I am sure that he is happy that its provisions do not apply to Northern Ireland. I am wondering whether that is because he put in an oar in that direction. I shall be interested to see whether he is in the Lobby tonight or whether he has an unavoidable commitment in Belfast which will prevent him from voting for a Bill for which I do not think he cares very much.

The right hon. Member for Lowestoft thought hard about the complexities of industrial relations. He did not always get the right answers, as we saw in relation to some aspects of his own Bill, but at least he listened to the people who know something of the subject. He listened to the CBI, to the TUC, and to the organisations of professional managers, whereas the present Secretary of State listens to nobody but the Prime Minister. Doubtless that is why he has got on as quickly as he has—unlike those of his colleagues who have minds of their own, like the right hon. Members for Chelmsford (Mr. St. John-Stevas) and Amersham and Chesham (Sir Ian Gilmour.)

I want to say a brief word about a number of anomalies, and in some cases a number of dangers, which I believe are inherent in the Bill. First, the Bill claims—and the Secretary of State and other Conservative Members have underlined the claim—that it will extend freedom. Of course, everyone wants to extend freedom. However, the Bill destroys one important freedom, and that is the freedom of a man to choose with whom he wants to work. That, too, is a freedom. A man should not be compelled to work with people with whom he does not want to work. There are strong feelings among some workers against those who, sometimes on the ground of genuine conscience, but more often—here I speak from experience—speciously pretend to have a conscience which enables them to take the benefits achieved by trade union organisation without contributing a penny or a minute of work.

Mr. Richard Needham (Chippenham) *rose*——

Mr. Mikardo: I shall give way in a moment, provided that the hon. Gentleman speaks some sense, and I am a little doubtful about that.

I have spent a fair amount of my lifetime in factories, and I have met a lot of these chaps who have a conscientious objection to belonging to a trade union. In the whole of my working life I have not met one who had a conscientious objection to taking the wage increase that had been negotiated. In a factory one never meets the bloke who says "It is very nice. We have an increase of 30 bob in the wages this week, but I shall not take it because I do not belong to the union that negotiated it, because I have a conscientious objection". My experience, on the contrary, is that it is the money grabbers, those who will not pay, who are the first in the queue with their hands out as soon as the union has negotiated a wage increase or an improvement in conditions.

Mr. Needham: I am grateful to the hon. Gentleman for giving way. Surely there is nothing in the Bill that compels

reinstatement. It merely puts a financial onus on the employer and the union if they do not reinstate. The Bill does not take away a freedom because there is no compulsion in it.

Mr. Mikardo: All right. I shall say to the hon. Gentleman "I do not mind you doing what you are about to do. All that I shall do is to take £100,000 off you if you do", and he will say that I am not compelling or preventing him from doing so.

The Bill is intended to take away, and will take away, a man's right to work with those with whom he chooses to work. Moreover, the Bill gives those money grabbers—those who have a conscience about joining trade unions, but no conscience about taking the wage increases—a huge financial incentive, sometimes at the expense of the trade union, to pursue their selfish behaviour. That clause is a charter for the litigious—and there are many litigious people. The Minister of State smiles. I am not sure whether he is a lawyer. If he is not, he is not one of those who will get all the benefit. The lawyers are grinning all over their faces. They will get some gravy out of this legislation. They will have a wonderful time. Moreover, there are outside organisations that will inspire and finance people to go to court.

I am worried, too, about what may happen to the atmosphere in a workplace as a result of the periodical review ballot of membership agreement. There will be nasty arguments in the factory canteen, in the pits, and in the pubs where the chaps stop for a drink on their way home. The seeds of serious dissension will be sown in the middle of working groups which, up to that point, had worked in harmony.

There is another freedon that the Bill will take away, and that is the freedom of discretion, in some cases, of employers. At present, an employer who wants to avoid difficulty and who has good relations with his work force and wants to maintain those good relations can decide for himself whether to involve the unions in tribunal proceedings. One or two do; most do not. They can decide for themselves. Each employer can decide in accordance with the circumstances of his industry and of his own workplace and, above all, in accordance with the sort of atmosphere that exists in his workplace. He can decide whether he wants to involve the trade unions. The Bill takes away that power of decision and discretion from employers.

What is all this talk about increasing freedom? I have shown how, in some respects, the Bill takes freedoms away from workers and also from some employers.

Mr. Churchill *rose*——

Mr. Mikardo: I shall give way in a moment, although I should prefer to give way to those who have been here for the whole debate. The hon. Gentleman is bound to lead with his chin, and every boxer likes an opponent who does that.

I come back to the business of compelling an employer to associate with a trade union whether or not he wants to, and whether or not he thinks that it is in his interests to do so. It amounts to this, that the Secretary of State reckons that he knows what is in a particular employer's interests better than that employer himself knows. That is arrant nonsense. Now let us have another piece of arrant nonsense.

Mr. Churchill: Is the hon. Gentleman seriously seeking to defend the supposed right which he is advancing of a trade union or an employer to victimise individuals who work at a given plant or factory? If so, that is directly counter to the European Convention on Human Rights. Perhaps he has little concern for human rights when they involve individuals on the shop-floor.

Mr. Mikardo: As I expected, that intervention shows that the hon. Gentleman has not been here listening to the debate, because that matter has been discussed by right hon. and hon. Members on both sides a number of times. If hon. Gentlemen wish to intervene, they should spend some time in the Chamber.

Mr. Churchill: Answer the question.

Mr. Mikardo: I shall answer the question. I do not believe in victimising anyone. I have never taken part in victimising anyone, and I do not want to see employers or workers victimised. I did not like it when the workers at Grunwick were victimised because they wanted to join a trade union. My memory does not stretch to any recollection that the hon. Gentleman was affronted by that gross victimisation. He is one—and one of many—who apply double standards to these matters.

I come now to the union labour-only contracts. We have seen what has happened where such contracts are not applied. We are discussing not theory but practice. It has opened the door to cowboys, tax evaders and moonlighters. One hon. Member asked what was wrong with cowboys if they did an efficient job. They may do the job more cheaply, but they cut corners in safety, legal and tax areas. They have lower labour costs, because their wages do not go through a wages book. I am concerned chiefly about cuts in safety standards. Any hon. Member who doubts that that happens should consult the Health and Safety Executive about the safety records of non-union and union labour in such industries as steel erection. The difference is very great indeed.

I wish to deal now with the ruling out of trade disputes affecting matters outside Great Britain. As my hon. Friend the Member for Hackney, Central (Mr. Davis) said, British unions alone among all unions in the world will be forbidden to take part in the International Transport Workers Federation campaign against unsafe ships sailing under flags of convenience. I give the Secretary of State the benefit of the doubt, because I do not believe that he intended that that should happen. He probably did not realise that that would be an effect of the provision. I hope that he is willing to reconsider the matter now that that point has been made clear to him.

That circumstance is not the only one in which the welfare of British workers may be directly affected by matters outside Great Britain. That is especially true for employees of multinational companies. For example, if Ford decides to concentrate its design activity at Cologne or Valencia, where it has factories, that would affect employment in Great Britain, with possibly thousands of people losing their jobs. Why should it be improper for workers at Ford, Dagenham to take action in that matter?

Much has been said about the Bill promoting the intentions of the Social Democratic Party. If I have an opportunity I shall introduce a motion to change the name of the SDP to the Common Market Party, because the only policy on which its members agree is that Britain should

[Mr. Mikardo]

continue to bear the burden of membership of the European Community. Some SDP Members will vote for the Bill, some against and some abstain.

As we heard from the lips of the right hon. Member for Stockton (Mr. Rodgers), his attitude is dictated by the fact that he was smitten by a blinding light on the road to Limehouse. I am sure that this SDP attitude is what is meant by the phrase "breaking the mould". SDP Members use that phrase all the time. Until now I have never understood what it meant—it means that some vote for something, some vote against it and some abstain. It will be fascinating to know whom they intend to nominate to serve on the Committee considering the Bill. Will it be someone who voted for it, against it or abstained? Hon. Members may laugh, but it is a serious matter.

The Social Democratic Party is putting itself forward as a possible next Government. The electors are entitled to know the policy of any such Government. On its pantomime performance today, no one could know its policy on industrial relations. Will it be determined by my ex-hon. Friend the Member for Leicester, East (Mr. Bradley), who has been in the Chamber for most of the debate? He has been a lifelong trade unionist. He was president of his union for some years and he took money from his union to sponsor his candidature in the House. Or will policy be determined by Mr. Roy Jenkins, who, throughout his political career, has shown trade unions, workers and the working class at best a lofty condescension and, at worst, eminent contempt? People are entitled to know the answer to that question?

I conclude with a friendly word of warning to the Secretary of State. When he goes to his office tomorrow he should ask his private secretary to dig out the name and address of the Official Solicitor and type it on a card, which he should put in his wallet and carry around with him. During the next 12 months he will jolly well need it.

7.57 pm

Mr. George Gardiner (Reigate): It is always with fascination, occasionally tinged with delight, that I listen to the hon. Member for Bethnal Green and Bow. Since the days when, as a journalist, I listened to him compering the cabaret that was held on the eve of the Labour Party conference, I have enjoyed his performance. He has never let me down. That cabaret no longer takes place, and its place has been taken by the deputy leadership elections within the Labour Party, with the Transport and General Workers Union performing the role of contortionist.

The hon. Gentleman's speech brought out one remarkable feature of all our debates on this subject—the blinding incomprehension of the Opposition of the need for any reform of industrial relations practice or trade union law. It illustrates the Opposition's deafness to the widespread public demand for such reforms, which they do not recognise at all.

Some hon. Members cannot understand why the Bill is now being brought forward. I do not believe that my right hon. Friend the Secretary of State or the Government could do anything other than bring forward a Bill of this nature in the present circumstances.

After publishing a Green Paper on trade union immunities, which brought responses from a wide range of those engaged in business and industry, representing large and small firms—they showed an amazing degree of unanimity—there was no way that the Government could have ducked their responsibilities. After the disgraceful behaviour of certain Socialist local authorities in persecuting individuals who refused to be press-ganged into joining a trade union, there was no way that the Government could turn a blind eye to what had been done. After every recorded measure of public opinion, including the judgment of the majority of trade union members, there was no way that the Government could sit back and do nothing. Indeed, my right hon. Friend the Secretary of State was earlier chided for not representing the consensus in British politics. If ever there was a consensus across the country in support of a piece of legislation, it exists for this Bill.

Finally, after the ruling from the European Court of Human Rights, which should make Opposition Members crawl under their seats in shame, there was no way that any responsible Government could avoid introducing legislation to rectify at least that situation. The Bill falls broadly into two parts.

Mr. Harold Walker: Will the hon. Gentleman tell us which part of the Bill relates to and does anything to remedy the position of those railwaymen to whom he referred who went before the European Court? What has it to do with that case?

Mr. Gardiner: As I understand it, the Bill provides compensation for those who suffered the injustice——

Mr. Walker: Not to those.

Mr. Gardiner: —of losing their jobs while the right hon. Gentleman's Government were in power. I shall return to that point shortly. The Bill deals, first, with matters concerning the closed shop and, secondly, with trade union immunities. I shall cover those two aspects separately.

Opposition Members frequently speak in these debates and lecture us as if they had some monopoly of experience. The hon. Member for Bethnal Green and Bow (Mr. Mikardo), teases us now and has teased me regularly about my constituency; there are no throbbing industries, steel mills or shipyards in Reigate. It is always amusing when he delivers such lectures. He does it with great charm and grace, but I simply tell him that my constituents and those of every other hon. Gentleman he chose to mention, contribute as much to the economic life of Britain as do his constituents and those in other constituencies he mentioned.

I joined a trade union voluntarily—not in a closed shop—and I still belong to it. I have worked in a closed shop so the hon. Member for Bethnal Green and Bow might allow me to make some observations on it.

It is often asked what great objection Conservative Members and a great number of the British public have to the closed shop as an institution. First, there is an objection in principle. To many, it seems to constitute a fundamental injustice; someone can lose his job simply because he does not wish to join a trade union or even because he has fallen out with the officials of the trade union to which he formerly belonged. That matter was very well brought out in the European Court of Human Rights judgment.

It is correctly said that the Bill does not eliminate the closed shop or seek to ban it, however objectionable we find that institution. In my submission, it should not, because we must proceed by legislating for what is practicable and on laws can be made to stick.

However, I am pleased that this legislation offers some redress to those who lost their jobs during the years when Labour were in power through the threat of, and great powers then given to trade unions to impose closed shops, almost regardless of their members wishes. I am therefore pleased to see the compensation provisions which at least remove the disgraceful rot from Britain's record at that time of fairness and freedom.

Secondly, I am concerned—I slightly part company here with my hon. Friend the Member for Fareham (Mr. Lloyd)—that in those years, workers who were dragooned into closed shops without having any right of decision or ballot and who decided not to make a great issue of principle but to knuckle under and put up with it, should at some point have the chance to vote, decide and ballot again on that issue. I would accept my hon. Friend's criticisms of the provisions, if there had been a ballot of those members in the first place. However, in the absence of such a ballot, it is right that future ballots on whether closed shops should continue should be on broadly the same terms as ballots that occur where it is suggested that new closed shops should be introduced.

I mentioned objections to closed shops on the grounds of principle and human rights, but there is also the objection which from my experience is particularly valid—that it gives trade union organisations the muscle power to enforce decisions against the wishes of their members.

I am sure that we have all had experience, particularly during the winter of discontent, of being contacted by lorry drivers, for example, saying "Look, we were never ballotted on this or asked to vote for it, but when we contact our shop stewards and ask whether there is any chance of being consulted and having a proper ballot, all they say is 'Look, sunshine, you had better keep quiet or you'll lose your union card'". Equally, I recall the position in my union where members of a chapel—the union branch in a newspaper—were flatly opposed to a certain course of action but were ordered from on high to take it, in support of action elsewhere, under threat of disciplinary action being taken against them. The muscle power, of course, came from the closed shop provisions under which we worked.

Therefore, I believe that the proposals that my right hon. Friend the Secretary of State advanced will also make trade unions rather more responsive to their members' wishes.

My right hon. Friend said that fairly restrictive amendments are being proposed on trade union immunities. The general immunity granted to legitimate trade union action is not being affected in the least. However, when approaching this aspect, we must ask what the objective of the law is. The law surely has the task of providing a framework for good industrial relations. It is often said "Let the lawyers stay out of this. Just leave it to negotiations between the employers and their shop stewards and they will get it all sorted out. There is no role for the law here."

I am always amazed when I hear that argument put, because I know that those putting it take a very different view about industrial safety legislation. They would never argue that that should be left purely to negotiation between the employer and the trade union representatives. They rightly argue that it should not. Equally, they never suggest that it should be left to whites and blacks to work out their own relationship within a community. Rather, they argue that there is a role for the law in providing the proper context and framework for good community and race relations.

The law is needed to provide a framework for good industrial relations. Whatever improvement we might have seen in our strike record over recent months, there is no doubt but that in the past our pattern of bad industrial relations has held back the country and its economy time and again. The argument was well set out in paragraphs 1 and 2 of the Green Paper on "Trade Union Immunities" which stated:

> "For at least a generation now our industrial relations have failed us because they have inhibited improvements in productivity, acted as a disincentive to investment and discouraged innovation. The results are apparent in our poor industrial performance and lower standard of living compared with our major competitors overseas."

It continued:

> "The persistence of restrictive practices, of outdated working methods and of overmanning have contributed just as powerfully, if more insidiously, to our economic problems. Such practices and the attitudes that they embody have stood in the way of the achievement of high productivity, high output and high real wages."

We must break with that past and at least start to identify those limited areas where a reform of immunity covering certain kinds of trade union action will be of great benefit to our economy as well as to trade union members.

There has been some talk of alleged gaps in the Bill. There are matters that some hon. Members would like to see included. Obviously, we shall discuss in Committee matters such as pre-strike ballots and the provision for opting in or out of the political levy. At this stage, I express my disappointment about one feature of the Bill. I believe that we should take the opportunity that it offers to reform the law in such a way as to encourage procedural agreements and their observation.

Of all the submissions that came from a wide range of employer bodies to the Green Paper proposals, it was interesting that the proposal to withdraw union immunity for action taken in breach of an established disputes procedure, or before ACAS or an independent conciliator had sought a solution, attracted support from the CBI, the Institutue of Directors, the Association of British Chambers of Commerce, the British Institute of Management, the Contractors Plant Association, the Federation of Civil Engineering Contractors and other bodies. It is a pity that we have not used this opportunity somehow to quality immunity so as to encourage the conclusion of procedure agreements and to ensure that they are adhered to. It may be necessary to have a lengthly phasing-in period, that is a matter for discussion, but it is disappointing that we have allowed this opportunity to pass without covering that point.

I agree with my right hon. Friend the Secretary of State that the Bill will not revolutionise industrial relations overnight or even by next year. Nevertheless, it should be welcomed for a number of genuine reasons. I believe that it will create a fairer balance between the rights and duties of the trade union movement, as we promised during the general election. It recognises the strength of the closed shop system and the extent to which it has been built into our industrial relations, certainly in our old heavy industries. It offers protection to the individual who falls foul of that system. It gives workers a chance to choose whether they want a closed shop to continue, and it

[Mr. Gardiner]

protects workers and union members from many of the current abuses of union power against them, through qualifying at the margin existing trade union immunities.

It will put the majority of wreckers within the trade unions much on the defensive and will thereby give greater protection to our economy against much of the damage inflicted upon it in the past. It will increase job prospects.

The Bill takes a significant step in strengthening the right of employees to choose. It is my hope and prayer that thereby it will assist the development of a more responsible trade union movement that is more responsive to the needs and views of its members.

8.17 pm

Mr. John Prescott (Kingston upon Hull, East): When the hon. Member for Reigate (Mr. Gardiner) talked about a responsible trade union movement, I think he meant a more timid one. That has been the view of most Conservative Members throughout the debate.

I am a sponsored member of the National Union of Seamen. I was a seaman for 10 years and am, therefore, moulded by my own experience. I want to speak about the effects of the Bill on a trade union activity of which I am fully aware, and I should also like to explain how we maintain trade union activity in the seafaring industry.

Seafaring is a unique industry that poses unique problems. That is why I believe—and I shall seek to prove—that this is an anti-trade union Bill. It is ridiculous to call it the "Employment Bill", because it will most certainly create job losses in that industry. It is anti-trade union, because by its very content it takes a major step towards destroying any sense of trade unionism in the seafaring and shipping industries.

The arguments that I shall deploy can be applied equally to other trade unions, but I shall limit my remarks to seafaring. I belonged to, and operated in, a closed shop. I therefore address my remarks to clause 2. The Secretary of State said that this was a British law for British workers. The members of my union work in an international business that is involved in international law and international consequences. A closed shop is required to maintain the organisation of that industry. That is also true of Equity. Earlier, an hon. Member pointed out that Equity and the seafaring unions had been given certain exemptions under previous Tory legislation.

About 100,000 people work in the seafaring industry, including Asian workers who come under the British flag and British law. When I heard the right hon. Gentleman suggest that this was a workers' charter, I could not help but feel that he was refusing to extend to Asians on board British ships the same rates of pay as are available to white seafarers. Those Asians are exempt from the provisions of the racial discrimination measure, which requires equal pay for all people.

Some time ago, during the period of the last Labour Government, there was a recommendation to end that discrimination—my hon. Friend the Member for Hackney, Central (Mr. Davis) was very much responsible for it—yet this Government are refusing to implement a recommendation jointly agreed with the industry to ensure that Asian seafarers on British ships should get the same rate of pay as European seamen. Therefore, the Bill might have been more of a workers' charter if the Secretary of State had corrected that Act.

There are 1,000 vessels under the British flag and they sail all over the world. Some of them do not return to Britain and crews have to fly out to them. The industry has a high staff turnover of almost 25 per cent., but that is not necessarily due to the conditions of the industry. Young men go into the industry, but they want to settle down when they marry. Such factors affect all countries that have a traditional seafaring industry and lead to a high turnover of staff.

Obviously, a high turnover means problems for trade union organisation. In addition, criminal law extends more to seafaring than to other forms of industry. Seamen can face criminal charges for disobeying a captain's command. There are various reasons for that. When there is an industrial dispute on the other side of the world, it is not only industrial problems that result, but perhaps criminal charges and gaol sentences. That is a further complication of the industry.

Since 1921, the industry has had a closed shop. It is interesting that this very evening many Members will have received a report from the General Council of British Shipping. The report makes it clear that no problems have arisen as a result of closed shop agreements and that no dismissals have been recorded for non-compliance. It believes that the closed shop is needed for the maintenance of an orderly supply of manpower. The work force is scattered throughout the world on 1,100 ships and the tensions in a community that lives and works together make it desirable for potentially divisive issues to be eliminated as far as possible. Therefore, seafarers face more potentially explosive situations than other workers.

The Industrial Relations Act 1971 had at its heart the concept of equal rights—that each worker should have the right to belong or not to belong to a union. That reminds me that employers used to say that it was their right not to employ workers just as it was the workers' right not to work for them. They said that as if the rights were equal, but they were not. We are talking about a balance of power, and equal rights must be considered against that background.

Conservative Members may talk about individual rights and freedoms, but the history of the trade union movement and much of Britain's social history shows that Governments have not given rights and that people have had to take collective action. People have had to demand their rights—sometimes break the law—in order for Parliament to change the legislation. There are many examples to show that individual rights have been achieved through collective strength. We have not heard much about the collective right to combine together and guarantee those individual rights.

In an industrial dispute, the balance of power is all-important. If only 10 per cent. of the work force belongs to a trade union, the employer will not talk to it. If 50 per cent. of the work force belongs to a trade union, the employer might talk to his workers. If 80 per cent. of the workers belong to a union, the employer will listen seriously. Therefore, the degree of organisation determines trade union activity and the strength of workers to determine their wages and conditions in a basically unequal situation. Such matters must be taken into account.

In the seafaring industry it is claimed that in order to maintain any trade union organisation, a closed shop is necessary. Given the many ports in Britain and all over the world and the fact that crews are flown home from various

parts of the world, it is impossible for officials to contact workers about the conditions of their membership and to contact those who might not wish to join a trade union.

Mr. Whitney: How have the present arrangements and the closed shop in British shipping contributed to the prosperity of that industry and the preservation of jobs?

Mr. Prescott: I shall come to that point later. I suggest that the hon. Gentleman should consult the British shipping industry as it has provided a two-page document endorsing the closed shop. *[Interruption.]* I wish that I had not given way. The hon. Gentleman's experience of seafaring is about as limited as his experience of most of the other things upon which he makes observations in the House.

A closed shop is necessary to maintain organisation. It is also necessary if seamen are to maintain simple organisational links that normal trade unions take for granted. The Tory Party came to power having said that it would ban the closed shop and make it illegal. However, in 1971 the Tory Government were forced by the weight of argument—particularly in relation to seamen—to change the then Bill to include an approved closed shop. That allowed the closed shop to be endorsed, as it was in my industry. Therefore, the Government had to change the provision about banning the closed shop and recognise that in some cases, such as shipping, the rights are not equal in treatment.

The Bill apparently states that there can be closed shops, but that there must be periodic reviews by means of ballots. I shall cite one example of the difficulties facing the industry. Any idea of 80 per cent. polls or 85 per cent. majorities is impossible for seafarers. The industry's document points out that in the latest wage poll in the industry, only 30 per cent. took part. It would be impossible to achieve such high levels of participation. The industry states that such provisions are totally unrealistic and that

"company ballots would be quite inappropriate for an industry-wide agreement."

The industry has some experience of this subject and holds that view strongly. Indeed it held that opinion in 1971 and it presumably convinced the Government that they were wrong. As a result, that Bill was changed. If consent is not gained, it appears that the law of the bounty hunters will prevail.

Given that the industry has a turnover of 25 per cent. and that many seamen fly to different parts of the world, an individual could fairly easily cause the maximum disruption possible on the issue whether to join the union. In addition, the compensation levels of £12,000 to £30,000 make such activity extremely attractive. The industry points out the difficulties that would arise in such a situation. Hon. Members should consider how trade unions can send instructions to members on ships all over the world. It is extremely difficult to maintain communications at the best of times. I do not know whether a union would be liable if it sent a telegram or letter when a ship was held up half-way round the world. Such a situation defies the imagination.

If a ship on which a closed shop operates finds that a crew member who has joined it on the other side of the world does not want to become a member of the union, its crew might refuse to sail with him. A serious situation would develop on the other side of the world. The document points out that it would be very expensive for the company to fly the rest of the crew home. In addition, there are legal requirements about manning. If one able seaman refused to sail, there might not be sufficient skilled men to sail the ship. There is a whole area for guerrilla warfare, and ship owners can foresee the difficulties.

Although I do not like to say it, the closed shop means discipline. Many condemn that, but the House enacts measure after measure in the belief that greater discipline for seamen means greater safety. When we consider the closed shop organisation for the maintenance of trade union discipline, individual liberty is then talked about. The whole panoply of industrial relations in the seafaring industry means greater discipline and safety with more powers given to captains to endorse that discipline. Some questions should be asked of the people who support the legislation.

I assume that the Bill is hostile. It will destroy my union if it is allowed to continue along the way that I have suggested. The clauses that try to outlaw sympathy strikes will create further difficulties for the British seafaring unions. We are an international industry and we require international solidarity. The growth of the flags of convenience fleets, which undermine British shipping, are another danger. On some of those fleets, seamen are paid £50 a month instead of the average wage of £500 a month. British seamen cannot be competitive unless they go back to the free market and agree to work for £50 a month. That may be the reality of this legislation.

Some ships which enter ports all round our shores impose no standards of safety, exploit slave labour and have low standards of manning. They sometimes sink with much loss of life and, in some cases, no inquiry. The only people who can check that abuse of power are the trade unions. We black those ships when they enter our ports. We might not be a direct party to the dispute, but those workers appeal to us for help and we give it. The only way in which we can do that is by saying that the tugs will not take the ship out or that the harbour gates will not open. The Bill tries to make that illegal, although Lord Denning completely endorsed that action as part of legitimate trade union activity, as my hon. Friend the Member for Hackney, Central said.

What is much worse is that flags of convenience ships, which represent 30 per cent. of the world's fleets, lose four times as many ships as traditional fleets. Some are sunk deliberately for insurance money. Some are sunk with the loss of lives about which no one gives a damn because they sailed under flags from which no redress could be obtained. It is an intolerable position which will be made worse by this legislation. That is why we shall oppose it.

The International Transport Workers Federation has done much to recover millions of pounds in back wages and to enforce safe, internationally-agreed manning levels on ships where Governments have turned a blind eye. It is the only means of defence for thousands of foreign seamen. Some may say that seamen sue through the flag. That is not always possible. Last month a ship came into Hull flying a Panamanian flag. When a dispute started, the ship changed to a Maltese flag and before she left the harbour she changed to another flag. How can one get justice in that position if the trade unions do not act as did Mr. Ken Turner the Hull NUS official in this case? There is no workers' charter in the Bill to correct such matters.

The Bill will make matters more difficult for our campaign. Another alarming aspect is the fact that the Philippines fleet requires 2,000 men. However, 200,000

[Mr. Prescott]

Filipino seamen are being hawked as slave labour around the world. It is no coincidence that the international shipowners are backing this legislation and calling for full support, because once it is illegal for the trade unions to conduct their campaign, free market forces will suggest that British seamen being paid £500 a month should be replaced by Asian seamen who work for only £50 a month. It may be more competitive, but it is not in our interests. Nor is it in the interests of those who take the jobs. Therefore, the legislation is trying to cripple the seafaring trade union in its domestic and international campaign and to assist the shipowner to employ labour wherever he wishes around the world.

Seamen have not changed anything in the world without breaking the law. I have heard much hoo-ha about breaking the law, and I understand the importance of the issues involved, but we have never received help without breaking the law. If we are told that we shall be destroyed by the Bill and that we cannot help the many thousands of seamen who are being exploited, we say "Go to hell with your law. We will oppose it."

8.33 pm

Mr. Den Dover (Chorley): I speak this evening as a Member for an industrial Lancashire area. It is appropriate that I should speak because we have nearly 10,000 British Leyland workers on strike.

In 1980, my hon. Friend the Member for Winchester (Mr. Browne) put down an amendment to the Employment Bill that workers should have the freedom to take part in secret ballots. Since then we have heard only trade union leaders calling for secret ballots. I deplore the fact that workers cannot ask for a secret ballot and decide for themselves whether they wish to support or to end a strike. I wish that the Bill, although I appreciate its appearance in the House, contained that requirement.

The Secretary of State mentioned one occasion where blacking would be stopped under the Bill, but I am sure that he would agree that it relates to less than 1 per cent. of all blacking. I object to the fact that secondary action is sanctioned by the Employment Act 1980; instead, we should be stamping down hard on blacking and secondary action, which is so much a factor in reducing the efficiency of British industry.

The hon. Member for Bethnal Green and Bow (Mr. Mikardo) said that union-labour-only clauses in contracts were to be desired. I have been responsible for hundreds of workers in the hon. Gentleman's constituency. I am sure that he was not seriously saying that union members take the right safety measures and that non-union members do not. I welcome the clause which bans union-only contracts as someone with 20 years' experience in the construction industry. That provision will increase efficiency in industry. Safety measures are more a function of management and safety officers than of workers who are in, or not in, a union.

My main topic is the closed shop. I was interested to hear what the Secretary of State said about it. He said that it was a most unhappy arrangement, that unions tend to dictate who works for a firm, and that it was not possible effectively to legislate to make it illegal.

The hon. Member for Rochdale (Mr. Smith) talked about the freedom to belong or not to belong to a trade union. In February last year my Freedom of Association Bill was given a First Reading. It tried to enshrine that right in legislation. The hon. Member for Rochdale was a member of the Standing Committee which had a close vote on the issue two years ago. I ask members of the Committee on this Bill to table such an amendment.

We must decide whether we are interested in the freedom of individuals, and whether we want a Western-type democracy in industrial relations, or whether we are out for an Eastern European-type regime where everyone is drummed into membership. I cannot understand why it is not possible for 85 per cent. or 90 per cent. of a work force to belong to a union while the rest are allowed not to be members.

I welcome the Bill. It is a major step forward compared with the Act of two years ago. It will increase employment and improve industrial prospects. I hope that the Bill has a speedy and effective passage.

8.39 pm

Mr. Michael Martin (Glasgow, Springburn): The Bill attacks ordinary workers and implies that only the workers, not the employers, create trouble in industry. Nothing could be further from the truth. In the disputes in which I have been involved as a shop steward and a trade union officer I have found that it takes two to create an argument.

Only today I received a telephone call from a constituent who has been locked out by his employer. He was employed as a blacksmith and had never been out of work in the last 20 years. He worked for 20 years without a break. Because of an argument involving other workers he was locked out with 50 other blacksmiths.

That happened three weeks ago. The man has been refused social security benefit. His previous employer has refused to talk to ACAS and has refused to give an interview to the unemployment benefit officers or the social security officers. The officers cannot obtain confirmation about whether the man left his job voluntarily or whether he was dismissed. That makes a difference to a person's right to unemployment benefit.

I worked out an arrangement whereby the man would be considered to be in dispute with his employer. That would allow some benefit to go not to him but to his wife and four children. However, £12 will be deducted from whatever benefit is given to his wife and children because it will be assumed that his union is giving him £12 a week. He said "I am being punished for being a trade unionist." There is nothing in the Bill that will ensure that action can be taken against employers of the sort who employed that constituent of mine. It is a scandal that such abuses should take place in 1982.

My constituent told me that when the press went to his previous employer it was told that industrial relations were bad within the firm during 1980-81. However, there has never been a strike there. My constituent, who was a shop steward, can recall making only one complaint. He approached his employer to take up the lack of toilet facilities. It seems that the employer interpreted that complaint as bad industrial relations.

I come from a city which has a history of being involved in the trade union struggle. My father and grandfather were shop stewards and were active in the trade union movement. I worked on the tool and most of my working life was spent as a metal worker in engineering shops. The Secretary of State is kidding himself if he thinks that working men and women will tolerate this type of

legislation. They will fight against it. If the Bill becomes law it will make no difference if working people do not accept it. I feel that they will oppose the Bill at every stage. If I supported it in any way, I should be turning my back on those from whom I came and with whom I worked.

8.42 pm

Mr. John Gorst (Hendon, North): I have some sympathy with the arguments advanced by the hon. Member for Kingston upon Hull, East (Mr. Prescott). Some of his comments had some merit, if the tone in which he finished did not. We must recognise that most of the shrill tones of protest from the official Opposition are echoes of the protests that have been heard down the ages from barons, bishops and monarchs who have had their powers curtailed.

Mr. John Evans: The hon. Gentleman is representing the Tory Party!

Mr. Gorst: It is interesting that so many trade unionists and Labour Members talk liberally about rights. They seldom realise that they are talking about powers and not rights. It is axiomatic in this place that what Parliament has conferred, Parliament can remove.

Mr. John Evans: The hon. Gentleman should not worry, because we shall.

Mr. Gorst: Parliament in its wisdom will be removing certain immunities and powers because there is no longer any necessity for them. Their removal does not necessarily mean that they have always been abused. We are living in 1982, not 1882.

I welcome the Bill, for two reasons. First, it will substantially reduce union immunities where there is no justification for them. I part company from my right hon. Friend the Secretary of State when he describes the Bill as a moderate measure. It is not a moderate measure in that sense. It is tough, relevant and effective. It copes with everyday occurrences. It seeks to deal with real and not strange and archaic abuses. It stops unions from doing things that they should not do and permits them to carry on doing legitimate things.

The second and more important reason why the Bill should be welcomed is that it moves towards establishing a most important principle—that it is the union to which a man belongs, and not just the man himself, that should bear responsibility for what he may have done in combination with others if it has been offensive or damaging to another party. It has always been wrong to penalise individuals for what probably could have occurred only because they were either incited or emboldened to act as part of a group. The Bill recognises the need to make the differentiation between what men do as individuals and what they do in concert with others.

I am less happy about the way in which the Bill deals with the abuse of individual rights, especially when those rights are curtailed within a closed shop. The closed shop is wrong in principle and should, in principle, be abolished, but on the ground of expediency the Government have decided that it should remain, at least so far as permitting it under the law in certain circumstances.

I give a qualified welcome to the alternative pragmatic approach, as it is grounded in practical expediency. We should realise the reality of precisely how my right hon. Friend is going about this. The Government have put forward a measure which will not outlaw the closed shop but which will, in practice, I hope, price it out of existence when it is illiberally conducted. Many closed shops will find it too expensive to compensate their victims. I hope that in the process they will adopt the alternative and live with the people whom they do not have in membership of their union.

Mr. John Evans: The trade unions may respond in an equally pragmatic way, perhaps by negotiating wage increases only for people who are members and ensuring that non-members do not benefit from pay rises.

Mr. Gorst: That is a matter for the trade unions to decide, if it is within the law. What the union leaders promise and what they will do when they have consulted their members may be two different matters.

I have said that I welcome the Bill for two good and basic reasons. It is worth while and necessary. It is basically the first meaningful step that the Government have taken to reform trade union practices. It goes a long way, but not the whole way. Improvements could be made, and there are certain omissions. One weakness is that, although the proposals remove immunity in a number of legitimate respects, they fail to remove immunity from those who take industrial action before they have observed procedural agreements or been involved in meaningful conciliation. I believe that that should be covered in the Bill. Indeed, had it been part of the law of the land, it is difficult to believe that we should have had the problem with the railways that we now face.

I draw the attention of the House to the fact that the Select Committee on Employment came to the conclusion that this was an important matter which should be added to our trade union reform. It also recommended that there should be secret ballots before a strike and that the matter of strikes in the essential services such as health or social services, where health or safety might be involved, should be tackled urgently.

The Secretary of State made it clear when he appeared before the Select Committee last week that it was his policy to implement proposals which commanded widespread support among the public and elsewhere. He wishes public opinion to be ahead of him, not behind. That point was made by the Lord Chancellor when he appeared before the Select Committee last summer.

Since my right hon. Friend gave evidence to the Select Committee it has become clear that the whole weight, if I may so put it, of the Liberal Party is also behind the proposals. It is also clear that, schizophrenic as it may be, the Social Democratic Party, or at least some part of it, which will be measured in an hour or so, is also behind them. That adds to the consensus that existed only a week ago.

I hope that my right hon. Friend will regard that as widespread support and will not, as I think he was indicating in his speech, stick narrowly to the proposition that anything that may affect the internal affairs of a trade union should lie outside the scope of the Bill. The inclusion of Procedural agreements is essential and urgently necessary. If there is now a consensus in many parts of the House, we should not be mealy-mouthed and turn our backs on the possibility of adding our voice to the views expressed by the nation at large.

Politics are about timing, not about putting things in tidy pigeonholes or filing away the right Bills at the right

[Mr. Gorst]

time. Here is an opportunity to add meaningful improvements to the Bill. The tide is moving towards such changes. We should catch the tide while it is flowing and not miss it when it turns to ebb.

8.54 pm

Mr. Ray Powell (Ogmore): First, I condemn the hypocrisy that we have heard from the Conservatives today. I condemn outright this mean, contemptible, outrageous, vindictive, perverse and prejudiced measure, compiled to put new legal shackles on the trade unions. Legislation such as this could only have been dreamed up by someone with a sick mind who wished to show his utter contempt for the trade union movement.

The Government's policies have caused soaring unemployment, falling living standards and drastically-reduced social services. Unions are the only defence that working people have against the effects of these pernicious policies. That is why the Government want to weaken unions. That is the reason for the appointment of a union-bashing Secretary of State. Tebbit's Law, as the Bill is called, will be fought line by line, and campaigns will be waged by millions of trade unionists throughout the country. The Government have made a declaration of war on the trade unions and they will live to regret it.

These measures are intended to smash the existing arrangements and agreements with employers about trade union membership. They are designed to see unions and officials dragged into court to face penalties of up to £250,000. They will make outlaws of people who give assistance to other workers in dispute. They are compiled to allow employers to sack workers who refuse to be forced back to work until a dispute is fairly settled.

The whole Bill represents a further step in the Government's sustained offensive against trade union freedoms. It is far worse than anything proposed in the Industrial Relations Act 1971. It is yet another measure to give work to the Law Lords who, in the past two years, have shown no understanding of the trade union movement. The Bill contains enough controversial measures to give the legal profession yet another bonanza.

Will the legislation encourage foreign firms to come to this country? A number of us are hoping to see a major Japanese firm set up a development in Wales or elsewhere in this country. Will the Bill encourage that firm to come here? Only this week the Prime Minister and the Secretary of State for Wales have openly said to foreign companies that this is the country to come to and that industrial relations here are second to none.

Active, law-abiding trade union leaders may not wish to flout or break the law, but they want to protect the rights of their members and there is a number of ways in which they can express their opposition to the Bill. They are members of the NEDC and it has been suggested in some quarters of the trade union movement that they should withdraw their support from the council.

Alan Sapper of the TUC has said that the reason for the high quality of goods and the high level of production in this country is the relatively high level of membership of democratic trade unions. Why has the Secretary of State not considered the views of the TUC? I warn the Government that the trade union movement has already suggested that there will be an explosion in industrial relations if the Bill becomes law.

Trade unions may withdraw their support from numerous bodies in which they participate, including the NEDC and its associated bodies and any Government body that has as its objective the application of Government economic policies. Other TUC activities on many other tripartite bodies will be reviewed and the trade unions are also considering whether to sit on tribunals dealing with issues arising from the proposed legislation. Non-compliance with ballots on closed shops will also be considered.

The Secretary of State mentioned last week law and retrospective legislation. He referred to the law on closed shops between 1974 and 1980 as transient legislation. According to the Oxford Concise Dictionary, the word "transient" means "fleeting, not permanent". That is how we shall interpret the Bill, or Tebbit's Law.

This transient law will be repealed as soon as we return as the next Labour Government. I say to the Prime Minister that this active BOAC pilot she has employed as Secretary of State for Employment to introduce this Bill will be called the Tories' kamikaze pilot before the next election.

9 pm

Mr. Harold Walker (Doncaster): I understand the sense of déjà vu that has been expressed in relation to this debate. I should like to start on a gentle note. I hope that I do not offend too many hon. Members when I say that I welcome the support of the Social Democratic Party and especially of the right hon. Member for Stockton (Mr. Rodgers) for industrial democracy. I look forward to that party's support on the issue in the future. I am bound to say, however, that when my right hon. Friend the Leader of the Opposition, my right hon. Friend the Member for Barrow-in-Furness (Mr. Booth) and myself were trying our best to see some degree of industrial democracy established in Britain, I did not discover any fervour in the approach of the right hon. Gentleman and his right hon. and hon. Friends. I hear mutterings from below the Gangway. I say, with all sincerity, that when some of them, as departmental Ministers, had the opportunity to act directly to introduce industrial democracy, they did nothing.

It is astonishing that the speech of the right hon. Member for Stockton—I am glad to see him now in his place—did not produce any single, coherent, credible reason for supporting the Bill other than the implicit suggestion that there were votes at the end of the road that leads to Hillhead. The right hon. Gentleman spoke in a vein different from what many hon. Members had thought was the authentic statement of the SDP on reading the *The Times* this morning. He ignored the article by Mr. Brian Capstick, a member of the SDP trade union reform group, which was headed

"Why we are backing Tebbit's bad Bill."

The article states that

"despite its popularity with the electorate, the Bill is unlikely to do much to improve industrial relations."

and that it

"is largely irrelevant to the contemporary industrial relations scene."

The article talks of the

"big cash prizes for the successful litigant"

and goes on to refer to

"local groups of activists and militant shop stewards. Mr. Tebbit's Bill will do nothing to restrain their activity, and may even encourage it."

Another passage states:

"The worst evils of the closed shop, such as the well-known British Rail cases, are largely a thing of the past and were due as much to management ineptitude as to union militancy."

The article adds:

"In many respects therefore the Bill is ill-thought out"

and concludes that

"the Bill is sadly irrelevant to the more pressing issues of the day."

It is all the more extraordinary therefore that the right hon. Member for Stockton and his hon. Friends, including the right hon. Member for Crosby (Mrs. Williams), should be going into the Lobby to support the iron heel of the Government.

The motion on the Order Paper referring to the political levy and the remarks of the right hon. Member for Stockton fill me with astonishment. Without the commitment of the trade unions to political activity—I am unashamed of their significant role in the creation and support of my party—few of the hon. Members now representing the Social Democratic Party would be present in the House. The trade unions were the making of the Labour Party. The Labour Party was the making of the standing of most of those right hon. and hon. Members. Yet they will go into the Lobby tonight, hand in hand, under the iron heel of the Government, ready to bite the hand of those that fed them. I could not help recalling at the conclusion of the remarks of the right hon. Member for Stockton a comment attributed to Nye Bevan who said of someone that he felt he wanted both the crown of thorns and the 30 pieces of silver.

The closed shop that was established in British Rail and that set the three railwaymen—Mr. Young, Mr. James, and Mr. Webster—off on the long road to Strasbourg, was concluded in 1975 between British Rail and the three railway unions—the National Union of Railwaymen, the Associated Society of Locomotive Engineers and Firemen, and the Transport Salaried Staffs Association. The president of the Transport Salaried Staffs Association at that time—I am glad to see him nodding in assent—was none other than the hon. Member for Leicester, East (Mr. Bradley).

This afternoon the Secretary of State indulged in a bout of loutish, brutal, bullying union bashing of a crudity that I have never witnessed either inside or outside the House. Whatever it did for the Secretary of State's conceit and ego, it certainly did no good for industrial relations.

Two years ago at the Dispatch Box, I forecast that the Employment Act 1980 would not exhaust this Government's determination to cripple the trade union movement. Nor would it end the sustained attack by the Conservative Party on the whole range of statutory safeguards and protections which Parliament, perhaps belatedly, but none the less properly, has granted to working people in recent years. They were safeguards and rights that not only the British Parliament, but Parliaments throughout Western Europe thought it proper to provide in one form or another.

It gives me no consolation to be proved right. I never anticipated a measure so ill-judged as that which we have before the House this evening.

The right hon. Gentleman says that the proposals are formulated:

"to safeguard the liberty of the individual from the abuse of trade union power"

Who will safeguard working people from a malevolent and malicious Secretary of State?

The Secretary of State said that he considered calling his measure the workers' rights Bill. Let me remind the House how this Government have safeguarded individual workers' rights. My right hon. Friend reminded us this afternoon that as early as July 1979, before the dust of the general election had settled, they had doubled the qualifying period for protection from unfair dismissal. At a stroke they removed that protection from hundreds of thousands of employees. At the same time, the Government cut the obligation on employers to consult about proposed redundancies.

Next there was change in the procedures of the industrial tribunals, deliberately aimed at making it harder for a person to claim that he had been sacked unfairly. The Government followed that, not only by shifting the burden of proof that the dismissal was reasonable from the employer, but also by making what is fair or otherwise depend on the size and administrative resources of the employer.

Then, the Government doubled yet again the qualifying period for a claim of unfair dismissal where an employee worked for a small firm. As if that was not enough, the Government then abolished the minimum award for someone who had been unfairly sacked and provided for cuts in the basic award of compensation.

In addition, they have cut, cut and cut again, the value of the payments of unfair dismissal, with the exception of payments provided for in the Bill. They have cut redundancy and guarantee payments. Furthermore, contrary to the spirit of the Redundancy Payments Act 1965, employees now have to contribute to the redundancy fund. Not even pregnant women have escaped the zeal of this Government to cut workers' rights. The Employment Act severely curtailed their right to return to work following confinement. The protection that was contained in schedule 11 of the 1975 Act, which in principle had been available for 40 years or so, often the only protection for lower paid workers, has been snatched from that particular group.

This is not the complete indictment, but it is more than sufficient to expose the cynicism and the mendacity of the Secretary of State when he poses as a protector of workers' rights. It hardly touches upon the Government's attack upon the collective rights of workers—a matter to which I shall return shortly—nor does it start to take account of the simultaneous injury being inflicted by other Ministers, with the erosion of benefits, the withdrawal of earnings-related benefit, and the termination of industrial injury benefit and related benefits. What is more, it will go on as long as this Government are in office.

Clause 7, among other things, encourages employers to victimise individuals in an industrial dispute. In the Secretary of State's speech was the hint of yet more to come—a step-by-step approach. In reality, it is the slice-by-slice approach, the salami approach, cutting down to size the trade union and the people they represent.

The Government say that the Bill will improve the operation of the labour market. What an extraordinary and unsubstantiated defence of the Bill from a Government whose policies have taken unemployment to more than 3 million and from a Secretary of State who last week deprived the Manpower Services Commission of the services of a highly respected expert in labour market matters and replaced him with a totally inexperienced political stooge.

Mr. Tebbit: The right hon. Gentleman should know that that is a contemptible attack on a devoted public servant who has served in both the public sector and the private sector, and has served long and faithfully in an international organisation devoted to training.

Mr. Walker: It is a little rich for the Secretary of State, who has poured out such venom and abuse on working people this afternoon, to show such sensitivity on behalf of one of his appointees. The fact is that the man who has been appointed has gained his experience of these matters in the Centre for Policy Studies, a Tory set-up.

The Government also say that the Bill will curb the number of continuing abuses of trade union power. When will the Government address themselves to the continuing abuses of employer power, such as the declaration of war on the print unions by Mr. Pole-Carew, the Nottingham *Evening Post* proprietor. No doubt the Secretary of State feels an affinity with him, since many of Mr. Carew's workers refer to him as Mr. Polecat Carew.

Mr. Pole-Carew, in advising representatives of newspaper employers—according to the publication *Print* of November 1980—"advocated petrol bomb threats" against trade union officials, and

"explained how he deliberately set out to humiliate union representatives, and urged that strikes should be prolonged by managements for at least three months to break the spirits of workers."

My right hon. Friend the Member for Manchester, Openshaw (Mr. Morris) rightly drew the attention of the House to the outrageous behaviour of Mr. Arthur Snipe. I feel that I am entitled to refer to him, as the headquarters of his company, Mining Supplies Ltd, is in my constituency. That company took over Lawrence Scott and Electromotors Limited of Openshaw in Manchester. An apparently profitable business was taken over as a result of some commercial manipulation. It was shut down with inadequate notice to the workers. Many of them had given a lifetime of service to the firm, and they were chucked out of their jobs with the minimum of compensation. When they tried peacefully to communicate their plight to their fellow workers at the firm's headquarters, legal action was taken to terminate their employment under the terms of the 1980 Act.

Mr. Charles R. Morris: Will my right hon. Friend give way?

Mr. Walker: If my right hon. Friend will forgive me, I am trying to make his case for him. When in despair the workers tried to keep the factory intact, there was a re-run of the raid on Entebbe, with helicopters, a battalion of bailiffs and a small army of supporting police. [*Interruption.*] What about that for an abuse of employer power? Is that the acceptable face of British capitalism? Is that a reasonable use of employer power? Perhaps the Secretary of State secretly applauds the use of such SAS guerrilla tactics in industrial relations.

The Government's total silence on such behaviour, involving the peremptory and arbitrary sacking of over 600 people who had done nothing wrong, contrasts very sharply with the kind of outspoken remarks made by the Secretary of State this afternoon concerning the four dinner ladies. The other day in Committee, the Under-Secretary ranted and raged against the "inherent wickedness" of the closed shop which led to the dismissal of Joanna Harris. He said that the closed shop could result in the most gross attack on the individual's rights. He talked of the terrible assault on the lady's rights. It should be borne in mind, of course, that that lady had a statutory remedy at the time of her dismissal, and to the best of my knowledge she has never exercised that remedy.

The House should compare the excessive emotion shown on that occasion by the Minister with the more level-headed approach of the management professionals who are engaged day in, day out in these matters—the Institute of Personnel Management. In its memorandum to the Secretary of State on the subject of the closed shop it said:

"The Institute is concerned that a few highly publicised cases in the public sector which have attracted political attention have been used as grounds of prejudicing a system which has been shown in many industries in the private sector to be a stabilising influence".

I point out to the hon. Gentleman, who was sceptical when it was suggested that it might have the effect of encouraging trade unionists to negotiate only on behalf of trade unionists, that it went on to say:

"If trade unions are prevented by law from excluding non-unionists by virtue of these new closed shop provisions, there will be increasing pressure on employers to apply the benefits derived from trade union negotiations to their members only. This process has already started".

Elsewhere in its paper, the institute expressed a number of reservations about the Government's proposals, its anxiety about the fragmentation of bargaining arrangements and its concern about the balloting provisions. It makes it clear that it has tested the proposals against their effect on industrial relations. That, of course, is a proper test to apply.

Unhappily, there is little evidence that the Government have done likewise. The Government's continued attack on trade unions and on union membership agreements has little to do with the needs and the reality of industrial relations and has everything to do with the political dogma of the Conservative Party.

I shall say a word about the carefully cultivated myth of the effect of the 1974 and 1976 Acts on dismissal where there is a union membership agreement. The Secretary of State said that those Acts created a situation which, in his words, was morally indefensible by sanctioning the dismissal without compensation of employees in a closed shop solely on the ground of their non-membership of a specified union. The truth is that, although closed shops have existed for many years, statutory compensation was available for only two years—from 1972 to 1974. In all the years before 1972, the Conservatives had not shown a glimmer of interest in providing any form of statutory right of redress for any dismissal, whatever the reason. The only remedy that was available previously was the remedy at common law for wrongful dismissal. There is nothing in any statute, including the 1974 and 1976 Acts, which in any way diminishes those common law rights.

It is true, of course, that the introduction of the statutory unfair dismissal provisions was effected by the Tory Government of the right hon. Member for Sidcup (Mr. Heath), but that Government only implemented, in a slightly watered-down form, the proposals in Mrs. Barbara Castle's Bill that was presented to the House in 1970.

I repeat, for the benefit of the Secretary of State, that, to the best of my knowledge, the first reference in any statute to a closed shop was provided by the Government of the right hon. Member for Sidcup in the Industrial Relations Act. Having first sought completely to outlaw

all closed shops, that Government found it necessary to face reality and make provision for what they called approved closed shops.

The seamen, to whom my hon. Friend the Member for Kingston upon Hull, East (Mr. Prescott) referred with his enormous knowledge of that industry, will face the same problem, as will their employers. Incidentally, the document referred by my hon. Friend related to the employers not the National Union of Seamen, stating the harmful and disruptive effects of not having a closed shop in the seafaring industry. It continued that it was not only the National Union of Seamen, but the four unions representing officers, that had similar closed shop arrangements. The document also referred to the other provision in the Bill, which has been mentioned so often in debates, about the "bounty hunters" and the inducements which lead people suddenly to find that they have a conscience and a reason for dropping out of the union.

The General Council for British Shipping said.

"there can be little doubt that there would be clever and rapacious seafarers who would be tempted by the extremely high levels of the special award in clause 3".

The departmental blurb which accompanies the Bill says that it seeks a fairer and more balanced framework of industrial relations law. Of course, that is the cautious and restrained—as it should be—language of the Department's press officer. However, when the Secretary of State comments, he blurts out the blunt truth. What does he say? He says that he wants to "neuter" the unions; to castrate them; to render them impotent. I see him shaking his head in dissent but, as I understand it, that word——

Mr. Tebbit: Would the right hon. Gentleman like to give the quotation, and say where it came from and on what authority he gives it?

Mr. Walker: The Select Committee on Employment received evidence from the TUC that the Secretary of State had used that remark. [*Interruption.*]

Mr. Speaker: Order.

Mr. Walker: If right hon. and hon. Gentlemen will be patient, they will learn that when the Secretary of State appeared before the Select Committee on Employment last week, that was put to him and he did not challenge it.

Mr. Tebbit: The right hon. Gentleman knows perfectly well that that is not true. I did not challenge it. I told the Select Commitee that I wanted to neuter the worst effects of the closed shop. The right hon. Gentleman might get his quotations right.

Hon. Members: "Withdraw."

Mr. Walker: If I were a shade in error, of course I apologise for that. The TUC published a document about the Government's proposals in which it said that the closed shop proposals—[*Interruption.*] I hope that hon. Gentlemen will listen. The Government's intention is clearly to render effective union membership agreements virtually inoperable or, in the Secretary of State's words, to "neuter" their effects. I am prepared to apologise to the right hon. Gentleman and the House for the extent of my error but I believe that the right hon. Gentleman made it clear that it does render the unions impotent and castrated.

Mr. Tebbit: The right hon. Gentleman really must get it right.

Mr. Walker: No, the right hon. Gentleman——[*Interruption.*]

Mr. Speaker: Order.

Mr. Tebbit: It is time that the right hon. Gentleman distinguished between the closed shop and the trade union movement, because no other country finds such difficulty in distinguishing between the two. He thinks that our unions need conscription.

Mr. Walker: The right hon. Gentleman is now trying to go off on a very dificult tack. I shall readily pick up the point he just made. For example, the closed shop is widespread in the United States, and on both the Western and Eastern seaboards, nobody works on the docks, irrespective of the State, unless he is a member of the appropriate trade union.

Mrs. Elaine Kellett-Bowman *rose*——

Mr. Walker: It is a growth industry in the United States and the right hon. Gentleman——[*Interruption.*]

Mr. Speaker: Order.

Mr. Walker: The right hon. Gentleman made a long speech and has repeatedly intervened during other hon. Gentlemen's speeches and in my speech. I do not resile from what I have said. I am astonished, after the abuse that the right hon. Gentleman heaped on the trade unions and workers this afternoon, that he should show such sensitivity. No one could be blamed from thinking that his approach and words were intended to render impotent the trade union movement.

The Secretary of State quoted Donovan on trade union immunities, but he did not go on, as he might have done, to tell us what Donovan recommended. I do not have a copy of that report to hand, but I well remember that it recommended virtually no change in trade union immunities, except that it should be made clear that the immunity conferred upon trade unions by section 3 of the 1906 Act should be extended to cover all contracts, not only contracts of employment. I make that point only to illustrate the fact that, contrary to the impression the Secretary of State tried to create, the Donovan commission had serious doubts about so-called trade union immunities and was satisfied that they were appropriate and relevant. That was confirmed in its recommendations.

Perhaps the most fundamental conclusion of the Donovan committee was that a voluntary system of collective bargaining between efficient management and well organised trade unions was the best basis for British industrial relations. Until this Government took office, I thought that everyone concerned about and caring for good industrial relations accepted that as a basic premise.

The continuing role chosen by the Government, the 1980 Act, the Bill now before the House and the Secretary of State's crude hostility to trade unions, not only undermine the Donovan concept but mean that what I thought were shared assumptions about the basis of our system are no longer common ground.

Clearly, the Government do not want well organised unions. It seems that they are prepared to tolerate only emasculated, yellow dog unions. Professor Lord Wedderburn, probably the country's best informed legal expert on these matters, concluded his memorandum to the Select Committee on Employment with these words:

[Mr. Walker]

"My submission to the Committee is that the law of 1980 diminished trade union rights in Britain to a point where it can properly be said that organised workers have never had fewer rights to take action since 1906".

He went on:

"The Green Paper should have concentrated on reversing instead of accelerating that trend; for only by restoring a reasonable balance of legal rights to trade unionists is any Government likely to gain the willing co-operation from working people which will inevitably be required to save Britain from decay".

My hon. Friend the Member for Newham, North-East (Mr. Leighton) reminded us, if we needed any reminding, that we were told by the Government that the 1980 Act had restored the necessary fair balance between employers, workers and trade unions. He was right to pose the question that if that were true, how could this new assault on trade unions be other than unfair. How can these new proposals be justified as fair and providing a balanced framework of legislation, when the last piece of legislation was claimed to have achieved those aims already?

We are also told that the Bill has popular backing. That explains why some people have now had a dramatic conversion on the start of the road to Hillhead. I remember all those things claimed in support of the legislation introduced in 1971. Nothing has been said in support of this Bill that was not said in support of the Industrial Relations Act in 1971. Following the enactment of that legislation, we had the worst year for industrial relations since the general strike. A total of 24 million working days were lost as a consequence of that Act. Two years later, that legislation was condemned by the CBI's director general as "disastrous".

George Bernard Shaw said:

"What history and experience teach us is this—that people and Governments never have learned anything from history, or acted on principles deduced from it".

That has again been illustrated by the Government's behaviour. What weight does the Secretary of State give to the views of those who will have to live with this legislation, such as the personnel managers to whom reference has been made? The institutes memorandum to the Secretary of State states:

"another round of major industrial relations legislation at this time could be counter-productive, deflecting management from its present urgent task of managing and raising industrial efficiency ,"

I fear that the Bill may have wider and more far-reaching consequences than those of deflecting industrial managers from their proper objectives, serious as that might be. The appalling occurrences in some of our inner city areas last year were only a symptom of the crumbling social fabric of our society and the deepening social divisions within it. The Bill will only feed those who seek to exploit such divisions.

Rarely in our peace-time history has there been a greater or more acute need for the Government to encourage the maximum co-operation and good will of the organisations of workers on whom we all ultimately depend for our livelihoods. Without the help, advice and involvement of those organisations, we shall not recover from the consequences of the Government's economic and political strategy, or rid ourselves of the scourge of mass unemployment and the rising social tensions that it brings.

Yet the Government have chosen this moment—for what can only be blind, ideological reasons—to introduce a highly provocative Bill that will alienate trade unions and that has already inflamed such moderate men as Mr. Duffy, Mr. Bill Sirs and Mr. David Basnett. To paraphrase the words of the noble Lord Wedderburn—whose evidence to the Select Committee I commend to the House—we should be advancing to employment practices and a legal framework that can fruitfully develop towards a wider democracy at work as part of a more humane working environment and a more just society. Instead, we have been offered a Bill that is totally irrelevant to the problems facing the country, that is already fostering tension and strife and that may well prove a prescription for conflict and confrontation.

For those reasons, we shall not only vote against the Bill but, as my right hon. Friend the Member for Chesterfield (Mr. Varley) said, we shall fight every inch of its progress through the House and, at the earliest moment, wipe it from the statute book.

9.31 pm

The Under-Secretary of State for Employment (Mr. David Waddington): It might be convenient to get out of the way at the beginning—[HON. MEMBERS: "Go on then."]—the junketings of the SDP. We should all thank the SDP for having given us quite an enjoyable afternoon. There was almost a carnival atmosphere when the right hon. Member for Stockton (Mr. Rodgers) addressed the House.

As we all know, the SDP has proved one thing in the last few days—the infinite divisibility of the smallest and most insignificant fraction of matter. The first time that the SDP has been required to say where it stands on an important matter of policy it has been revealed for what it is—[HON. MEMBERS: "Tories."]—a group of individuals who are united only by the common belief that the Labour Party will lose the next general election and so they had better rat and leave the ship, before it sinks.

The trouble is that those SDP Members who are minded to support us tonight have spent far too much time studying the polls. They looked at the "Weekend World" poll and found that 72 per cent. of their supporters favoured curtailment of trade union immunities. They looked at the same poll and found that 60 per cent. of their supporters wanted to ban the closed shop. I think that it was Sir Winston Churchill who said that it was all very well having one's ear to the ground, but it often leads to a very undignified posture.

SDP Members have had their ears far too close to the ground for far too long. We can all do very well without "Tebbit's troopers", as they were described by the right hon. Member for Leeds, East (Mr. Healey). I guess that those troops would be pretty unreliable in battle. They certainly were not very courageous freedom fighters in 1974 and 1976. They were not courageous fighters for freedom when they were party to the placing on the statute book of some of the most illiberal legislation that has ever been passed by the House. The right hon. Member for Stockton said that he was a recent convert to such legislation. He can say that again. He was not a convert to that belief when he stood as a Labour Party candidate in 1979, which was long after the worst abuses of the 1974 and 1976 legislation had been exposed.

I have gone through the Division lists of the Second Readings of the 1974 and 1976 Acts. Almost every member of the SDP today voted each time for the closed shop against the freedom of the individual.

Let us consider the Instructions to the Committee proposed by the SDP. The first concerns the political levy. The SDP members did not mind about the system of contracting out when they were in the Labour Party, but now that they are out they wish to get their sticky fingers back in the honey pot.

I must remind my hon. Friend the Member for Winchester (Mr. Browne) that contracting out was not considered in the Green Paper. It is not strictly a matter of industrial relations, but more a matter of the financing of political parties. No one in the House can have been surprised to find that it did not feature in the Bill presented by my right hon. Friend.

A rigid legal framework would be bad for any employee participation schemes, and more platitudes and generalisations would be pointless. That is why I have some reservations about the wish of my hon. Friend the Member for Mid-Sussex (Mr. Renton) that we should legislate in that area. However, I remind the House that we have already legislated in two important respects. We have encouraged share ownership schemes and we have made provision in our privatisation measures for sales of shares to employees.

As to trade union elections, mention has been made today of the behaviour of the Transport and General Workers Union over the election of the deputy leader of the Labour Party. No one could seriously deny that there is need for more democracy within the trade union movement when they consider the trade unions, including ASLEF and the NUR, which have been busy during the years purchasing votes at 40p a time so that they can poll more votes in elections at Labour Party conferences than they have members who subscribe to the political levy. We have been careful not to interfere with union rules, which caused the trade union movement such offence in 1971.

Mr. Leighton: On a point of order, Mr. Speaker. Can the Minister tell us under which clause these items come?

Mr. Speaker: Order. This is a Second Reading debate.

Mr. Waddington: I do not suggest that they appear under any clause, Mr. Speaker, but you gave the House the impression that it was right for us to debate the matters raised by the Social Democratic Party in the proposals that it put on the Order Paper.

Although I sympathise with what my hon. Friend the Member for Mid-Sussex said when he called for union elections by secret ballot, this is not the time to do that. Clearly, if the trade unions do not reform themselves, pressure will build up over the years for further measures to be taken.

The speech by the right hon. Member for Doncaster (Mr. Walker) was a catalogue of irrelevancies. He mentioned the new chairman of the MSC. That has a most tenuous connection with the Bill's provisions. We have heard a great deal of synthetic anger from the Opposition today. We heard similar synthetic anger in 1980. There were threats in 1980 of the dire consequences that would follow the passing of that measure. I take the threats today with a similar pinch of salt.

The Opposition know that in certain areas no responsible Government could have failed to act. The right hon. Member for Chesterfield (Mr. Varley) said that free trade unionism was essential to our liberties. He knows that nothing in the Bill affects that freedom in any way.

It is all very well for the Labour Party and the TUC to declare war on the Government. We would like to know whether they will now declare war on the European Court of Human Rights. If, as a result of some stroke of fate, a Labour Government were returned to power tomorrow, would they go back to the pre-1980 position and give no protection to existing employees when a closed shop is formed? If that is their view, they are flying in the face of international law. If that is what they say, their views are as quaint as the views of those who believed that the earth was flat.

Mr. Clinton Davis: As the hon. and learned Gentleman is such a great upholder of the law, does he approve of Lord Denning saying that to take away the power of blacking from the international seafaring movement would destroy its ability to deal with the extraordinary extortion by owners? Why does he not address himself to the real exploitation that exists?

Mr. Waddington: Opposition Members are selective in their quotations from the words and judgments of Lord Denning. Normally he is cast by the Opposition in the role of a villain. I shall deal with the seamen later.

Still we wait for an answer from the Opposition. They will not stand up and apologise for their illiberal legislation. They do not say whether, if they were returned to power, they would return to the pre-1980 position. We are met with a deafening silence.

I assure the Opposition that the Bill was not conjured up by my right hon. Friend the Secretary of State when he was bicycling from Waltham Forest. The Bill is the product of a long period of consultation, beginning with the publication of the Green Paper. The Bill's proposals reflect industry's view. That is why—and I answer the question asked by the hon. Member for Newham, North-East (Mr. Leighton)—the time has come to take a further step. It is always wise to move in step with public opinion. That is precisely what we are doing.

Many people wanted us to go further. It is clear from today's debate that some people wanted the immunities for the breach of procedural agreements removed. My hon. Friends the Members for Winchester, for Reigate (Mr. Gardiner) and for Hendon, North (Mr. Gorst) are of that view. That is not surprising when there are still too many examples of strikes being used without regard for the damage to the country as a whole and with no moral justification whatsoever.

We have tried to create a balanced package. Because it is seen as a fair and balanced attempt to deal with some of the worst abuses it continues to attract widespread support. We do not exaggerate the importance of the Bill. In spite of what the right hon. Member for Stockton said, it will not get rid of all irresponsible action. It will not get rid of the ASLEF dispute, for example.

In a free country there has to be the right to strike. However, there will always be those who abuse that right. I have never pretended that the problems of industrial relations can be solved by legislation. We cannot overestimate the need for new initiatives from management to break down the old "them and us" attitudes in industry and create an atmosphere of partnership. The Bill will continue the progress that was begun with the Employment Act 1980 of bringing some sanity and fairness into our legal framework of industrial relations. It will also give better protection for the individual against

[Mr. Waddington]

the abuse of industrial power. It will mark more clearly than before what the community regards as acceptable and what is clearly not acceptable in an industrial dispute. It will remove some of the more obvious barriers to economic recovery.

Clause 1 is an act of belated justice to about 400 people who were dismissed between 1974 and 1980 under the Labour Government's legislation. It was welcomed by my hon. Friend the Member for Fareham (Mr. Lloyd), and rightly so. It was welcomed by my hon. Friend the Member for Scarborough (Mr. Shaw), but I did not agree with him when he said that the Bill was retrospective legislation. It is not, because it will not make unlawful that which was lawful. It will not make any employer or individual subject to any new proceedings in respect of past dismissals.

Mr. George Cunningham: Surely it is retrospective legislation in the sense that it is authorising expenditure in respect of past behaviour which would be unlawful but for this legislation. Do the Government not see the awful precedent that is being set? Successive Governments will use public funds as an opportunity to reimburse groups towards which they think their predecessors acted unfairly.

Mr. Waddington: It is no more retrospective than the War Damage Act 1941, the Pneumoconiosis Etc. (Workers') Compensation Act 1979 and the Vaccine Damage Payments Act 1979, for example. I do not want to quote some of the precedents and antics of the Labour Government. As usual, they were pretty shabby antics with which one does not wish to be associated. However, the right hon. Member for Leeds East, when he was Chancellor of the Exchequer, included in the Finance Act 1975 provisions that freed unions from the consequences of not registering. Then we had the disgraceful legislation that freed the Clay Cross councillors from their penalties.

There are many arguments against the closed shop, including many economic arguments. The principal argument against it is that it is an affront to liberty. There is nothing wrong with 100 per cent. trade union membership if it is brought about by voluntary means, but we object to compulsory trade unionism. Despite all that has been said by the right hon. Member for Doncaster, it is disgraceful that the Labour Government positively encouraged closed shops by declaring closed shop dismissals fair. If the right hon. Gentleman needs reminding, they did that in the 1974 Act in paragraph 6 of the first schedule, and that made history.

We considered making the closed shop unlawful. Many of us wished to do so. However, we were not encouraged by the experience between 1971 and 1974. There are well-established, if undesirable, institutions in this country. That is the only reason why we should not pass legislation to protect those who suffer from the worst effects of the closed shop.

I have heard much this afternoon about the free rider of free loader. Such arguments are a load of nonsense. Why should any union fear the free rider? If a trade union provide a good and effective service people will want to be members. They will not want to leave.

Opposition Members may not recognise the fact, but many people find trade union political objectives unacceptable. They are not prepared to strike if it causes hardship to the public or to other innocent third parties. Why should they be compelled to strike just because they are members of a closed shop? The free rider argument presupposes that employees always stand to gain if their pay and conditions are negotiated by trade unions. I do not accept that for one moment. As my hon. Friend the Member for Fareham said, some people are far from convinced that inflationary wage claims and clinging to restrictive practices are in the long-term interests of employees. One can think of many instances where the rights of working people have been gravely harmed by irresponsible industrial action.

Mr. Eric Ogden (Liverpool, West Derby): Will the Minister assure us that the Government have no intention to outlaw closed shops in industries such as coalmining and seafaring, and for airline pilots?

Mr. Waddington: The Bill does not outlaw any closed shop.

Mr. Ogden: Not just in this Bill.

Mr. Waddington: The Bill provides compensation for people who are unfairly dismissed where the closed shop operates.

I owe it to my hon. and learned Friend the Solicitor-General to say a word about what the right hon. Member for Chesterfield said about the European Court of Human Rights' case. At no stage in Strasbourg did we argue that the Labour legislation of 1974 to 1976 was other than disgraceful, but my hon. and learned Friend believed that there should be a ruling on whether there was a breach of article 11 of the convention, whether there was a right to belong as well as not to belong and whether the Government, although not the employer of the railwaymen, were liable for the actions of British Rail. As my hon. Friend the Member for Cornwall, North (Mr. Neale) said, as a result of the 1980 Act we are in compliance with article 11, which was not the case when the Labour legislation was on the statute book.

I turn to the subject of trade union immunities. Incidentally, the right hon. Member for Doncaster talked about the Donovan commission, but he does not seem to remember that it recommended that trade union immunities should be limited to acts done in contemplation of or in furtherance of a trade dispute, so some of the proposals in the Bill are in compliance with its recommendations.

We are moving in line with public opinion. A recent poll showed that 70 per cent. of the public and 60 per cent. of trade unionists want trade unions to be sued if they organise secondary action. It is wrong in principle to set trade unions above the law. It is absurd that they should be given an immunity not even offered to their own officers. They do not need it.

The immunity in the 1906 Act came about by historical accident. On one night the Solicitor-General of the Liberal Government was arguing fervently that no immunity should be granted to trade unions. The next day he had changed his mind and the Liberal Government marched into the Lobby in line with the new Labour Members. That is an example of the behaviour of Liberal Governments over the years.

My right hon. Friend the Secretary of State quoted from a Royal Commission report. Following the Taff Vale case another Royal Commission stated:

"There is no rule of law so elementary, so universal and so indispensable as the rule that a wrong-doer should be made to redress this wrong. If trade unions were exempt from this liability they would be the only exception and it would then be right that the exception should be removed."

As we have heard, little Sidney Webb was a member of that commission. We may also remember that, later, in their book on the history of trade unionism, Sidney and Beatrice Webb spoke of the Act conferring an extraordinary and unlimited immunity that was quite unjustified.

Mr. John Evans *rose*——

Mr. Waddington: No, I shall not give way. I have only a few more minutes.

My hon. Friends referred to the part of the Bill which limits the damages that may be awarded against trade unions. I remind the House that in putting into the Bill that limitation on damages, we are thereby still conferring upon trade unions an element of privilege not afforded to anyone else who commits an unlawful act. It therefore comes ill from Opposition Members to cavil about the exact amount of compensation that may be awarded.

With regard to the definition of a trade dispute, what could be more absurd than to give protection for a trade dispute when there is no argument between the employer and his employees? A case was brought to my attention shortly before Christmas in which a trade union official sought to black the goods from a poultry packing firm because the union wanted recognition rights. There was no dispute within the firm. There was no dispute between the employer and his own employees. Yet the trade union official was prepared to jeopardise the employment of those people and if necessary drive the business into bankruptcy. To my mind, that kind of behaviour cannot be condoned.

With regard to shipping, of course there are special problems in the shipping industry in relation to closed shop ballots. I undertake to look into that matter, and I know that my right hon. Friend will do so. It must be remembered, however, that communications are very much better today then they were in the past. Strike ballots have been held on many occasions, apparently without all that much difficulty, so it is not self-evident that it would be impossible to hold a ballot on the closed shop.

I fear that I have not been able to respond to all the points raised by the Labour Members. I confess that, on the whole, I found their contributions deeply depressing. Any element of fairness and objectivity that the Labour Party may have possessed seems to have been mortgaged to the trade unions. It is the old story. Labour Members know of no other posture than to lie on their backs and wait for their tummies to be tickled by their block vote brandishing paymasters. That is a good posture for a whore, but an undignified and disgraceful posture by and unworthy of representatives of the British people.

We have heard not one word of support from the Labour Party for those thrown out of their jobs between 1974 and 1980 as a result of closed shops. There has been not a flicker of recognition that the Labour Government's legislation which permitted those dismissals has been found to be in breach of the European Convention on Human Rights. We have heard not a whisper of condemnation of councils such as Sandwell and Walsall which have sacked low-paid workers in defiance of the Employment Act. There has been not a hint of unease among Labour Members at the threat by a number of trade union leaders to defy a law passed by Parliament and supported by the vast majority of the British people.

We have seen today the extent to which the Labour Party has sold itself morally and financially to the trade unions. Those who oppose the Bill are offering a society in which the interests of trade unions must be protected before all others and in which the collective will must prevail over the rights of the individual. But as the European Court said about the British railmen, democracy does not simply mean that the views of the majority and powerful must always prevail. A balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a majority and dominant position. That is precisely what we have done in the Bill.

Question put, That the Bill be now read a Second time:—

The House divided: Ayes 348, Noes 241.

Division No. 59] **[10.00**

AYES

Adley, Robert
Aitken, Jonathan
Alexander, Richard
Alison, Rt Hon Michael
Alton, David
Ancram, Michael
Arnold, Tom
Aspinwall, Jack
Atkins, Rt Hon H. *(S'thorne)*
Atkins, Robert *(Preston N)*
Atkinson, David *(B'm'th, E)*
Baker, Kenneth *(St. M'bone)*
Baker, Nicholas *(N Dorset)*
Beaumont-Dark, Anthony
Beith, A. J.
Bell, Sir Ronald
Bendall, Vivian
Bennett, Sir Frederic *(T'bay)*
Benyon, Thomas *(A'don)*
Benyon, W. *(Buckingham)*
Best, Keith
Bevan, David Gilroy
Biffen, Rt Hon John
Biggs-Davison, Sir John
Blackburn, John
Blaker, Peter
Body, Richard
Bonsor, Sir Nicholas
Boscawen, Hon Robert
Bottomley, Peter *(W'wich W)*
Bowden, Andrew
Boyson, Dr Rhodes
Bradley, Tom
Braine, Sir Bernard
Bright, Graham
Brinton, Tim
Brittan, Rt. Hon. Leon
Brocklebank-Fowler, C.
Brooke, Hon Peter
Brotherton, Michael
Brown, Michael *(Brigg&Sc'n)*
Browne, John *(Winchester)*
Bruce-Gardyne, John
Bryan, Sir Paul
Buck, Antony
Budgen, Nick
Bulmer, Esmond
Burden, Sir Frederick
Butcher, John
Butler, Hon Adam
Cadbury, Jocelyn
Carlisle, John *(Luton West)*
Carlisle, Kenneth *(Lincoln)*
Carlisle, Rt Hon M. *(R'c'n)*
Cartwright, John
Chalker, Mrs. Lynda
Channon, Rt. Hon. Paul
Chapman, Sydney
Churchill, W. S.
Clark, Hon A. *(Plym'th, S'n)*
Clark, Sir W. *(Croydon S)*
Clarke, Kenneth *(Rushcliffe)*
Clegg, Sir Walter
Cockeram, Eric
Colvin, Michael
Cope, John
Cormack, Patrick
Corrie, John
Costain, Sir Albert
Cranborne, Viscount
Critchley, Julian
Crouch, David
Dean, Paul *(North Somerset)*
Dickens, Geoffrey
Dorrell, Stephen
Douglas-Hamilton, Lord J.
Dover, Denshore
du Cann, Rt Hon Edward
Dunn, Robert *(Dartford)*
Durant, Tony
Dykes, Hugh
Eden, Rt Hon Sir John
Edwards, Rt Hon N. *(P'broke)*
Eggar, Tim
Elliott, Sir William
Ellis, Tom *(Wrexham)*
Emery, Sir Peter
Eyre, Reginald
Fairbairn, Nicholas
Fairgrieve, Sir Russell
Faith, Mrs Sheila
Farr, John
Fell, Sir Anthony
Fenner, Mrs Peggy
Finsberg, Geoffrey
Fisher, Sir Nigel
Fletcher, A. *(Ed'nb'gh N)*
Fletcher-Cooke, Sir Charles
Fookes, Miss Janet
Forman, Nigel
Fowler, Rt Hon Norman
Fox, Marcus
Fraser, Peter *(South Angus)*
Freud, Clement
Fry, Peter
Gardiner, George *(Reigate)*
Gardner, Edward *(S Fylde)*
Garel-Jones, Tristan
Gilmour, Rt Hon Sir Ian
Ginsburg, David
Glyn, Dr Alan
Goodhart, Sir Philip

Goodhew, Sir Victor
Goodlad, Alastair
Gorst, John
Gow, Ian
Grant, Anthony *(Harrow C)*
Gray, Hamish
Greenway, Harry
Grieve, Percy
Griffiths, E. *(B'y St. Edm'ds)*
Griffiths, Peter *Portsm'th N)*
Grimond, Rt Hon J.
Grist, Ian
Grylls, Michael
Gummer, John Selwyn
Hamilton, Hon A.
Hamilton, Michael *(Salisbury)*
Hampson, Dr Keith
Hannam, John
Haselhurst, Alan
Hastings, Stephen
Havers, Rt Hon Sir Michael
Hawkins, Paul
Hayhoe, Barney
Heath, Rt Hon Edward
Heddle, John
Henderson, Barry
Heseltine, Rt Hon Michael
Hicks, Robert
Higgins, Rt Hon Terence L.
Hogg, Hon Douglas *(Gr'th'm)*
Holland, Philip *(Carlton)*
Hooson, Tom
Horam, John
Hordern, Peter
Howe, Rt Hon Sir Geoffrey
Howell, Rt Hon D. *(G'ldf'd)*
Howell, Ralph *(N Norfolk)*
Howells, Geraint
Hunt, David *(Wirral)*
Hunt, John *(Ravensbourne)*
Irving, Charles *(Cheltenham)*
Jenkin, Rt Hon Patrick
Jessel, Toby
Johnson Smith, Geoffrey
Jopling, Rt Hon Michael
Joseph, Rt Hon Sir Keith
Kaberry, Sir Donald
Kellett-Bowman, Mrs Elaine
Kershaw, Sir Anthony
Kilfedder, James A.
Kimball, Sir Marcus
King, Rt Hon Tom
Kitson, Sir Timothy
Knight, Mrs Jill
Knox, David
Lamont, Norman
Lang, Ian
Langford-Holt, Sir John
Latham, Michael
Lawrence, Ivan
Lawson, Rt Hon Nigel
Lee, John
LeMarchant, Spencer
Lennox-Boyd, Hon Mark
Lester, Jim *(Beeston)*
Lewis, Kenneth *(Rutland)*
Lloyd, Ian *(Havant & W'loo)*
Lloyd, Peter *(Fareham)*
Loveridge, John
Luce, Richard
Lyell, Nicholas
Lyons, Edward *(Bradf'd W)*
Mabon, Rt Hon Dr J. Dickson
McCrindle, Robert
Macfarlane, Neil
MacGregor, John
MacKay, John *(Argyll)*
Maclennan, Robert
Macmillan, Rt Hon M.
McNair-Wilson, M. *(N'bury)*
McNair-Wilson, P. *(New F'st)*
McQuarrie, Albert
Madel, David
Major, John
Marland, Paul
Marlow, Antony
Marshall, Michael *(Arundel)*
Marten, Rt Hon Neil
Mates, Michael
Maude, Rt Hon Sir Angus
Mawby, Ray
Mawhinney, Dr Brian
Maxwell-Hyslop, Robin
Mayhew, Patrick
Mellor, David
Meyer, Sir Anthony
Miller, Hal *(B'grove)*
Mills, Iain *(Meriden)*
Mills, Peter *(West Devon)*
Miscampbell, Norman
Mitchell, David *(Basingstoke)*
Moate, Roger
Monro, Sir Hector
Montgomery, Fergus
Moore, John
Morgan, Geraint
Morris, M. *(N'hampton S)*
Morrison, Hon C. *(Devizes)*
Morrison, Hon P. *(Chester)*
Mudd, David
Murphy, Christopher
Myles, David
Neale, Gerrard
Needham, Richard
Nelson, Anthony
Neubert, Michael
Newton, Tony
Normanton, Tom
Nott, Rt Hon John
Onslow, Cranley
Oppenheim, Rt Hon Mrs S.
Osborn, John
Owen, Rt Hon Dr David
Page, John *(Harrow, West)*
Page, Richard *(SW Herts)*
Parkinson, Rt Hon Cecil
Parris, Matthew
Patten, Christopher *(Bath)*
Patten, John *(Oxford)*
Pattie, Geoffrey
Pawsey, James
Percival, Sir Ian
Pink, R. Bonner
Pitt, William Henry
Pollock, Alexander
Porter, Barry
Prentice, Rt Hon Reg
Price, Sir David *(Eastleigh)*
Proctor, K. Harvey
Pym, Rt Hon Francis
Raison, Timothy
Rathbone, Tim
Rees, Peter *(Dover and Deal)*
Rees-Davies, W. R.
Renton, Tim
Rhodes James, Robert
Rhys Williams, Sir Brandon
Ridley, Hon Nicholas
Ridsdale, Sir Julian
Rifkind, Malcolm
Rippon, Rt Hon Geoffrey
Roberts, M. *(Cardiff NW)*
Roberts, Wyn *(Conway)*
Rodgers, Rt Hon William
Roper, John
Rossi, Hugh
Rost, Peter
Royle, Sir Anthony
Sainsbury, Hon Timothy
St. John-Stevas, Rt Hon N.
Sandelson, Neville
Scott, Nicholas
Shaw, Giles *(Pudsey)*
Shaw, Michael *(Scarborough)*
Shelton, William *(Streatham)*
Shepherd, Colin *(Hereford)*
Shepherd, Richard
Shersby, Michael
Silvester, Fred
Sims, Roger
Skeet, T. H. H.
Smith, Cyril *(Rochdale)*
Smith, Dudley
Speed, Keith
Speller, Tony
Spence, John
Spicer, Jim *(West Dorset)*
Spicer, Michael *(S Worcs)*
Sproat, Iain
Squire, Robin
Stainton, Keith
Stanbrook, Ivor
Stanley, John
Steel, Rt Hon David
Steen, Anthony
Stevens, Martin
Stewart, A. *(E Renfrewshire)*
Stewart, Ian *(Hitchin)*
Stokes, John
Stradling Thomas, J.
Tapsell, Peter
Taylor, Teddy *(S'end E)*
Tebbit, Rt Hon Norman
Temple-Morris, Peter
Thatcher, Rt Hon Mrs M.
Thomas, Mike *(Newcastle E)*
Thomas, Rt Hon Peter
Thompson, Donald
Thorne, Neil *(Ilford South)*
Thornton, Malcolm
Townend, John *(Bridlington)*
Townsend, Cyril D. *(B'heath)*
Trippier, David
Trotter, Neville
van Straubenzee, Sir W.
Vaughan, Dr Gerard
Viggers, Peter
Waddington, David
Wainwright, R. *(Colne V)*
Wakeham, John
Waldegrave, Hon William
Walker, Rt Hon P. *(W'cester)*
Walker, B. *(Perth)*
Walker-Smith, Rt Hon Sir D.
Wall, Sir Patrick
Waller, Gary
Walters, Dennis
Ward, John
Warren, Kenneth
Watson, John
Wellbeloved, James
Wells, Bowen
Wells, John *(Maidstone)*
Wheeler, John
Whitelaw, Rt Hon William
Whitney, Raymond
Wickenden, Keith
Wiggin, Jerry
Wilkinson, John
Williams, D. *(Montgomery)*
Williams, Rt Hon Mrs *(Crosby)*
Winterton, Nicholas
Wolfson, Mark
Wrigglesworth, Ian
Young, Sir George *(Acton)*
Younger, Rt Hon George

Tellers for the Ayes:
Mr. Anthony Berry and
Mr. Carol Mather.

NOES

Abse, Leo
Adams, Allen
Allaun, Frank
Anderson, Donald
Archer, Rt Hon Peter
Ashley, Rt Hon Jack
Ashton, Joe
Atkinson, N. *(H'gey,)*
Bagier, Gordon A.T.
Barnett, Guy *(Greenwich)*
Barnett, Rt Hon Joel *(H'wd)*
Benn, Rt Hon Tony
Bennett, Andrew *(St'kp'tN)*
Bidwell, Sydney
Booth, Rt Hon Albert
Boothroyd, Miss Betty
Bottomley, Rt Hon A. *(M'b'ro)*
Bray, Dr Jeremy
Brown, Hugh D. *(Provan)*
Brown, R. C. *(N'castle W)*
Brown, Ron *(E'burgh, Leith)*
Buchan, Norman
Callaghan, Rt Hon J.
Callaghan, Jim *(Midd't'n & P)*
Campbell, Ian
Campbell-Savours, Dale
Canavan, Dennis
Cant, R. B.
Carmichael, Neil
Carter-Jones, Lewis
Clark, Dr David *(S Shields)*
Cocks, Rt Hon M. *(B'stol S)*
Cohen, Stanley
Coleman, Donald
Concannon, Rt Hon J. D.
Cook, Robin F.
Cowans, Harry
Cox, T. *(W'dsw'th, Toot'g)*
Craigen, J. M. *(G'gow, M'hill)*
Crowther, Stan
Cryer, Bob
Cunliffe, Lawrence
Cunningham, G. *(Islington S)*
Cunningham, Dr J. *(W'h'n)*
Dalyell, Tam
Davidson, Arthur
Davies, Rt Hon Denzil *(L'lli)*
Davies, Ifor *(Gower)*
Davis, Clinton *(Hackney C)*
Davis, Terry *(B'ham, Stechf'd)*
Deakins, Eric
Dean, Joseph *(Leeds West)*
Dewar, Donald
Dixon, Donald
Dobson, Frank
Dormand, Jack
Douglas, Dick
Douglas-Mann, Bruce
Dubs, Alfred
Duffy, A. E. P.
Dunnett, Jack
Dunwoody, Hon Mrs G.
Eadie, Alex
Eastham, Ken
Edwards, R. *(W'hampt'n S E)*
Ellis, R. *(NE D'bysh're)*
English, Michael
Ennals, Rt Hon David
Evans, Ioan *(Aberdare)*
Evans, John *(Newton)*
Ewing, Harry
Faulds, Andrew
Field, Frank
Fitch, Alan
Fitt, Gerard
Flannery, Martin

Fletcher, L. R. *(Ilkeston)*
Fletcher, Ted *(Darlington)*
Foot, Rt Hon Michael
Ford, Ben
Forrester, John
Foster, Derek
Foulkes, George
Fraser, J. *(Lamb'th, N'w'd)*
Freeson, Rt Hon Reginald
Garrett, John *(Norwich S)*
Garrett, W. E. *(Wallsend)*
George, Bruce
Gilbert, Rt Hon Dr John
Golding, John
Graham, Ted
Grant, George *(Morpeth)*
Grant, John *(Islington C)*
Hamilton, W. W. *(C'tral Fife)*
Hardy, Peter
Harrison, Rt Hon Walter
Hart, Rt Hon Dame Judith
Hattersley, Rt Hon Roy
Haynes, Frank
Healey, Rt Hon Denis
Heffer, Eric S.
Hogg, N. *(E Dunb't'nshire)*
Holland, S. *(L'b'th, Vauxh'll)*
Home Robertson, John
Homewood, William
Hooley, Frank
Howell, Rt Hon D.
Hoyle, Douglas
Huckfield, Les
Hughes, Mark *(Durham)*
Hughes, Robert *(Aberdeen N)*
Hughes, Roy *(Newport)*
Janner, Hon Greville
Jay, Rt Hon Douglas
John, Brynmor
Johnson, James *(Hull West)*
Johnson, Walter *(Derby S)*
Jones, Rt Hon Alec *(Rh'dda)*
Jones, Barry *(East Flint)*
Jones, Dan *(Burnley)*
Kaufman, Rt Hon Gerald
Kerr, Russell
Kilroy-Silk, Robert
Kinnock, Neil
Lamborn, Harry
Lamond, James
Leadbitter, Ted
Leighton, Ronald
Lestor, Miss Joan
Lewis, Arthur *(N'ham NW)*
Lewis, Ron *(Carlisle)*
Litherland, Robert
Lofthouse, Geoffrey
Lyon, Alexander *(York)*
McCartney, Hugh
McDonald, Dr Oonagh
McGuire, Michael *(Ince)*
McKay, Allen *(Penistone)*
McKelvey, William
MacKenzie, Rt Hon Gregor
McMahon, Andrew
McNally, Thomas
McNamara, Kevin
McTaggart, Robert
McWilliam, John
Marks, Kenneth
Marshall, D *(G'gow S'ton)*
Marshall, Dr Edmund *(Goole)*
Marshall, Jim *(Leicester S)*
Martin, M *(G'gow S'burn)*
Mason, Rt Hon Roy
Maxton, John
Maynard, Miss Joan
Meacher, Michael
Mellish, Rt Hon Robert
Mikardo, Ian
Millan, Rt Hon Bruce
Miller, Dr M. S. *(E Kilbride)*
Mitchell, R. C. *(Soton Itchen)*
Morris, Rt Hon A. *(W'shawe)*
Morris, Rt Hon C. *(O'shaw)*
Morris, Rt Hon J. *(Aberavon)*
Morton, George
Moyle, Rt Hon Roland
Mulley, Rt Hon Frederick
Newens, Stanley
Oakes, Rt Hon Gordon
Ogden, Eric
O'Neill, Martin
Orme, Rt Hon Stanley
Palmer, Arthur
Park, George
Parker, John
Parry, Robert
Pavitt, Laurie
Pendry, Tom
Powell, Raymond *(Ogmore)*
Prescott, John
Price, C. *(Lewisham W)*
Race, Reg
Radice, Giles
Rees, Rt Hon M *(Leeds S)*
Richardson, Jo
Roberts, Albert *(Normanton)*
Roberts, Allan *(Bootle)*
Roberts, Ernest *(Hackney N)*
Roberts, Gwilym *(Cannock)*
Robertson, George
Rooker, J. W.
Ross, Ernest *(Dundee West)*
Rowlands, Ted
Ryman, John
Sever, John
Sheerman, Barry
Sheldon, Rt Hon R.
Shore, Rt Hon Peter
Short, Mrs Renée
Silkin, Rt Hon J. *(Deptford)*
Silkin, Rt Hon S. C. *(Dulwich)*
Silverman, Julius
Skinner, Dennis
Snape, Peter
Soley, Clive
Spearing, Nigel
Spriggs, Leslie
Stallard, A. W.
Stoddart, David
Stott, Roger
Strang, Gavin
Straw, Jack
Summerskill, Hon Dr Shirley
Taylor, Mrs Ann *(Bolton W)*
Thomas, Dafydd *(Merioneth)*
Thomas, Jeffrey *(Abertillery)*
Thomas, Dr R. *(Carmarthen)*
Thorne, Stan *(Preston South)*
Tilley, John
Tinn, James
Torney, Tom
Urwin, Rt Hon Tom
Varley, Rt Hon Eric G.
Wainwright, E. *(Dearne V)*
Walker, Rt Hon H. *(D'caster)*
Watkins, David
Weetch, Ken
Welsh, Michael
White, Frank R.
White, J. *(G'gow Pollok)*
Whitehead, Phillip
Whitlock, William
Wigley, Dafydd
Willey, Rt Hon Frederick
Williams, Rt Hon A. *(S'sea W)*
Wilson, Gordon *(Dundee E)*
Wilson, Rt Hon Sir H. *(H'ton)*
Wilson, William *(C'try SE)*
Winnick, David
Woodall, Alec
Woolmer, Kenneth
Wright, Sheila
Young, David *(Bolton E)*

Tellers for the Noes:
Mr. Austin Mitchell and
Mr. James Hamilton.

Question accordingly agreed to.
Bill read a Second time.

Mr. Michael Cocks (Bristol, South) *rose*——

Mr. Dennis Skinner (Bolsover): On a point of order,——

Mr. Cocks: I beg to move, That the Bill be committed to a Committee of the whole House.

Question put:—

The House divided: Ayes 236, Noes 353.

Division No. 60] **[10.13 pm**

AYES

Abse, Leo
Adams, Allen
Allaun, Frank
Anderson, Donald
Archer, Rt Hon Peter
Ashley, Rt Hon Jack
Ashton, Joe
Atkinson, N. *(H'gey,)*
Bagier, Gordon A.T.
Barnett, Guy *(Greenwich)*
Barnett, Rt Hon Joel *(H'wd)*
Benn, Rt Hon Tony
Bennett, Andrew *(St'kp'tN)*
Bidwell, Sydney
Booth, Rt Hon Albert
Boothroyd, Miss Betty
Bottomley, Rt Hon A. *(M'b'ro)*
Bray, Dr Jeremy
Brown, Hugh D. *(Provan)*
Brown, R. C. *(N'castle W)*
Brown, Ron *(E'burgh, Leith)*
Buchan, Norman
Callaghan, Rt Hon J.
Callaghan, Jim *(Midd't'n & P)*
Campbell, Ian
Campbell-Savours, Dale
Canavan, Dennis
Cant, R. B.
Carmichael, Neil
Carter-Jones, Lewis
Clark, Dr David *(S Shields)*
Cocks, Rt Hon M. *(B'stol S)*
Cohen, Stanley
Coleman, Donald
Concannon, Rt Hon J. D.
Cook, Robin F.
Cowans, Harry
Cox, T. *(W'dsw'th, Toot'g)*
Craigen, J. M. *(G'gow, M'hill)*
Crowther, Stan
Cryer, Bob
Cunliffe, Lawrence
Cunningham, Dr J. *(W'h'n)*
Dalyell, Tam
Davidson, Arthur
Davies, Rt Hon Denzil *(L'lli)*
Davies, Ifor *(Gower)*
Davis, Clinton *(Hackney C)*
Davis, Terry *(B'ham, Stechf'd)*
Deakins, Eric
Dean, Joseph *(Leeds West)*
Dewar, Donald
Dixon, Donald
Dobson, Frank
Dormand, Jack
Douglas, Dick
Dubs, Alfred
Duffy, A. E. P.
Dunnett, Jack
Dunwoody, Hon Mrs G.
Eadie, Alex
Eastham, Ken
Edwards, R. *(W'hampt'n S E)*
Ellis, R. *(NE D'bysh're)*
English, Michael
Ennals, Rt Hon David
Evans, Ioan *(Aberdare)*
Evans, John *(Newton)*
Ewing, Harry
Faulds, Andrew
Field, Frank
Fitch, Alan
Fitt, Gerard
Flannery, Martin
Fletcher, L. R. *(Ilkeston)*
Fletcher, Ted *(Darlington)*
Foot, Rt Hon Michael
Ford, Ben
Forrester, John
Foster, Derek
Foulkes, George
Fraser, J. *(Lamb'th, N'w'd)*
Freeson, Rt Hon Reginald
Garrett, John *(Norwich S)*
Garrett, W. E. *(Wallsend)*
George, Bruce
Gilbert, Rt Hon Dr John
Golding, John
Graham, Ted
Grant, George *(Morpeth)*
Hamilton, James *(Bothwell)*
Hamilton, W. W. *(C'tral Fife)*
Hardy, Peter
Harrison, Rt Hon Walter
Hart, Rt Hon Dame Judith
Hattersley, Rt Hon Roy
Haynes, Frank
Healey, Rt Hon Denis
Heffer, Eric S.
Hogg, N. *(E Dunb't'nshire)*
Holland, S. *(L'b'th, Vauxh'll)*
Home Robertson, John
Homewood, William
Hooley, Frank
Howell, Rt Hon D.
Hoyle, Douglas
Huckfield, Les
Hughes, Mark *(Durham)*
Hughes, Robert *(Aberdeen N)*
Hughes, Roy *(Newport)*
Janner, Hon Greville
Jay, Rt Hon Douglas
John, Brynmor
Johnson, James *(Hull West)*
Johnson, Walter *(Derby S)*
Jones, Rt Hon Alec *(Rh'dda)*

Jones, Barry *(East Flint)*
Jones, Dan *(Burnley)*
Kaufman, Rt Hon Gerald
Kerr, Russell
Kilroy-Silk, Robert
Kinnock, Neil
Lambie, David
Lamborn, Harry
Lamond, James
Leadbitter, Ted
Leighton, Ronald
Lestor, Miss Joan
Lewis, Arthur *(N'ham NW)*
Lewis, Ron *(Carlisle)*
Litherland, Robert
Lofthouse, Geoffrey
Lyon, Alexander *(York)*
McDonald, Dr Oonagh
McGuire, Michael *(Ince)*
McKay, Allen *(Penistone)*
McKelvey, William
MacKenzie, Rt Hon Gregor
McMahon, Andrew
McNamara, Kevin
McTaggart, Robert
McWilliam, John
Marks, Kenneth
Marshall, D *(G'gowS'ton)*
Marshall, Jim *(LeicesterS)*
Martin, M *(G'gowS'burn)*
Mason, Rt Hon Roy
Maxton, John
Maynard, Miss Joan
Meacher, Michael
Mellish, Rt Hon Robert
Mikardo, Ian
Millan, Rt Hon Bruce
Miller, Dr M. S. *(E Kilbride)*
Mitchell, Austin *(Grimsby)*
Morris, Rt Hon A. *(W'shawe)*
Morris, Rt Hon C. *(O'shaw)*
Morris, Rt Hon J. *(Aberavon)*
Morton, George
Moyle, Rt Hon Roland
Mulley, Rt Hon Frederick
Newens, Stanley
Oakes, Rt Hon Gordon
O'Neill, Martin
Orme, Rt Hon Stanley
Palmer, Arthur
Park, George
Parker, John
Parry, Robert
Pavitt, Laurie
Pendry, Tom
Powell, Raymond *(Ogmore)*
Prescott, John
Price, C. *(Lewisham W)*
Race, Reg
Radice, Giles
Rees, Rt Hon M *(Leeds S)*
Richardson, Jo
Roberts, Albert *(Normanton)*
Roberts, Allan *(Bootle)*
Roberts, Ernest *(Hackney N)*
Roberts, Gwilym *(Cannock)*
Robertson, George
Robinson, G. *(Coventry NW)*
Rooker, J. W.
Ross, Ernest *(Dundee West)*
Rowlands, Ted
Ryman, John
Sever, John
Sheerman, Barry
Sheldon, Rt Hon R.
Shore, Rt Hon Peter
Short, Mrs Renée
Silkin, Rt Hon J. *(Deptford)*
Silkin, Rt Hon S. C. *(Dulwich)*
Silverman, Julius
Skinner, Dennis
Snape, Peter
Soley, Clive
Spearing, Nigel
Spriggs, Leslie
Stallard, A. W.
Stoddart, David
Stott, Roger
Strang, Gavin
Straw, Jack
Summerskill, Hon Dr Shirley
Taylor, Mrs Ann *(Bolton W)*
Thomas, Dafydd *(Merioneth)*
Thomas, Dr R. *(Carmarthen)*
Thorne, Stan *(Preston South)*
Tilley, John
Tinn, James
Torney, Tom
Urwin, Rt Hon Tom
Varley, Rt Hon Eric G.
Wainwright, E. *(Dearne V)*
Walker, Rt Hon H. *(D'caster)*
Watkins, David
Weetch, Ken
Welsh, Michael
White, Frank R.
White, J. *(G'gow Pollok)*
Whitehead, Phillip
Whitlock, William
Wigley, Dafydd
Willey, Rt Hon Frederick
Williams, Rt Hon A. *(S'sea W)*
Wilson, Gordon *(Dundee E)*
Wilson, Rt Hon Sir H. *(H'ton)*
Wilson, William *(C'try SE)*
Winnick, David
Woodall, Alec
Woolmer, Kenneth
Wright, Sheila
Young, David *(Bolton E)*

Tellers for the Ayes:
Dr. Edmund Marshall and
Mr. Hugh McCartney.

NOES

Adley, Robert
Aitken, Jonathan
Alexander, Richard
Alison, Rt Hon Michael
Alton, David
Ancram, Michael
Arnold, Tom
Aspinwall, Jack
Atkins, Rt Hon H. *(S'thorne)*
Atkins, Robert *(PrestonN)*
Atkinson, David *(B'm'th,E)*
Baker, Kenneth *(St.M'bone)*
Baker, Nicholas *(N Dorset)*
Beaumont-Dark, Anthony
Beith, A. J.
Bell, Sir Ronald
Bendall, Vivian
Bennett, Sir Frederic *(T'bay)*
Benyon, Thomas *(A'don)*
Benyon, W. *(Buckingham)*
Best, Keith
Bevan, David Gilroy
Biffen, Rt Hon John
Biggs-Davison, Sir John
Blackburn, John
Blaker, Peter
Body, Richard
Bonsor, Sir Nicholas
Boscawen, Hon Robert
Bottomley, Peter *(W'wich W)*
Bowden, Andrew
Boyson, Dr Rhodes
Bradley, Tom
Braine, Sir Bernard
Bright, Graham
Brinton, Tim
Brittan, Rt. Hon. Leon
Brocklebank-Fowler, C.
Brooke, Hon Peter
Brotherton, Michael
Brown, Michael *(Brigg&Sc'n)*
Brown, Ronald W. *(H'ckn'yS)*
Browne, John *(Winchester)*
Bruce-Gardyne, John
Bryan, Sir Paul
Buck, Antony
Budgen, Nick
Bulmer, Esmond
Burden, Sir Frederick
Butcher, John
Butler, Hon Adam
Cadbury, Jocelyn
Carlisle, John *(Luton West)*
Carlisle, Kenneth *(Lincoln)*
Carlisle, Rt Hon M. *(R'c'n)*
Cartwright, John
Chalker, Mrs. Lynda
Channon, Rt. Hon. Paul
Chapman, Sydney
Churchill, W. S.
Clark, Hon A. *(Plym'th, S'n)*
Clark, Sir W. *(Croydon S)*
Clarke, Kenneth *(Rushcliffe)*
Clegg, Sir Walter
Cockeram, Eric
Colvin, Michael
Cope, John
Cormack, Patrick
Corrie, John
Costain, Sir Albert
Cranborne, Viscount
Critchley, Julian
Crouch, David
Dean, Paul *(North Somerset)*
Dickens, Geoffrey
Dorrell, Stephen
Douglas-Hamilton, Lord J.
Dover, Denshore
du Cann, Rt Hon Edward
Dunn, Robert *(Dartford)*
Durant, Tony
Dykes, Hugh
Eden, Rt Hon Sir John
Edwards, Rt Hon N. *(P'broke)*
Eggar, Tim
Elliott, Sir William
Ellis, Tom *(Wrexham)*
Emery, Sir Peter
Eyre, Reginald
Fairbairn, Nicholas
Fairgrieve, Sir Russell
Faith, Mrs Sheila
Farr, John
Fell, Sir Anthony
Fenner, Mrs Peggy
Finsberg, Geoffrey
Fisher, Sir Nigel
Fletcher, A. *(Ed'nb'gh N)*
Fletcher-Cooke, Sir Charles
Fookes, Miss Janet
Forman, Nigel
Fowler, Rt Hon Norman
Fox, Marcus
Fraser, Peter *(South Angus)*
Freud, Clement
Fry, Peter
Gardiner, George *(Reigate)*
Gardner, Edward *(S Fylde)*
Garel-Jones, Tristan
Gilmour, Rt Hon Sir Ian
Ginsburg, David
Glyn, Dr Alan
Goodhart, Sir Philip
Goodhew, Sir Victor
Goodlad, Alastair
Gorst, John
Gow, Ian
Grant, Anthony *(Harrow C)*
Grant, John *(Islington C)*
Gray, Hamish
Greenway, Harry
Grieve, Percy
Griffiths, E. *(B'y St. Edm'ds)*
Griffiths, Peter *Portsm'th N)*
Grimond, Rt Hon J.
Grist, Ian
Grylls, Michael
Gummer, John Selwyn
Hamilton, Hon A.
Hamilton, Michael *(Salisbury)*
Hampson, Dr Keith
Hannam, John
Haselhurst, Alan
Hastings, Stephen
Havers, Rt Hon Sir Michael
Hawkins, Paul
Hayhoe, Barney
Heath, Rt Hon Edward
Heddle, John
Henderson, Barry
Heseltine, Rt Hon Michael
Hicks, Robert
Higgins, Rt Hon Terence L.
Hogg, Hon Douglas *(Gr'th'm)*
Holland, Philip *(Carlton)*
Hooson, Tom
Horam, John
Hordern, Peter
Howe, Rt Hon Sir Geoffrey
Howell, Rt Hon D. *(G'ldf'd)*
Howell, Ralph *(N Norfolk)*
Howells, Geraint
Hunt, David *(Wirral)*
Hunt, John *(Ravensbourne)*
Irving, Charles *(Cheltenham)*
Jenkin, Rt Hon Patrick
Jessel, Toby
Johnson Smith, Geoffrey
Jopling, Rt Hon Michael
Joseph, Rt Hon Sir Keith
Kaberry, Sir Donald
Kellett-Bowman, Mrs Elaine
Kershaw, Sir Anthony
Kilfedder, James A.
Kimball, Sir Marcus
King, Rt Hon Tom
Kitson, Sir Timothy
Knight, Mrs Jill
Knox, David
Lamont, Norman
Lang, Ian
Langford-Holt, Sir John
Latham, Michael
Lawrence, Ivan
Lawson, Rt Hon Nigel
Lee, John
LeMarchant, Spencer
Lennox-Boyd, Hon Mark
Lester, Jim *(Beeston)*
Lewis, Kenneth *(Rutland)*
Lloyd, Ian *(Havant & W'loo)*
Lloyd, Peter *(Fareham)*
Loveridge, John
Luce, Richard
Lyell, Nicholas
Lyons, Edward *(Bradf'd W)*
Mabon, Rt Hon Dr J. Dickson
McCrindle, Robert
Macfarlane, Neil
MacGregor, John
MacKay, John *(Argyll)*
Maclennan, Robert

Macmillan, Rt Hon M.
McNair-Wilson, M. *(N'bury)*
McNair-Wilson, P. *(New F'st)*
McNally, Thomas
McQuarrie, Albert
Madel, David
Major, John
Marland, Paul
Marlow, Antony
Marshall, Michael *(Arundel)*
Marten, Rt Hon Neil
Mates, Michael
Maude, Rt Hon Sir Angus
Mawby, Ray
Mawhinney, Dr Brian
Maxwell-Hyslop, Robin
Mayhew, Patrick
Mellor, David
Meyer, Sir Anthony
Miller, Hal *(B'grove)*
Mills, Iain *(Meriden)*
Mills, Peter *(West Devon)*
Miscampbell, Norman
Mitchell, David *(Basingstoke)*
Mitchell, R. C. *(Soton Itchen)*
Moate, Roger
Monro, Sir Hector
Montgomery, Fergus
Moore, John
Morgan, Geraint
Morris, M. *(N'hampton S)*
Morrison, Hon C. *(Devizes)*
Morrison, Hon P. *(Chester)*
Mudd, David
Murphy, Christopher
Myles, David
Neale, Gerrard
Needham, Richard
Nelson, Anthony
Neubert, Michael
Newton, Tony
Normanton, Tom
Nott, Rt Hon John
Ogden, Eric
Onslow, Cranley
Oppenheim, Rt Hon Mrs S.
Osborn, John
Owen, Rt Hon Dr David
Page, John *(Harrow, West)*
Page, Richard *(SW Herts)*
Parkinson, Rt Hon Cecil
Parris, Matthew
Patten, Christopher *(Bath)*
Patten, John *(Oxford)*
Pattie, Geoffrey
Pawsey, James
Percival, Sir Ian
Pink, R. Bonner
Pitt, William Henry
Pollock, Alexander
Porter, Barry
Prentice, Rt Hon Reg
Price, Sir David *(Eastleigh)*
Proctor, K. Harvey
Pym, Rt Hon Francis
Raison, Timothy
Rathbone, Tim
Rees, Peter *(Dover and Deal)*
Rees-Davies, W. R.
Renton, Tim
Rhodes James, Robert
Rhys Williams, Sir Brandon
Ridley, Hon Nicholas
Ridsdale, Sir Julian
Rifkind, Malcolm
Rippon, Rt Hon Geoffrey
Roberts, M. *(Cardiff NW)*
Roberts, Wyn *(Conway)*
Rodgers, Rt Hon William
Roper, John
Rossi, Hugh
Rost, Peter
Royle, Sir Anthony
Sainsbury, Hon Timothy
St. John-Stevas, Rt Hon N.
Sandelson, Neville
Scott, Nicholas
Shaw, Giles *(Pudsey)*
Shaw, Michael *(Scarborough)*
Shelton, William *(Streatham)*
Shepherd, Colin *(Hereford)*
Shepherd, Richard
Shersby, Michael
Silvester, Fred
Sims, Roger
Skeet, T. H. H.
Smith, Cyril *(Rochdale)*
Smith, Dudley
Speed, Keith
Speller, Tony
Spence, John
Spicer, Jim *(West Dorset)*
Spicer, Michael *(S Worcs)*
Sproat, Iain
Squire, Robin
Stainton, Keith
Stanbrook, Ivor
Stanley, John
Steel, Rt Hon David
Steen, Anthony
Stevens, Martin
Stewart, A. *(E Renfrewshire)*
Stewart, Ian *(Hitchin)*
Stokes, John
Stradling Thomas, J.
Tapsell, Peter
Taylor, Teddy *(S'end E)*
Tebbit, Rt Hon Norman
Temple-Morris, Peter
Thatcher, Rt Hon Mrs M.
Thomas, Mike *(Newcastle E)*
Thomas, Rt Hon Peter
Thompson, Donald
Thorne, Neil *(Ilford South)*
Thornton, Malcolm
Townend, John *(Bridlington)*
Townsend, Cyril D. *(B'heath)*
Trippier, David
Trotter, Neville
van Straubenzee, Sir W.
Vaughan, Dr Gerard
Viggers, Peter
Waddington, David
Wainwright, R. *(Colne V)*
Wakeham, John
Waldegrave, Hon William
Walker, Rt Hon P. *(W'cester)*
Walker, B. *(Perth)*
Walker-Smith, Rt Hon Sir D.
Wall, Sir Patrick
Waller, Gary
Walters, Dennis
Ward, John
Warren, Kenneth
Watson, John
Wellbeloved, James
Wells, Bowen
Wells, John *(Maidstone)*
Wheeler, John
Whitelaw, Rt Hon William
Whitney, Raymond
Wickenden, Keith
Wiggin, Jerry
Wilkinson, John
Williams, D. *(Montgomery)*
Williams, Rt Hon Mrs *(Crosby)*
Winterton, Nicholas
Wolfson, Mark
Wrigglesworth, Ian
Young, Sir George *(Acton)*
Younger, Rt Hon George

Mr. Anthony Berry and
Mr. Carol Mather.

Tellers for the Noes:

Question accordingly negatived.

Bill committed to a Standing Committee pursuant to Standing Order No. 40 (Committal of Bills).

Mr. Dennis Skinner (Bolsover): On a point of order, Mr. Speaker. I merely seek the necessary information about the composition of the Committee that will deal with this matter, in view of the fact that we do not yet have the *Hansard* proceedings. As many Social Democrat Members voted with the Government, some voted against the Bill and others abstained, it is important to ascertain precisely what variety of SDP Members will be serving on the Committee. I wonder whether you can give us any advice.

Mr. Speaker: It is so long since I voted that I can give no advice at all.

Mr. Arthur Lewis: Further to that point of order, Mr. Speaker. You, and some hon. Members, will know that there is a difference between a Committee upstairs and a Committee of the whole House. Many hon. Members can genuinely argue that they cannot get into the Committee upstairs because of the method of selection. As you and I know, that method of selection cannot apply if we have a Committee of the whole House. The fact that SDP Members voted against that shows that they do not even want to get on the Committee, otherwise they would have voted for it.

Mr. Speaker: As usual, I am grateful to the hon. Gentleman.

EMPLOYMENT [MONEY]

Queen's Recommendation having been signified—

Motion made, and Question proposed.

That, for the purposes of any Act of the present Session to provide for compensation out of public funds for certain past cases of dismissal for failure to conform to the requirements of a union membership agreement; to amend the law relating to workers, employers, trade unions and employers' associations; to make provision with respect to awards by industrial tribunals and the procedure of the Employment Appeal Tribunal; and for connected purposes, it is expedient to authorise—

(a) the payment out of money provided by Parliament of any expenses incurred by the Secretary of State in consequence of making provision for payments towards compensating individuals who, on or after 16 September 1974 and before 15 August 1980, were dismissed from employment; and

(b) any payment into the Consolidated Fund.—*[Mr. Tebbit.]*

The House divided: Ayes 345, Noes 239.

Division No. 61] **[10.28 pm**

AYES

Adley, Robert
Aitken, Jonathan
Alexander, Richard
Alison, Rt Hon Michael
Alton, David
Ancram, Michael
Arnold, Tom
Aspinwall, Jack
Atkins, Rt Hon H. *(S'thorne)*
Atkins, Robert *(PrestonN)*
Atkinson, David *(B'm'th,E)*
Baker, Kenneth *(St.M'bone)*
Baker, Nicholas *(N Dorset)*
Beaumont-Dark, Anthony
Beith, A. J.
Bell, Sir Ronald
Bendall, Vivian
Bennett, Sir Frederic *(T'bay)*
Benyon, Thomas *(A'don)*
Benyon, W. *(Buckingham)*
Best, Keith
Bevan, David Gilroy
Biffen, Rt Hon John
Biggs-Davison, Sir John
Blackburn, John
Blaker, Peter
Body, Richard
Bonsor, Sir Nicholas
Boscawen, Hon Robert
Bowden, Andrew
Boyson, Dr Rhodes
Bradley, Tom
Braine, Sir Bernard
Bright, Graham

Brinton, Tim
Brittan, Rt. Hon. Leon
Brooke, Hon Peter
Brotherton, Michael
Brown, Michael *(Brigg&Sc'n)*
Browne, John *(Winchester)*
Bruce-Gardyne, John
Bryan, Sir Paul
Buck, Antony
Budgen, Nick
Bulmer, Esmond
Burden, Sir Frederick
Butcher, John
Butler, Hon Adam
Cadbury, Jocelyn
Carlisle, John *(Luton West)*
Carlisle, Kenneth *(Lincoln)*
Carlisle, Rt Hon M. *(R'c'n)*
Cartwright, John
Chalker, Mrs. Lynda
Channon, Rt. Hon. Paul
Chapman, Sydney
Churchill, W. S.
Clark, Hon A. *(Plym'th, S'n)*
Clark, Sir W. *(Croydon S)*
Clarke, Kenneth *(Rushcliffe)*
Clegg, Sir Walter
Cockeram, Eric
Colvin, Michael
Cope, John
Cormack, Patrick
Corrie, John
Costain, Sir Albert
Cranborne, Viscount
Critchley, Julian
Crouch, David
Dean, Paul *(North Somerset)*
Dickens, Geoffrey
Dorrell, Stephen
Douglas-Hamilton, Lord J.
Dover, Denshore
du Cann, Rt Hon Edward
Dunn, Robert *(Dartford)*
Durant, Tony
Dykes, Hugh
Eden, Rt Hon Sir John
Edwards, Rt Hon N. *(P'broke)*
Eggar, Tim
Elliott, Sir William
Ellis, Tom *(Wrexham)*
Emery, Sir Peter
Eyre, Reginald
Fairbairn, Nicholas
Fairgrieve, Sir Russell
Faith, Mrs Sheila
Farr, John
Fell, Sir Anthony
Fenner, Mrs Peggy
Finsberg, Geoffrey
Fisher, Sir Nigel
Fletcher, A. *(Ed'nb'gh N)*
Fletcher-Cooke, Sir Charles
Fookes, Miss Janet
Forman, Nigel
Fowler, Rt Hon Norman
Fox, Marcus
Fraser, Peter *(South Angus)*
Freud, Clement
Fry, Peter
Gardiner, George *(Reigate)*
Gardner, Edward *(S Fylde)*
Garel-Jones, Tristan
Gilmour, Rt Hon Sir Ian
Ginsburg, David
Glyn, Dr Alan
Goodhart, Sir Philip
Goodhew, Sir Victor
Goodlad, Alastair
Gorst, John
Gow, Ian
Grant, Anthony *(Harrow C)*
Gray, Hamish
Greenway, Harry
Grieve, Percy
Griffiths, E. *(B'y St. Edm'ds)*
Griffiths, Peter *Portsm'th N)*
Grimond, Rt Hon J.
Grist, Ian
Grylls, Michael
Gummer, John Selwyn
Hamilton, Hon A.
Hamilton, Michael *(Salisbury)*
Hampson, Dr Keith
Hannam, John
Haselhurst, Alan
Hastings, Stephen
Havers, Rt Hon Sir Michael
Hawkins, Paul
Hayhoe, Barney
Heath, Rt Hon Edward
Heddle, John
Henderson, Barry
Heseltine, Rt Hon Michael
Hicks, Robert
Higgins, Rt Hon Terence L.
Hogg, Hon Douglas *(Gr'th'm)*
Holland, Philip *(Carlton)*
Hooson, Tom
Horam, John
Hordern, Peter
Howe, Rt Hon Sir Geoffrey
Howell, Rt Hon D. *(G'ldf'd)*
Howell, Ralph *(N Norfolk)*
Howells, Geraint
Hunt, David *(Wirral)*
Hunt, John *(Ravensbourne)*
Irving, Charles *(Cheltenham)*
Jenkin, Rt Hon Patrick
Jessel, Toby
Johnson Smith, Geoffrey
Jopling, Rt Hon Michael
Joseph, Rt Hon Sir Keith
Kaberry, Sir Donald
Kellett-Bowman, Mrs Elaine
Kershaw, Sir Anthony
Kilfedder, James A.
Kimball, Sir Marcus
King, Rt Hon Tom
Kitson, Sir Timothy
Knight, Mrs Jill
Knox, David
Lamont, Norman
Lang, Ian
Langford-Holt, Sir John
Latham, Michael
Lawrence, Ivan
Lawson, Rt Hon Nigel
Lee, John
LeMarchant, Spencer
Lennox-Boyd, Hon Mark
Lester, Jim *(Beeston)*
Lewis, Kenneth *(Rutland)*
Lloyd, Ian *(Havant & W'loo)*
Lloyd, Peter *(Fareham)*
Loveridge, John
Luce, Richard
Lyell, Nicholas
Lyons, Edward *(Bradf'd W)*
Mabon, Rt Hon Dr J. Dickson
McCrindle, Robert
Macfarlane, Neil
MacGregor, John
MacKay, John *(Argyll)*
Maclennan, Robert
Macmillan, Rt Hon M.
McNair-Wilson, M. *(N'bury)*
McNair-Wilson, P. *(New F'st)*
McQuarrie, Albert
Madel, David
Major, John
Marland, Paul
Marlow, Antony
Marshall, Michael *(Arundel)*
Marten, Rt Hon Neil
Mates, Michael
Maude, Rt Hon Sir Angus
Mawby, Ray
Mawhinney, Dr Brian
Maxwell-Hyslop, Robin
Mayhew, Patrick
Mellor, David
Meyer, Sir Anthony
Miller, Hal *(B'grove)*
Mills, Iain *(Meriden)*
Mills, Peter *(West Devon)*
Miscampbell, Norman
Mitchell, David *(Basingstoke)*
Moate, Roger
Monro, Sir Hector
Montgomery, Fergus
Moore, John
Morgan, Geraint
Morris, M. *(N'hampton S)*
Morrison, Hon C. *(Devizes)*
Morrison, Hon P. *(Chester)*
Mudd, David
Murphy, Christopher
Myles, David
Neale, Gerrard
Needham, Richard
Nelson, Anthony
Neubert, Michael
Newton, Tony
Normanton, Tom
Nott, Rt Hon John
Onslow, Cranley
Oppenheim, Rt Hon Mrs S.
Osborn, John
Owen, Rt Hon Dr David
Page, John *(Harrow, West)*
Page, Richard *(SW Herts)*
Parkinson, Rt Hon Cecil
Parris, Matthew
Patten, Christopher *(Bath)*
Patten, John *(Oxford)*
Pattie, Geoffrey
Pawsey, James
Percival, Sir Ian
Pink, R. Bonner
Pitt, William Henry
Pollock, Alexander
Porter, Barry
Prentice, Rt Hon Reg
Price, Sir David *(Eastleigh)*
Proctor, K. Harvey
Pym, Rt Hon Francis
Raison, Timothy
Rathbone, Tim
Rees, Peter *(Dover and Deal)*
Rees-Davies, W. R.
Renton, Tim
Rhodes James, Robert
Rhys Williams, Sir Brandon
Ridley, Hon Nicholas
Ridsdale, Sir Julian
Rifkind, Malcolm
Rippon, Rt Hon Geoffrey
Roberts, M. *(Cardiff NW)*
Roberts, Wyn *(Conway)*
Rodgers, Rt Hon William
Roper, John
Rossi, Hugh
Rost, Peter
Royle, Sir Anthony
Sainsbury, Hon Timothy
St. John-Stevas, Rt Hon N.
Sandelson, Neville
Scott, Nicholas
Shaw, Giles *(Pudsey)*
Shaw, Michael *(Scarborough)*
Shelton, William *(Streatham)*
Shepherd, Colin *(Hereford)*
Shepherd, Richard
Shersby, Michael
Silvester, Fred
Sims, Roger
Skeet, T. H. H.
Smith, Cyril *(Rochdale)*
Smith, Dudley
Speed, Keith
Speller, Tony
Spence, John
Spicer, Jim *(West Dorset)*
Spicer, Michael *(S Worcs)*
Sproat, Iain
Squire, Robin
Stainton, Keith
Stanbrook, Ivor
Stanley, John
Steel, Rt Hon David
Steen, Anthony
Stevens, Martin
Stewart, A. *(E Renfrewshire)*
Stewart, Ian *(Hitchin)*
Stokes, John
Stradling Thomas, J.
Tapsell, Peter
Taylor, Teddy *(S'end E)*
Tebbit, Rt Hon Norman
Temple-Morris, Peter
Thatcher, Rt Hon Mrs M.
Thomas, Mike *(Newcastle E)*
Thomas, Rt Hon Peter
Thompson, Donald
Thorne, Neil *(Ilford South)*
Thornton, Malcolm
Townend, John *(Bridlington)*
Townsend, Cyril D. *(B'heath)*
Trippier, David
Trotter, Neville
van Straubenzee, Sir W.
Vaughan, Dr Gerard
Viggers, Peter
Waddington, David
Wainwright, R. *(Colne V)*
Wakeham, John
Waldegrave, Hon William
Walker, Rt Hon P. *(W'cester)*
Walker, B. *(Perth)*
Walker-Smith, Rt Hon Sir D.
Wall, Sir Patrick
Waller, Gary
Walters, Dennis
Ward, John
Warren, Kenneth
Watson, John
Wells, Bowen
Wells, John *(Maidstone)*
Wheeler, John
Whitelaw, Rt Hon William
Whitney, Raymond
Wickenden, Keith
Wiggin, Jerry
Wilkinson, John
Williams, D. *(Montgomery)*
Williams, Rt Hon Mrs *(Crosby)*
Winterton, Nicholas
Wolfson, Mark
Wrigglesworth, Ian
Young, Sir George *(Acton)*
Younger, Rt Hon George

Tellers for the Ayes:
Mr. Anthony Berry and
Mr. Carol Mather.

NOES

Abse, Leo
Adams, Allen
Allaun, Frank
Anderson, Donald
Archer, Rt Hon Peter
Ashley, Rt Hon Jack
Ashton, Joe
Atkinson, N. *(H'gey,)*
Bagier, Gordon A. T.
Barnett, Guy *(Greenwich)*
Barnett, Rt Hon Joel *(H'wd)*
Benn, Rt Hon Tony
Bennett, Andrew *(St'kp't N)*
Bidwell, Sydney
Booth, Rt Hon Albert
Boothroyd, Miss Betty
Bottomley, Rt Hon A. *(M'b'ro)*
Bray, Dr Jeremy
Brown, Hugh D. *(Provan)*
Brown, R. C. *(N'castle W)*
Brown, Ron *(E'burgh, Leith)*
Buchan, Norman
Callaghan, Rt Hon J.
Callaghan, Jim *(Midd't'n & P)*
Campbell, Ian
Campbell-Savours, Dale
Canavan, Dennis
Cant, R. B.
Carmichael, Neil
Carter-Jones, Lewis
Clark, Dr David *(S Shields)*
Cocks, Rt Hon M. *(B'stol S)*
Cohen, Stanley
Coleman, Donald
Concannon, Rt Hon J. D.
Cook, Robin F.
Cowans, Harry
Cox, T. *(W'dsw'th, Toot'g)*
Craigen, J. M. *(G'gow, M'hill)*
Crowther, Stan
Cryer, Bob
Cunliffe, Lawrence
Cunningham, Dr J. *(W'h'n)*
Dalyell, Tam
Davidson, Arthur
Davies, Rt Hon Denzil *(L'lli)*
Davies, Ifor *(Gower)*
Davis, Clinton *(Hackney C)*
Davis, Terry *(B'ham, Stechf'd)*
Deakins, Eric
Dean, Joseph *(Leeds West)*
Dewar, Donald
Dixon, Donald
Dobson, Frank
Dormand, Jack
Douglas, Dick
Dubs, Alfred
Duffy, A. E. P.
Dunnett, Jack
Dunwoody, Hon Mrs G.
Eadie, Alex
Eastham, Ken
Edwards, R. *(W'hampt'n S E)*
Ellis, R. *(NE D'bysh're)*
English, Michael
Ennals, Rt Hon David
Evans, Ioan *(Aberdare)*
Evans, John *(Newton)*
Ewing, Harry
Faulds, Andrew
Field, Frank
Fitch, Alan
Fitt, Gerard
Flannery, Martin
Fletcher, L. R. *(Ilkeston)*
Fletcher, Ted *(Darlington)*
Foot, Rt Hon Michael
Ford, Ben
Forrester, John
Foster, Derek
Foulkes, George
Fraser, J. *(Lamb'th, N'w'd)*
Freeson, Rt Hon Reginald
Garrett, John *(Norwich S)*
Garrett, W. E. *(Wallsend)*
George, Bruce
Gilbert, Rt Hon Dr John
Golding, John
Graham, Ted
Grant, George *(Morpeth)*
Grant, John *(Islington C)*
Hamilton, James *(Bothwell)*
Hamilton, W. W. *(C'tral Fife)*
Hardy, Peter
Harrison, Rt Hon Walter
Hart, Rt Hon Dame Judith
Hattersley, Rt Hon Roy
Haynes, Frank
Healey, Rt Hon Denis
Heffer, Eric S.
Hogg, N. *(E Dunb't'nshire)*
Holland, S. *(L'b'th, Vauxh'll)*
Home Robertson, John
Homewood, William
Hooley, Frank
Howell, Rt Hon D.
Hoyle, Douglas
Huckfield, Les
Hughes, Mark *(Durham)*
Hughes, Robert *(Aberdeen N)*
Hughes, Roy *(Newport)*
Janner, Hon Greville
Jay, Rt Hon Douglas
John, Brynmor
Johnson, James *(Hull West)*
Johnson, Walter *(Derby S)*
Jones, Rt Hon Alec *(Rh'dda)*
Jones, Barry *(East Flint)*
Jones, Dan *(Burnley)*
Kaufman, Rt Hon Gerald
Kerr, Russell
Kilroy-Silk, Robert
Kinnock, Neil
Lambie, David
Lamborn, Harry
Lamond, James
Leadbitter, Ted
Leighton, Ronald
Lestor, Miss Joan
Lewis, Arthur *(N'ham NW)*
Lewis, Ron *(Carlisle)*
Litherland, Robert
Lofthouse, Geoffrey
Lyon, Alexander *(York)*
McCartney, Hugh
McDonald, Dr Oonagh
McGuire, Michael *(Ince)*
McKay, Allen *(Penistone)*
McKelvey, William
MacKenzie, Rt Hon Gregor
McMahon, Andrew
McNally, Thomas
McNamara, Kevin
McTaggart, Robert
McWilliam, John
Marks, Kenneth
Marshall, D *(G'gow S'ton)*
Marshall, Dr Edmund *(Goole)*
Marshall, Jim *(Leicester S)*
Martin, M *(G'gow S'burn)*
Maxton, John
Maynard, Miss Joan
Meacher, Michael
Mellish, Rt Hon Robert
Mikardo, Ian
Millan, Rt Hon Bruce
Miller, Dr M. S. *(E Kilbride)*
Mitchell, R. C. *(Soton Itchen)*
Morris, Rt Hon A. *(W'shawe)*
Morris, Rt Hon C. *(O'shaw)*
Morris, Rt Hon J. *(Aberavon)*
Moyle, Rt Hon Roland
Mulley, Rt Hon Frederick
Newens, Stanley
Oakes, Rt Hon Gordon
Ogden, Eric
O'Neill, Martin
Orme, Rt Hon Stanley
Palmer, Arthur
Park, George
Parker, John
Parry, Robert
Pavitt, Laurie
Pendry, Tom
Powell, Raymond *(Ogmore)*
Prescott, John
Price, C. *(Lewisham W)*
Race, Reg
Radice, Giles
Rees, Rt Hon M *(Leeds S)*
Richardson, Jo
Roberts, Albert *(Normanton)*
Roberts, Allan *(Bootle)*
Roberts, Ernest *(Hackney N)*
Roberts, Gwilym *(Cannock)*
Robertson, George
Robinson, G. *(Coventry NW)*
Rooker, J. W.
Ross, Ernest *(Dundee West)*
Rowlands, Ted
Ryman, John
Sever, John
Sheerman, Barry
Sheldon, Rt Hon R.
Shore, Rt Hon Peter
Short, Mrs Renée
Silkin, Rt Hon J. *(Deptford)*
Silkin, Rt Hon S. C. *(Dulwich)*
Silverman, Julius
Skinner, Dennis
Snape, Peter
Soley, Clive
Spearing, Nigel
Spriggs, Leslie
Stallard, A. W.
Stoddart, David
Stott, Roger
Strang, Gavin
Straw, Jack
Summerskill, Hon Dr Shirley
Taylor, Mrs Ann *(Bolton W)*
Thomas, Dafydd *(Merioneth)*
Thomas, Dr R. *(Carmarthen)*
Thorne, Stan *(Preston South)*
Tilley, John
Tinn, James
Torney, Tom
Urwin, Rt Hon Tom
Varley, Rt Hon Eric G.
Wainwright, E. *(Dearne V)*
Walker, Rt Hon H. *(D'caster)*
Watkins, David
Weetch, Ken
Welsh, Michael
White, Frank R.
White, J. *(G'gow Pollok)*
Whitehead, Phillip
Whitlock, William
Wigley, Dafydd
Willey, Rt Hon Frederick
Williams, Rt Hon A. *(S'sea W)*
Wilson, Gordon *(Dundee E)*
Wilson, Rt Hon Sir H. *(H'ton)*
Wilson, William *(C'try SE)*
Winnick, David
Woodall, Alec
Woolmer, Kenneth
Wright, Sheila
Young, David *(Bolton E)*

Tellers for the Noes:
Mr. Austin Mitchell and
Mr. George Morton.

Question accordingly agreed to.

STATUTORY INSTRUMENTS, &c.

Motion made, and Question put forthwith, pursuant to Standing Order No. 73A(5) (Standing Committees on Statutory Instruments, &c.)

Civil Aviation

That the draft Aviation Security Fund Regulations, which were laid before this House on 18th January be approved.—*[Mr. Biffen.]*

Question agreed to.

[Continued in column 833]

VO

CONFIDENTIAL

(2)

Prime Minister

MLS 8/2

AO

Caxton House Tothill Street London SW1H 9NA F

Telephone Direct Line 01-213 6400 GTN 213

Switchboard 01-213 3000

Rt Hon Patrick Jenkin MP
Secretary of State
Department of Industry
Ashdown House
123 Victoria Street
LONDON SW1

8 February 1982

D. Patrick.

EMPLOYMENT BILL: THE CLOSED SHOP

Thank you for your letter of 25 January about the closed shop provisions of the Employment Bill and their possible implications for small firms.

As you point out, I have made a number of changes in the Bill as published on 27 January to provide safeguards against the abuse of the closed shop provisions by employees who might be attracted by the enhanced rates of compensation. However I do not think I could go further without undermining the protection the Bill gives to the non-unionist. We must not lose sight of the fact that employers can always refuse to dismiss non-unionists and that if they feel compelled to do so by threats of industrial action they can always "join" the union concerned in any subsequent unfair dismissal proceedings, thus ensuring that the union has to pay its fair share of the compensation. If there is no pressure on the employer, then he should not dismiss the non-unionist in the first place and he has no right to complain if he has to pay compensation to the person he has sacked.

Closed shop agreements are, of course, comparatively rare in small firms and I would not therefore expect many cases of dismissal in this sector. But if we were to exempt them from the relevant provisions of the Bill we would be inviting the trade unions to concentrate their efforts on smaller businesses. I should add that organisations representing smaller businesses (eg the Association of British Chambers of Commerce) have always pressed strongly for legislative action against the closed shop.

It should not be difficult for a small employer to organise a ballot of his employees to determine whether a closed shop should or should not continue. If the closed shop is approved then a dismissal for non-membership would be unfair only in the cases specified in the 1980 Act - ie those employed before the closed shop was introduced and conscientious objectors.

On the particular suggestion you put forward in your letter I must point out that S.6 of the Employment Act which requires tribunals to take into account the size and administrative resources of the employer when deciding whether or not a dismissal is fair, does not apply to dismissals for "inadmissible reasons" including unfair dismissal in a closed shop. I think it is essential that we maintain the principle that unfair dismissals in a closed shop are unjustified whatever the circumstances.

I am sending copies of this letter to the other recipients of yours.

SECRET

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 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 that Mr Tebbit presently proposes vis-à-vis unfair dismissals during industrial

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

SECRET

8 February 1982

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.

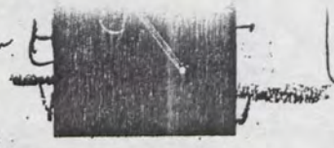
2. Your Secretary of State said that if there was pressure to introduce such provisions, it might be desirable to yield to it, and that he certainly would not immediately oppose it.

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 [Treasury; MPO; Lord President's Office and Sir Robert Armstrong].

SECRET



SECRET

2.12

PRIME MINISTER

LAYING OFF WITHOUT PAY

In my minute of 2 December I reported that instructions had been given for the preparation of draft Bills to permit the laying off without pay of employees who were without work because of the industrial action of others. I said that knowledge of the Bills would be tightly restricted.

Draft Bills have been drawn up by Parliamentary Counsel in consultation with officials in the Department of Employment, the legal Departments, and my Department. One Bill covers all employees; the other is confined to the civil and public services. In my view it would be unwise to widen knowledge of the Bills at this stage by sending copies of them to other Departments. Jim Prior agrees. Given priority, it should be possible to consult other Departments, and to prepare final versions, within a week of taking a decision to lay either Bill before Parliament.

The draft Bills include wide powers of lay-off but Jim Prior and I agree that this is inevitable. We also agree that we shall have to do without provision for pension protection in the Bills. My minute of 2 December warned that it would be very difficult to achieve this for the generality of employees; the study by officials has confimed that this is so. (If we wanted to, however, we could amend the relevant civil/public service schemes without a specific provision in either of these Bills.)

In view of the severe damage which would result from a leak, I have instructed that no further work should be done on the drafts until a decision has been taken to introduce legislation.

I am copying this only to the Secretary of State for Employment and Sir Robert Armstrong.

SOAMES

9 February 1981

CONFIDENTIAL

B

cc Mr. Duvid

10 DOWNING STREET

From the Private Secretary

3 February 1982

Thank you for your letter of 22 January about the Industrial Relations Bill.

The Prime Minister accepts Mr. Tebbit's view that the percentage level of support required in a ballot is a difficult matter of judgement. She remains, however, of the view that the test based on 80% of all those affected is the better arrangement without the option of 85% of those voting (she is less confident that an employee subsequently dismissed could challenge the validity of a ballot in which there had been a collusive action between a trade union and a compliant employer.

I have no doubt that your Ministers will face amendments to this clause in both directions when the Bill reaches Committee stage. I would be grateful if your Secretary of State would take into account the view of the Prime Minister (which is shared by the Chancellor in his letter of 25 January) when this point in the passage of the Bill is reached.

I am sending copies of this letter to the Private Secretaries to the other members of E Committee, the Chief Whip and Sir Robert Armstrong.

MCS

John Anderson, Esq.,
Department of Employment.

CONFIDENTIAL

DO

Ind Pol

CF
CO have I see a copy of NT's letter
earlier pps.

Prime Minister

Are there any points here which you wish to insist on? Or are you content to let Norman Tebbit make his own judgements? MCS 25/1

25 January 1982 (1)

MR SCHOLAR

cc Mr Hoskyns

INDUSTRIAL RELATIONS LEGISLATION

1. Mr Tebbit's response on the three points raised by the Prime Minister is a little disappointing.

2. There is nothing more to be said at the moment about whether we wait 1 year or 2 years before requiring the first ballots for existing closed shops. Mr Tebbit will write again. We still think it may be politically advantageous for the new regime to become effective before the next Election.

3. On the percentage level of support required in closed shop ballots, Mr Tebbit concedes the possibility of collusive action between a trade union and a compliant employer. I am less confident that an employee subsequently dismissed could challenge the validity of such a ballot. Presumably the employer could defend a ballot based on those voting, on the grounds that the legislation made specific provision for this criterion. You will see that the Chancellor has supported the view that the test based on 80% of all those affected reflects the democratic principle much better. We still think this is correct. If very few closed shops can muster such support, so be it.

Please Prime this point

4. I think we shall have to accept Mr Tebbit's view that ballot funds should not be made available to employers where trade unions refuse to conduct ballots. It is a pity that more employers have not asked for this. The Construction Plant Hire Association had pointed out that in 1980 they suffered a damaging strike, on the basis of a series of very questionable "show of hands" votes. In 1981, the union refused to conduct a ballot, but tacitly accepted it when management did so. The result was acceptance of the pay offer. This successful experience led them to believe that there was much more scope than was generally recognised for ballots conducted by managements.

AD.

ANDREW DUGUID

CONFIDENTIAL

End Rel AO

H 202

DEPARTMENT OF INDUSTRY
ASHDOWN HOUSE
123 VICTORIA STREET
LONDON SW1E 6RB
TELEPHONE DIRECT LINE 01-212 3301
SWITCHBOARD 01-212 7676

Secretary of State for Industry

(2)

25 January 1982

The Rt Hon Norman Tebbit MP
Secretary of State for Employment
Caxton House
Tothill Street
London SW1

Prime Minister

MLS 26/1

Dear Norman,

LEGISLATION ON INDUSTRIAL RELATIONS MATTERS

Thank you for sending me a copy of your minute to the Prime Minister reporting your conclusions on the outcome of the consultations.

2 I am sure that you are right to go some way towards meeting the concern of the CBI and other employers over the prospect of unduly high awards in closed shop dismissal cases, especially for opportunists who have no genuine objections to union membership. However, I wonder whether we should not build in some safeguards for the smaller firm with a limited amount of money and facing a powerful union. Well publicised generous awards which bring a firm close to bankruptcy would be no help to our cause (and we must remember that these same awards would apply also to allegations of dismissal because of membership of a union). This risk is increased if, as you propose, a union should not be liable unless it has put pressure on the employer to dismiss rather than merely consenting to the dismissal.

3 Can we be confident that industrial tribunals will fully take account of the administrative and financial resources of the "guilty" employer? Or should we have some analogue of section 6 of the Employment Act 1980 which requires tribunals to do so?

4 I am sending copies of this letter to the other recipients of yours.

Yours ever

Patrick

CONFIDENTIAL

MCS sen 27/

cc AD

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000 25 January 1982

The Rt Hon Norman Tebbit MP
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
LONDON SW1H 9NA

Dear Norman

INDUSTRIAL RELATIONS LEGISLATION

Thank you for copying to me your minute of 12 January to the Prime Minister. I have also seen her reply and the further correspondence between you and Jim Prior.

I am content with the lines proposed on "joinders" in closed shop cases and on the removal of immunity for disputes over union membership. I am also content with most of the proposed changes to other parts of the proposals described in your minute. But I would like to support the Prime Minister's suggestion that the '85 per cent of those voting' test in closed shop ballots be dropped. Not only does this option risk the fixing of votes, it also seems inconsistent with our emphasis on a full democratic test and the demonstration of overwhelming support as a condition for closed shops.

I am copying this letter to the Prime Minister, members of E Committee, the Chief Whip and Sir Robert Armstrong.

Yours ever

GEOFFREY HOWE

JO

LC AD MCS Sec 254

SECRETARY OF STATE FOR EMPLOYMENT

Caxton House Tothill Street London SW1H 9NF

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M Scholar Esq
Private Secretary
10 Downing Street
LONDON SW1

22 January 1982

Dear Michael

INDUSTRIAL RELATIONS LEGISLATION

Thank you for your letter of 15 January conveying the Prime Minister's agreement, subject to the views of colleagues, that my Secretary of State should proceed on the lines he proposed in his minute of 23 December without a further meeting of E.

On the three specific points the Prime Minister raised, Mr Tebbit has asked me to reply as follows

(a) Periodic Review Ballots

Mr Tebbit is giving this matter further thought and will write to the Prime Minister later. As you say, it does not affect the drafting of the Bill.

(b) Ballot Percentage

The percentage level of support in a ballot to be required is a difficult matter of judgement. Clearly a very high level of support should need to be demonstrated. On the other hand it should not be so high as to be unattainable in practice. Mr Tebbit understands the Prime Minister's concern about possible collusive action between a trade union and a compliant employer but it would always be open to an employee subsequently dismissed to challenge the validity of such a ballot. He believes that a required turn-out of 80% of those entitled to vote, particularly in the case of larger closed shops, would be unrealistically high and criticised by some employers and that therefore the alternative of 85% is necessary if the provision is to be industrially credible.

(c) Secret Ballots

With the possible single exception of the Construction Plant-hire Association, there has been no demand from industry in the

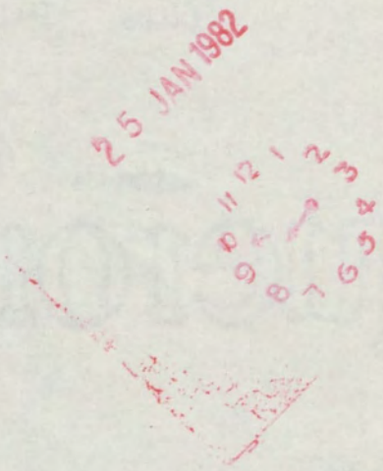
consultations for ballot funds to be made available to employers where they are not taken up by trade unions. Mr Tebbit is not inclined to support this proposal. The purpose of the scheme is to encourage the greater use of secret ballots by unions by removing the strongest argument against them, the expense involved: it is not to provide an additional facility for management. Trade unions would be unlikely ever to make use of these funds if they were being used to finance management ballots.

I am copying this letter to the recipients of your letter.

Yours sincerely

John Anderson

J ANDERSON
Private Secretary


25 JAN 1982

VO

CAD

(2)

Prime Minister

MLS 19/1

Caxton House Tothill Street London SW1H 9NA F
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Switchboard 01-213 3000

Rt Hon Jim Prior MP
Secretary of State
Northern Ireland Office
Government Offices
Great George Street
LONDON SW1P 3AJ

19 January 1982

Dear Jim,

INDUSTRIAL RELATIONS LEGISLATION

Thank you for your letter of 15 January about my proposals for further industrial relations legislation. I am glad that you agree with what I propose on 'joinder', 'contributory fault' in closed shop cases, as also the interval between periodic reviews and the date for the introduction of the periodic review requirements. I note too that while remaining sceptical on the general issue of making trade unions liable for damages which we agreed at E, you concur broadly with the modifications on vicarious liability I have proposed.

As regards your concern that the present proposals for the required percentage levels of support for existing closed shops may be pitched too high, I think it is important to remember that the EEF whose views on this matter you suggest we should particularly bear in mind start from the viewpoint of generally opposing further action on the closed shop now, and a general distaste for the idea of periodic reviews as such. As I said in my minute to the Prime Minister the general reaction of employers to my proposals has been favourable and very few opposed them. It is surely essential that for the continuation of a closed shop a very high level of support should have to be demonstrated. The addition of 85% of those actually voting as an alternative to 80% of those entitled to vote (which is the present requirement for new closed shops) is an important relaxation. My mind however is not closed on this matter. I believe that the present proposals (80 or 85% as the case may be)

are the right ones to start with in the Bill. I shall however listen carefully to what is said and may modify the requirements in Committee if this appears desirable.

Turning to the proposal to remove immunity from industrial action which interferes with the performance of commercial contracts on the grounds of union membership or non-membership, I would not wish to deny the risks which are inevitably involved. However I do not think that we should now set aside the strong views expressed by employers in the course of the consultations - the CBI confirmed their views on this matter to me when I saw them recently - nor the strong arguments in logic for this course. However if I were to delay the implementation of this provision I would not expect to have to introduce it at the first troublesome case to arise in the docks or elsewhere. I would make it absolutely clear that the purpose of the provision was not to seek to eliminate what are deep-seated practices of refusing to work alongside non-union labour, but rather to ensure that the provisions regarding union labour only requirements imposed by employers in contracts should not be rendered ineffective. However on this matter too my mind is still open. While I do not see that we now have any viable alternative to including the provision in the Bill, I would propose to consider further during its progress through Parliament whether there is a case for deferring its implementation.

I am sending copies of this to the Prime Minister and members of E Committee, the Chief Whip and Sir Robert Armstrong.

Prime Minister (2)

→ cc A.D.

NORTHERN IRELAND OFFICE
GREAT GEORGE STREET,
LONDON SW1P 3AJ

By the time this arrived I had already recorded your broad concurrence, subject to the views of colleagues, with Norman Tebbit's proposals; in particular,

SECRETARY OF STATE
FOR
NORTHERN IRELAND

Rt Hon Norman Tebbit MP
Secretary of State for Employment
Caxton House
Tothill Street
LONDON SW1

15 January 1982

Note I have conveyed this to D/Emp. MLS 18/1

Yes, on X, that you do not think a further E discussion necessary.

Content to leave Norman Tebbit to make the running? MLS 15/1

Dear Norman

LEGISLATION ON INDUSTRIAL RELATIONS MATTERS TPM

I have seen a copy of your minute of 12 January to the Prime Minister in which you report on the modifications you propose, in the light of consultations, to the further legislation on industrial relations.

I very much agree with your views on the issue of "joinder" and the concept of "contributory fault" in closed shop cases. I also agree with your suggested modifications in the levels of compensation payable in such cases. On periodic review ballots, I am sure it is right to recognise the employers' views on the interval between reviews and on the date for the introduction of the periodic review requirement. I am, however, less happy about the percentage level of support required in a ballot since I fear that 80 per cent (or 85 per cent as the case may be) is pitching it too high. I note that the CBI was "silent on the issue", but I think we should bear in mind particularly EEF thinking on this issue, since of all the employers' bodies their larger member-companies would probably be more affected than most by this proposal. Before your consultations began, the EEF were only in favour of action on the closed shop at a later date, and I do feel therefore that we need to be a little more clear on their position subsequently.

I am concerned that you intend to go ahead with your proposal to remove immunity from industrial action which interferes with the performance of a commercial contract on grounds of union membership or non-membership. We must, of course, bear in mind the wish of the majority of employers' organisations for this proposal to be enacted and the logic of their case. I note that you are considering delaying the commencement order for this particular provision, but I fear that that would be regarded as a very obvious ruse, and one which could put us in a far more embarrassing position as soon as the first case of trouble in the docks occurred. We cannot avoid the grave risk inherent in what you propose and I would therefore welcome an opportunity for further collective discussion on the issues at stake.

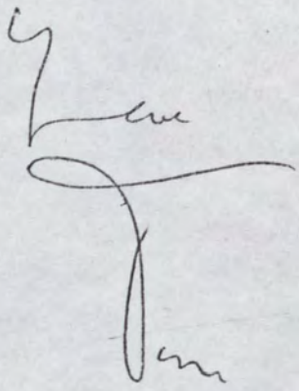
X

/...

On union immunities the modifications which you suggest to the proposals on "vicarious liability" illustrate the deep waters into which this approach will inevitably drag us. I remain sceptical of the effectiveness of this approach and am not at all sanguine about the prospects of the courts becoming involved in wrangles over the precise meaning of unions' rule-books. But I accept that your suggested modifications are probably reasonable if this is the course on which we are now firmly set.

Finally, I welcome your suggestion that some attempt be made to meet the concern of the CTU at the limits on damages and the possible effect on smaller unions.

I am sending copies of this to the Prime Minister and members of E Committee, the Chief Whip and Sir Robert Armstrong.



BB

CONFIDENTIAL

10 DOWNING STREET

From the Private Secretary

15 January 1982

INDUSTRIAL RELATIONS LEGISLATION

The Prime Minister was grateful for your Secretary of State's minute of 23 January on his consultations and conclusions about the industrial relations legislative proposals announced on 23 November. She is, subject to the views of colleagues, content to proceed broadly along the lines he proposes, without a further meeting of E Committee.

The Prime Minister has, however, asked me to raise the following points with you:

(a) Periodic Review Ballots

The Prime Minister is concerned that, as a result of extending the initial period in which ballots are required for closed shops to be "approved", very few ballots may have taken place before the two years are up. Many companies may be tempted to leave this until the last moment - perhaps even until unfair dismissal cases are actually brought. She wonders whether such delay can be defended, and whether there is not political advantage in establishing the new safeguards more quickly. She understands, however, that this question does not affect the drafting of the Bill.

(b) Ballot Percentage

The Prime Minister would prefer to see the ballot threshold expressed as 80 per cent of all those affected, without the option of 85 per cent of those voting. She suggests that this would make it more difficult for unions and compliant employers to arrange votes where most of those voting can be relied upon to support the closed shop arrangements.

(c) Secret Ballots

The Prime Minister asks whether your Secretary of State has considered the suggestion that where

/Government

Government funds for secret postal ballots conducted by unions are not taken up, the same funds should be available to employers if they wish to arrange for independent ballot.

I am copying this letter to John Halliday (Home Office), Michael Collon (Lord Chancellor's Office), John Kerr (HM Treasury), Imogen Wilde (Department of Education and Science), David Heyhoe (Lord President's Office), Stephen Boys-Smith (Northern Ireland Office), David Omand (Ministry of Defence), Kate Timms (MAFF), David Edmonds (Department of the Environment), Muir Russell (Scottish Office), John Craig (Welsh Office), Michael Arthur (Lord Privy Seal's Office), Jonathan Spencer (Department of Industry), John Rhodes (Department of Trade), Anthony Mayer (Department of Transport), David Clark (DHSS), Terry Mathews (Chief Secretary's Office), Jim Buckley (Chancellor of the Duchy of Lancaster's Office), Julian West (Department of Energy), Keith Long (Paymaster General's Office), Jim Nursaw (Law Officers' Department), Christine Duncan (Lord Advocate's Department), Murdo Maclean (Chief Whip's Office), Gerry Spence (CPRS) and to David Wright (Cabinet Office).

M. C. SCHOLAR

J.B. Shaw, Esq.,
Department of Employment.

Prime Minister

John Hoskyns agrees with these comments. Another E meeting seems unnecessary. Do you agree? (Subject to the views of colleagues) Should I take up Andrew Duguid's points in a private secretary letter? Yes MCS 14/1

13 January 1982 (1)

MR SCHOLAR cc Mr Hoskyns

INDUSTRIAL RELATIONS LEGISLATION

1. Norman Tebbit has now circulated his final proposals in the light of the most recent consultation exercise. He obviously hopes to clear outstanding issues by correspondence, rather than a full-blown discussion at E - at which there must be some risk of an attempt to unpick some of the main proposals that were settled in November.

attached

2. So far, I have only been able to talk in general terms with John Hoskyns - who is out this afternoon - but I think he would agree that a further E discussion ought not to be necessary. There are, however, a few points in Mr Tebbit's proposals to which we would like to draw the Prime Minister's attention:

overtaken MCS

(a) Changes in compensation arrangements. There have been quite widespread expressions of concern by employer organisations about both the proposed level of compensation in unfair dismissal cases and the issue of contributory fault. We think Mr Tebbit's changes represent a sensible response.

(b) Periodic review ballots. We have been told privately that, despite some attempted backsliding by CBI officials, the CBI Council was absolutely firm about the importance of revalidation of closed shops. Mr Tebbit proposes to go ahead with this, but to allay employer nervousness about it by allowing an initial period of 2 years rather than one before the first ballot needs to be conducted. This requires a difficult political judgment. Given 2 years, most employers will probably wait 2 years before attempting to conduct a review ballot. This means that very few ballots will have been conducted before the next Election. This will look to the Government's supporters as if it is pulling its punches. It will be hard to justify, other than by saying that it meets a general request from employers.

Against this, however, if the first ballots are required within twelve months of Royal Assent, we may find that not many companies will actually have conducted them by then. They may wait until unfair dismissal cases are actually brought, new levels of compensation are paid, and they then feel obliged to conduct the ballot. No doubt the unions would

try to cite a lack of ballots within twelve months as evidence of the "unworkability" of the new legislation. Personally, I think it would be better to require ballots within twelve months. Many companies will sit on the fence until unfair dismissal cases oblige them to get moving. There is strong public support for measures that weaken the closed shop. Public attention on this issue should be politically advantageous.

(c) Ballot threshold. Mr Tebbit proposes that a closed shop should be protected if it is supported either by 80% of those covered or 85% of those voting. We think that as a matter of principle, the percentage should be related to all those affected. That way, apathy is used as a weapon for weakening closed shops. It also makes it more difficult for unions and compliant employers to arrange a vote in circumstances where most of those voting are those who can be relied upon to support the closed shop arrangements.

(d) Removing immunity from industrial action directed at the employment of non-union labour. In November we urged careful consideration about whether this issue should be thrust into the front line when the Act is first tested. In the light of the strong response from employers, we now think that Mr Tebbit is right to include this provision. Without it, there is every risk that union-labour-only practices will continue on the ground. Again, it is an issue that should attract public support. Mr Tebbit might retain some flexibility about the date on which this aspect of the legislation became effective, so as to avoid an early challenge involving the docks.

(e) Vicarious liability. We think it very important that the legislation should specify the conditions under which unions are liable if their own rules are ambiguous. Mr Tebbit now proposes to do this. Where the action only involves shop stewards - and receives no support from any full-time union official - the issue of union liability will not arise. Originally, we hoped to see unions required to repudiate even unofficial action of this kind, as part of a long process by which unions are made more responsible for the actions of their members. But we understand Mr Tebbit is very clear in his own mind that unofficial disputes should not be affected at this stage. His first priority is to establish the principle that unions will be liable wherever official support is forthcoming - unless it is repudiated by higher authority.

(f) Secret ballots. It has been suggested by at least one trade association that Government funds available for secret postal ballots conducted by unions should also be available to employers, for the purposes of arranging for an independent ballot, where unions refuse to carry one out. We think this might advance the cause of ballots a little. There may be a number of cases where a union will tacitly accept the outcome of a ballot - it is hard not to do so - but be unwilling to institute the ballot itself. Mr Tebbit did not take up this point - which is, admittedly, a minority suggestion.

3. If the Prime Minister would like to take up any of these points with Mr Tebbit, we can supply a draft letter.

ANDREW DUGUID

W.A.D.

PRIME MINISTER

LEGISLATION ON INDUSTRIAL RELATIONS MATTERS

1. Consultations on the legislative proposals I announced on 23 November are now complete and drafting of the bill is well advanced. The purpose of this minute is to let you (and colleagues on E Committee) know of the outcome of the consultations, of the conclusions I have reached on the 2 issues I was asked to consider further in the light of those consultations and of some other modifications I intend to make to my original proposals.

2. When my proposals were discussed at E on 10 November I was asked to give further consideration, in the light of consultations, to 2 issues:

(i) whether, in the context of "joinder" in closed shop dismissal cases, the employee should be required to show evidence of union pressure to dismiss;

(ii) whether, in the context of the proposals for dealing with union labour only requirements in contracts, immunity should be removed from industrial action which interferes with the performance of a commercial contract on grounds of union membership or non-membership.

3. On the issue of joinder (i), my proposals have been widely supported and there has been no criticism of the suggestion that the grounds for employee joinder should be pressure on the employer to dismiss. These are the grounds which already apply in relation to joinder by an employer and, for the reasons set out in E(81)112 I do not believe that the alternative of automatic joinder would be workable. I therefore propose that the relevant provision in the bill should be drafted as I proposed in E(81)112.

4. On the issue of immunity for industrial action directed at the employment of non-union labour (ii), I am mindful of the dangers that an early case involving, for example, the docks might pose to the legislation. However, the consultations have shown that the majority of employers (including the CBI) are in favour of including a provision of this kind in the legislation. They take the view that, without it, the other provisions on union labour only requirements might be frustrated. I therefore propose to provide in the bill for a restriction of immunity for industrial action in these circumstances. I am still considering the possibility of delaying the commencement order for this part of the union labour only requirement provisions until there is evidence that it is needed (and to make this intention clear during the passage of the bill) but this will not affect the drafting of the bill.

5. The note attached to this minute explains the other modifications I propose to make in the proposals I announced on 23 November. These concern primarily the new compensation rates for closed shop dismissals (paras 3-9) and the definition of the vicarious liability of trade unions for the unlawful acts of their officials. In neither case am I proposing a substantial change from my original proposals.

6. My intention is to submit the draft bill for consideration by Legislation Committee on 27 January (which means that the bill has to be sent to the printers on 21 January) with a view to introduction as soon as possible thereafter. I therefore seek your agreement to the proposals set out in this minute and to the modifications described in the attached note.

7. I am sending copies of this minute to those who attended the meetings of E on 29 October and 10 November, to the Chief Whip and to Sir Robert Armstrong.

NT

N T

12 January 1982

SP

CLOSED SHOP PROPOSALS

1 Reaction from employers and employers' organisations to our closed shop proposals has generally been favourable and I see no reason to suggest any substantial modification of what was proposed in the consultative document. In particular the need for substantially enhanced compensation for unfair closed shop dismissals remains absolutely clear as does the need to promote periodic review of existing closed shops by secret ballot.

2 Concerns have, however, been expressed by the CBI and other employers over the need to prevent enhanced awards of compensation going to individuals without genuine objections to union membership who may drop out of their union in a closed shop which has not been approved by ballot simply in order to be dismissed and gain compensation. The normal rules of contributory fault applied by tribunals in assessing compensation will of course operate to reduce this risk but in addition I judge it right to adopt some of the modifications to the compensation proposals which the CBI and others have suggested in order to reduce the potential liability on employers.

Compensation where reinstatement is not sought

3 Colleagues will recall that under our proposals compensation in closed shop dismissal cases will vary depending on whether the dismissed employee seeks reinstatement or not. If he does not do so then compensation will comprise the normal basic award dependent on length of service, age etc but subject to a minimum of £2,000, and a compensatory award dependent on the actual loss suffered. The CBI and others have suggested that we retain the maximum on the compensatory award which applies to unfair dismissal cases generally (£7,000 as from 1 February) instead of making this award unlimited as we had proposed, and I think it right to accept this suggestion. The change will in fact affect only the very rare case since the vast majority of compensatory awards made in unfair dismissal cases are well under the maximum.

Compensation where reinstatement is sought

4 If reinstatement is sought but not ordered - normally because the tribunal considers it impracticable - or is ordered but the employer refuses to comply, then under our proposals either a special or an additional award will be payable in addition to the basic and compensatory awards. The consultative document proposed that the special award - where reinstatement is not ordered - should be 2½x annual salary subject to a minimum of £12,000. The additional award - where reinstatement is ordered but not complied with - was proposed as 3x salary subject to a £15,000 minimum. While I see no need to alter the proposed additional award, I am persuaded by the argument of a good many employers that there should be a greater differential between this and the special award. What worries employers is that the latter may be seen as there for the asking whether or not the dismissed employee genuinely wants reinstatement or not. I therefore propose to reduce the level of the special award from 2½ to 2x salary subject to a minimum of £10,000 rather than £12,000, and subject also to a maximum of £20,000.

5 Overall, these changes do not weaken the compensation proposals to any significant extent; for example someone on average male earnings of £7,500 could still expect to receive at least £17,000 in compensation if he sought but failed to obtain an order for reinstatement. However, the changes will, I think, make the sums payable less open-ended and will on the whole be welcomed by our supporters in industry.

Contributory fault in relation to an order for reinstatement

6 Currently tribunals in deciding whether to make a reinstatement order must take account of both the practicability of any such order and of whether the employee contributed to his dismissal in the first place. The consultative paper proposed removing the latter consideration but the CBI and others have pressed strongly that it should remain. Given the strength of employer feeling on the question of the person who contributes

to his dismissal solely in order to gain compensation I judge it right to keep the status quo. This will in practice have only marginal significance as the great majority of refusals by tribunals to order reinstatement are on account of impracticability rather than contribution.

Periodic review ballots

7 The major issues left open for consultation on periodic review concerned the maximum interval at which ballots must be held if a closed shop is to remain "approved" (suggested as 3 or 5 years in the proposals) and the percentage support which will need to be obtained in a ballot if a closed shop is to be approved (suggested as 80% of those covered or 85% of those voting). There is also the question of when these balloting requirements should bite for the first time.

8 On the interval between ballots the bulk of employer opinion is in favour of a five year interval and I therefore propose to embody this period in the Bill. As far as the percentage level of support in a ballot is concerned, most employer opinion has either been silent on the issue (eg the CBI) or in favour of the limits in the consultative paper. I see no reason therefore for modifying our proposal that the level of support needed should be either 80% of those covered by the agreement or 85% of those voting. I think it essential that closed shops should only continue if one of these overwhelming levels of support can be demonstrated. Finally the CBI and others have suggested that the period between the legislation taking effect and the requirement to have held a review ballot becoming operative should be more than one year in order to allow time for ballots to become a regular and acceptable practice. This seems sensible and I therefore propose announcing when the Bill is introduced my intention of introducing the review ballot provisions two years after Royal Assent. However, the Bill will be drafted so as to allow me to bring these provisions into effect at any earlier time should abuses occur during the two year period.

Shipping

9 I have had strong representations from the shipping industry about the special circumstances of the Merchant Navy, which was of course exempted under the closed shop provisions of the Industrial Relations Act, 1971. I am considering whether some special provision for merchant seamen would be justified in the forthcoming Bill.

TRADE UNION IMMUNITIES

10 I intend to make small changes to two aspects of my proposals for restricting trade union immunities. None of the changes, however, affects the basic proposition that the immunities for trade unions should be brought into line with those for individuals - which the majority of employers and employers' organisations support.

Vicarious liability

11 Most of those who have commented on this subject agreed that it was necessary to define as precisely as possible when a trade union was liable for the acts of its officials and they are broadly in favour of the proposals in the consultative document. But, as was only to be expected, few had detailed comments to offer.

12 As a result of further consideration of this issue, including a further examination of union rule books, I have concluded that the approach set out in paragraphs 33 and 34 of the consultative document is on the right lines but that a number of refinements are desirable to make it clearer and to ensure that it operates as intended:

(i) I think it is right that, as set out in paragraph 33 of the consultative document, the starting point should be whether the body or official calling the industrial action has authority to do so under the rules or has had such authority conferred upon it by a body or official

with authority to do so under the rules. But I propose that the test of liability should be not simply whether such a body or official has formally authorised or ratified the action, but whether, if it has not done so, it can be shown to be supporting it in some other way.

(ii) on the proposal in paragraph 34 I believe we should try to deal with the situation where the union rules are not clear about who has authority to call industrial action. However, I have concluded that there would be considerable dangers in holding trade unions automatically liable in such circumstances. I propose instead that where the rules are unclear the union should be held liable if the action has been authorised, ratified or supported by a paid official of the union or a committee of the union to which such an official is responsible and unless it has been repudiated in writing by the national executive. This would mean that, where the rules were ambiguous a trade union would be liable if the unlawful action had been authorised by any official other than a lay official (ie an official such as a shop steward who is employed by an employer and not by the union).

13 My officials are still discussing the details of the drafting of this provision with Counsel but I do not anticipate that there will be any fundamental change to the above proposals.

Limitation on damages

14 I have received representations from the Conservative Trade Unionists that the proposed limits on damages (paragraph 35 of the consultative document) represent too high a proportion of the annual income of many smaller unions with the risk that a single claim might bankrupt them. Since the CTU is one of the few trade union bodies which has commented constructively on my proposals I am anxious if possible to go some way towards meeting them on this point. I, therefore, propose that the proposed limits on damages for unions with fewer than 5,000 members should be reduced from £12,500 to £10,000 and for

unions with between 5,000 and 24,999 members from £62,000 to £50,000. I do not propose any reduction in the proposed limits for unions with over 25,000 members.

11 January 1982

CF
Pl remind me
of this
when the letter comes
forward
Hes 11/1

Ind Pol

MR SCHOLAR

TRADE UNION LEGISLATION

1. Following the latest round of consultation, Norman Tebbit is expected to put his final proposals for legislation to the Prime Minister and E colleagues by correspondence in the next day or two.

2. You will recall that the consultative paper deliberately left open two or three points, as well as inviting more general comment. I have been studying the responses from the more significant bodies - CBI, IoD, EEF, BIM etc. From these and what I gleaned last week from D/Em officials, it may be possible to settle the outstanding issues in correspondence.

3. If possible, I would like to hold up Mr Tebbit's proposals on arrival here for about one working day, so that we can put some comments to the Prime Minister to read with Mr Tebbit's letter.

ANDREW DUGUID

CONFIDENTIAL

Ref A0 6279

PRIME MINISTER

European Court of Human Rights: Compensation for Closed Shop Victims
(C(81)59)

BACKGROUND

Flag A

In his minute of 1 December the Secretary of State for Employment proposed that he should include in his Industrial Relations Bill a provision for compensation for anyone dismissed on closed shop grounds between the coming into force of the Trade Union and Labour Relations Act 1974 and the coming into force of the Employment Act 1980, where the circumstances were the same as those of the three former railmen who won their case earlier this year before the European Court of Human Rights at Strasbourg.

2. In addition to the three former railmen compensation would be available to:

- 6 former employees of Hull City Corporation whose case is before the European Commission of Human Rights;
- 40 other former British Rail employees dismissed under the same closed shop agreement as the 3 former railmen;
- others (possibly as many as 400) dismissed in comparable circumstances in other occupations between 1974 and 1980.

3. The Government is already seeking, through the European Commission of Human Rights, an agreed basis of compensation for the three former railmen and the 6 former Hull Corporation employees. For the rest it is proposed that there should be a statutory compensation scheme based on criteria which now apply in the Employment Act 1980 and using the maximum limits for industrial tribunal awards which were in force at the time of the

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dismissals.

4. The Secretary of State for Employment acknowledged that there was a danger of setting a precedent for compensation in other cases where people might claim to have grievances comparable with those found to constitute a breach of the Convention. He argued however that a distinction could be drawn on the basis that, in these closed shop cases, the grievance arose because of a specific piece of legislation in force for only six years which the Government had repealed before the case came to the Court.

flag B

5. In subsequent minutes (listed in para 2 of C(81)59 and annexed to it) many Ministers have expressed concern about the Secretary of State for Employment's proposals. They have not been satisfied that dangerous precedents will not be created (for example over compensation for airport noise). There has also been anxiety that the compensation proposed under the statutory scheme, which will be less than that awarded to the three former railmen, will provide the basis for new complaints under the European Convention of Human Rights.

6. In his latest paper (C(81)59) the Secretary of State for Employment has sought to deal with these two difficulties. He proposes that the statutory compensation scheme should not be linked to the Court judgement in favour of the three railmen but should be viewed simply as retrospective action to supplement the Employment Act 1980, putting people who suffered in the period 1974-1980 in the same position as if they had the protection of the 1980 Act. Secondly he seeks to avoid complaints under the Convention about the amount of compensation by making it discretionary and creating no new statutory rights.

MAIN ISSUES

7. The main options for consideration are as follows:

a. To compensate only those closed shop victims who have successfully made out a case either to the European Court of Human Rights or the European Commission of Human Rights. (In effect this means the three former railmen and six former Hull Corporation employees, together with any other cases which may be held not to be out of time; we believe that proceedings in Strasbourg are no longer open in such cases, but the Freedom Association thinks otherwise.)

b. To compensate all closed shop victims dismissed in the same circumstances as the three railmen.

c. To draw the line in some intermediate position, eg by providing compensation for closed shop victims dismissed under the same closed shop agreement as the three railmen and six Hull Corporation employees.

8. The main argument in favour of option a is that the Government has demonstrated its concern about the closed shop by the provisions in the Employment Act 1980 and the proposals which will be included in the new Bill. Beyond this, compensation ought to be available only for those who have taken the trouble to fight their case in Strasbourg. There are however, as the Secretary of State for Employment points out, in paragraph 8 of C(81)59, some powerful political arguments in favour of option b. Most Ministers are also likely to share his view that it would be difficult to defend a compromise approach on the lines of option c. The acceptability of option b. will depend on how far the Secretary of State for Employment is able to satisfy his colleagues on the two main points of difficulty - the need to avoid a dangerous precedent, and the need to avoid new actions in

Strasbourg about the inadequacy of the compensation arrangements.

9. The Secretary of State for Employment appears to have conceded that it would be desirable to avoid giving the impression that a judgement in the European Court of Human Rights justifies compensation for all those with similar grievances. Ministers may however question the new basis on which the statutory compensation scheme is to be justified on two grounds:

i. whether it is plausible to pretend that there is no close link with the European Court judgement;

ii. whether the new approach creates an awkward precedent of a different kind by suggesting that, where the Government alters the law, it should provide retrospective compensation for those adversely affected by the earlier legislation.

10. On the difficulty about possible new complaints at Strasbourg over inadequate compensation, it will be necessary to explore carefully whether it will be sufficient to make the payments discretionary. The Attorney General will wish to advise on whether there may be grounds for complaint in Strasbourg about the exercise of the discretion, particularly as the levels of compensation envisaged are less generous than the settlements which will be made with the three railmen and the six Hull Corporation employees.

11. In his minute of 8 December the Chancellor of the Exchequer has raised the question whether it would be better for the Government to provide the compensation for closed shop victims in response to pressure while the Bill is going through Parliament rather than to include such provisions when the Bill is introduced. This might make it easier for the Government to avoid taking responsibility for a new principle of ex gratia compensation. On the other hand the Secretary of State for Employment (para 8 of C(81)59) sees political advantages from including the scheme in the Bill from the outset.

HANDLING

12. When the Secretary of State for Employment has introduced his paper you may wish to invite comments from the Lord Chancellor and the Attorney General on the general legal issues and then from the other Ministers who have contributed to the correspondence: ie the Chancellor of the Exchequer, the Foreign and Commonwealth Secretary and the Secretaries of State for the Environment and for Trade.

CONCLUSIONS

13. You will wish to reach conclusions on the following matters:

i. whether there should be legislation to provide compensation for those categories of closed shop victims defined by the Secretary of State for Employment;

ii. whether the justification for the compensation scheme should be as proposed in paragraphs 4 and 5 of C(81)59;

iii. whether the compensation payments should be discretionary;

iv. whether the details of the scheme should be as set out in the Secretary of State for Employment's minute of 1 December;

v. whether the proposals should be included in the new Industrial Relations Bill when it is introduced, rather than added in response to Parliamentary pressure at a later stage.

RCA

ROBERT ARMSTRONG

9 December 1981

(2)

cc AD

Prime Minister

MLS 8/12

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

PRIME MINISTER

EUROPEAN COURT OF HUMAN RIGHTS : COMPENSATION FOR CLOSED SHOP VICTIMS

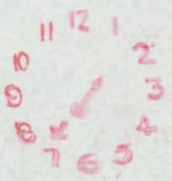
The Secretary of State for Employment sent me a copy of his minute to you of 1 December. I have also seen a copy of the Attorney General's minute of 3 December.

2. I entirely agree with the political arguments which Norman Tebbit advances, but I think that it would be worthwhile to have a short discussion of his proposals in E Committee on 10 December. We need to be clear about possible repercussions, and how costs are to be accommodated; and it might be sensible also to consider whether there would be tactical advantage in our appearing to respond to Parliamentary pressure, rather than ourselves creating a new principle of ex gratia compensation to match judgements of the European Court.

3. I am sending copies of this minute to the other recipients of the Secretary of State's.

(G.H.)

8 December 1981



CONFIDENTIAL

(2)

Prime Minister

P91

MLS 8/12

Prime Minister

EUROPEAN COURT OF HUMAN RIGHTS: COMPENSATION FOR CLOSED SHOP VICTIMS

I have seen a copy of the Secretary of State for Employment's minute of 1 December to you. I have also seen the responses of the Lord Chancellor, Foreign and Commonwealth Secretary, the Secretary of State for Trade and Attorney General. I share the reservations expressed by them about the proposed compensation scheme.

2. As you know the European Court has found in the case of Dudgeon that the law on homosexuality in Northern Ireland is in breach of Article 8 of the European Convention. Although I am proposing to make no offer of compensation to Dudgeon by way of a friendly settlement, the Court has still to rule on that issue. If the Court should find against us and award compensation, then the implications of the Secretary of State for Employment's proposals would be serious. I am not convinced by the distinction drawn between paying compensation to all victims of the closed shop legislation on the one hand, and compensating victims of other legislation judged by the Court to be in breach of the European Convention on the other. I believe that, if Dudgeon does win compensation, the proposals would make it very much more difficult for me to resist demands for compensation from any homosexual in Northern Ireland who claimed to have suffered as a result of the existence of the current law. I do not have to emphasise the political controversy which would erupt over claims for general compensation by homosexuals in Northern Ireland.

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CONFIDENTIAL

3. If there is to be legislation on compensation for those dismissed as a result of the closed shop in GB between 1974 and 1980, it will be necessary to decide how any Northern Ireland cases should be dealt with during the corresponding period during which no compensation has been legally payable in Northern Ireland - this runs from 1976 to date. I am advised that I should not rule out the possibility of a few cases: although the number should be much less than a pro rata figure, we may have a few. To keep Northern Ireland in line if the proposal is implemented the relevant sections of the Bill could be extended to include Northern Ireland, but I think it would be more appropriate for me to introduce separate legislation by Order in Council; or, if the number of cases appears likely to be negligible I could consider the alternative of an extra-statutory scheme. As you are aware I have not yet got legislation providing for compensation for dismissal on closed shop grounds. A draft Order is currently before Parliament which provides, inter alia, for this particular matter on the model of the 1980 Act and while I have deferred progress on it to consider further representations, it may well become law fairly early in the New Year. This would determine the end date for the period for which compensation could be paid.

4. I am copying this minute to those to whom the Secretary of State for Employment's minute was copied.

J P

(Signed on behalf of the Secretary of State in his absence)

8 December 1981

lf

PM/81/62

PRIME MINISTER

European Court of Human Rights:
Compensation for Closed Shop Victims

1. The Secretary of State for Employment sent me a copy of his minute of 1 December to you. I have since seen a copy of the minute of 3 December from the Attorney-General.

2. As you know, this Office deals, in the capacity of agent in the proceedings, with all cases against the UK Government before the Strasbourg Commission and Court. We are therefore very much aware both of the large number of such cases - around 100 pending at present, as Norman Tebbit says in his paragraph 5 - and of the wide range of issues which they cover. We have also become very familiar with the extended interpretation which the Commission and Court give to the term "victim" of a violation of the Convention (for example, in the Northern Ireland case to which Norman Tebbit refers, the applicant had not been prosecuted under the homosexuality laws: he was found by the Court to be a victim because, no doubt like many others, he was affected by the mere existence of those laws).

3. Given this extended interpretation, I think we may create serious difficulties for ourselves in other cases - not only the Northern Ireland case but also cases relating to airport noise, immigration, detention on grounds of mental disorder and corporal punishment in schools - if, in the present case, we depart from the position that our duty to compensate applies only to the limited category of those who /have

have taken proceedings in Strasbourg and have actually been found to be "victims". I of course see the force of the domestic political considerations to which Norman Tebbit refers; but unless there is a really convincing distinction which we can rely on to block off this case from others in future, we must in my view accept that by going beyond that limited category and compensating also people who might have claimed successfully to be victims, we may be creating what could be a very expensive precedent indeed. And I have to say that, like the Attorney-General, I am not satisfied that the distinction suggested here is anywhere near good enough for the purpose. Nor, I fear, do I see any other distinction on which we could safely rely.

4. I also agree with what the Attorney-General says in his paragraph 3 about the need to guard against the risk of further applications to Strasbourg on the basis of any compensation scheme which might be established.

5. I am sending copies of this minute to the recipients of Norman Tebbit's minute.

C

(CARRINGTON)

Foreign and Commonwealth Office

7 December 1981

CONFIDENTIAL

Prime Minister

Please see, too, Lord Carrington's minute, on the same subject, attached.

MLS 7/12

(2)

HOUSE OF LORDS,
SW1A 0PW

PRIME MINISTER

EUROPEAN COURT OF HUMAN RIGHTS -
COMPENSATION FOR CLOSED SHOP VICTIMS

1. I have seen copies of the Secretary of State for Employment's minute to you of 1st December and the Attorney General's minute of 3rd December. I think there are some important points that we should bear in mind when discussing the matter later this week.

2. I have no doubt that the case for compensating the victims of the closed shop legislation is very strong on moral grounds. We should, therefore, be prepared to offer compensation not only to those who brought cases in Strasbourg but also to those who can establish that they were dismissed in comparable circumstances. Like the Attorney General, I do not think that it would be possible to argue convincingly that what we now propose cannot be taken as a precedent for the payment of compensation in future human rights cases. It will certainly be taken as a precedent and this is the price that we must pay for our adherence to the Convention and our acceptance of the right of individual petition. On the other hand, the situations which give rise to cases of this kind suggest that it will only be on rare occasions that substantial compensation would be appropriate. In a majority of instances, applicants will have suffered little or no loss for which they can be compensated.

3. With regard to the closed shop cases, we should be prepared to compensate all those who can establish that they

.../2

HOUSE OF LORDS,
SW1A 0PW

were unfairly dismissed as a result of the legislation which has been held to be in breach of the European Convention. The category of case will have to be carefully defined in the proposed legislation if we are to avoid paying compensation in cases which could have occurred before 1974. Moreover, I do not think that it is necessary for the Government to go out of its way to discover possible instances of unfair dismissal which could qualify for compensation. A public announcement of our intentions and the passage of the necessary legislation will be sufficient. It should, however, be made clear that cases will be carefully scrutinised because it would be wrong to leave the impression that any dismissal which took place where a closed shop was in existence necessarily fell within the terms of the European Court's ruling.

4. I am sending a copy of this minute to those who received the Secretary of State's minute of 1st December.

H. of S. M.

7th December 1981


7 DEC 1981

DEPARTMENT OF TRADE 1 VICTORIA STREET LONDON SW1H 0ET Telephone 01-215 7877

(2)

Prime Minister

MLS 8/12

From the Secretary of State

The Rt Hon Norman Tebbit MP
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
London, SW1

7 December 1981

Dear Norman,

EUROPEAN COURT OF HUMAN RIGHTS: VICTIMS OF THE CLOSED SHOP

Thank you for sending me a copy of your minute to the Prime Minister setting out your proposals for compensating certain people who found themselves dismissed from their employment because of "closed shops" during the period 1974-1980.

I note that you feel it would be possible to argue that your action did not constitute a precedent for proceeding similarly in other cases which are currently before the European Human Rights Commission, but I am afraid that I cannot share your optimism. I am at present considering one case, arising from a claim by a householder for compensation for loss in value of her property caused by aircraft noise. Whether in that case (about which I hope to minute colleagues shortly) we decide to go to the courts, or whether we seek an amicable settlement, I see a considerable prospect of claims from people in similar circumstances who would try to exploit what we did in the particular case as a precedent for treating them similarly. It would certainly not make it any easier for us to resist such claims (which could be considerably more expensive than those you envisage) if they could point to the way in which a "moral obligation" had been recognised in the case of the closed shop victim.

From the Secretary of State

Hence while I have great sympathy with the people who lost their employment in this way, I would welcome an opportunity as you suggest to discuss collectively the implications of your proposals.

I am copying this letter to the same recipients as yours.

Yours

John Biffen

JOHN BIFFEN

VM

2pp's (2)

Prime Minister

MLS 8/12

2 MARSHAM STREET
LONDON SW1P 3EB

My ref:

Your ref:

7 December 1981

Dear Norman

Thank you for copying to me your minute of 1 December to the Prime Minister about the European Court of Human Rights and compensation for closed shop victims.

I'm afraid your proposal could have grave implications for the consequences of a current case that is before the European Commission concerning noise intrusion on a property at Gatwick airport - no doubt the one you allude to. Trade is in the lead here but, if the case goes badly, Transport's interests and the corresponding ones in the Scottish and Welsh Offices could also be seriously affected. My interest, which is less direct, is as custodian of the policy and law on land compensation and allied matters.

The Commission have provisionally found the Government in breach in the Gatwick case. John Biffen is awaiting the Attorney General's advice on the effects that might be set by the precedent of a friendly settlement. To legislate as you propose for the closed shop cases is at first sight likely to hazard greatly the prospects of containing these effects. At its worst the result would be very much more costly than the settlements in your proposal.

I think therefore we must discuss the issue with our colleagues.

I am copying this to the Prime Minister and to copy addressees of your minute.

Yours ever

MICHAEL HESELTINE

The Rt Hon Norman Tebbit Esq MP

CONFIDENTIAL

3 December 1981 (1)

Prime Minister

Content to proceed, as proposed by Mr Tebbit? Or shd we discuss?

MCS 3/12

MR SCHOLAR

COMPENSATION FOR CLOSED SHOP VICTIMS

1. Norman Tebbit proposes that compensation should be extended to those dismissed during the 1974-80 period in similar circumstances to the three railmen who have successfully fought their case at Strasbourg. As he says, there is a moral obligation to compensate these victims, even though there is no legal obligation. There is obviously room for debate about the strength of the moral claim. He does not mention any pledge made by a front-bench spokesman which must be redeemed.

2. The decision rests on political grounds. On the face of it, the political case is a strong one. Paragraph 5 explains that the danger of setting a precedent is limited.

3. But there will be strong criticism. Our generous treatment of this group may be contrasted unfavourably with that of other deserving groups: war veterans; criminal victims; the disabled - especially the difficult borderline cases in each group. Will we be open to the charge that we are less scrupulous where the political dimension is less prominent? Equal justice is Government responsibility, not "compassion" (for Sir K. Popper!)

4. If we are able to defend ourselves, well and good. We suspect that the gesture may backfire. It may be labelled humbug, and generate more grievance elsewhere than a strictly-maintained legal view of our obligations. We can still draw maximum political advantage from the contrast between the unfairness in 1974-80 and the position now.

JOHN HOSKYNS

I think we should consider it on our own.

MT.

CONFIDENTIAL

Prime Minister cc AD (2)

CONFIDENTIAL

MLS 8/12

PRIME MINISTER

THE EUROPEAN COURT OF HUMAN RIGHTS
COMPENSATION FOR CLOSED SHOP VICTIMS

1. I have seen a copy of the Secretary of State for Employment's minute to you of 1 December. This is essentially a question of policy rather than of law but there are two points on which I should comment.

2. First, the danger of setting a precedent for cases on other subjects, which is discussed in paragraph 5, is a very real one. Once we accept that a finding of a violation of the Convention in a particular case carries with it a moral obligation to pay compensation not only in that case but in all comparable cases, it will be difficult indeed to resist demands for the payment out of public funds of what may be quite large sums - and in cases that we may find much less politically attractive than the present case. I have to say that the distinction which is suggested in the second half of paragraph 5 of the Secretary of State's minute is one which I find unconvincing. I find it hard to see why there is a greater moral obligation to pay compensation in respect of a defect in our law which was of short duration and was in fact removed from our statute book even before the Court's judgment than there is in respect of a defect which we deliberately persisted in to the bitter end and removed only under the compulsion of a finding by the European Court.

3. My second comment relates to the procedure for awarding compensation which is described in the last section of the note attached to the Secretary of State's minute. In working out the details of that procedure and in formulating the terms in which it is prescribed, we shall need to be very careful that we do not

/leave

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CONFIDENTIAL

leave any scope for further complaints to the European Commission of Human Rights asserting that what is involved amounts to a violation either of Article 6 of the Convention (the right to a fair adjudication in the determination of one's civil rights) or Article 14 (no discrimination in the enjoyment of one's rights). It is precisely because I agree with the assessment in paragraphs 1 and 3 of the Secretary of State's minute that further complaints to the Commission based upon the original dismissal are no longer possible that I think that the Freedom Association, if they are dissatisfied with the terms offered, may be astute to find grounds such as this for taking their case once more to Strasbourg.

4. I am copying this minute to those to whom the Secretary of State's minute was itself copied.

for Attorney-General

(Draft approved by Attorney-General before his departure.)

3 December, 1981

CONFIDENTIAL


3 DEC 1981

CONFIDENTIAL

PRIME MINISTER

THE EUROPEAN COURT OF HUMAN RIGHTS

COMPENSATION FOR CLOSED SHOP VICTIMS

1. As you know the European Court of Human Rights at Strasbourg have found that the dismissal of 3 Railmen in 1976 without compensation in a closed shop under the last Government's legislation was in breach of the European Convention on Human Rights. The changes in the law made in the Employment Act 1980 (soon to be reinforced by the proposals agreed at E on 10 November) ensure that, were such dismissals do occur now, there would be a legal right to compensation. Under these circumstances, I am satisfied that no further closed shop cases could be successfully brought unless the Court were to rule that the closed shop itself was in breach of the Convention. The Court specifically declined to rule on this general issue in the British Rail case.

2. The urgent question now is that of compensation. There are two aspects to this. The first is the question of compensation for the 3 Railmen and for the 6 former employees of Hull City Corporation who were dismissed in 1977 in comparable circumstances and whose case is before the European Commission of Human Rights. We are now endeavouring, through the Commission, to reach a friendly settlement with the 3 Railmen. This can then set the pattern for a settlement in the Hull City Corporation case.

3. The second and more difficult question is that of other closed shop victims who were dismissed in the same circumstances under the last Government's legislation but who have not taken their case to Strasbourg. To begin with there are some 40 other former British Rail employees who were dismissed under the same closed shop agreement. However, there are also an unknown number

of other people (some estimates have put it as high as 400 but there is no way of knowing precisely how many there are) who were dismissed in comparable circumstances in other occupations between 1974 and the coming into force of the Employment Act in August 1980. There is of course no legal obligation on the Government to compensate any of these other closed shop victims. Such a legal obligation could derive only from proceedings by them in Strasbourg and, while I understand that the Freedom Association believe that such proceedings might still be possible, I am advised that proceedings based on their dismissal are no longer open to them. However, I believe that in the light of the British Rail case and of our consistent opposition to the last Govenment's closed shop legislation there is a moral obligation on us to offer some compensation to these people. Political considerations point to the same conclusion: there is already some pressure for this from our backbenchers and from the Freedom Association and this pressure is likely to grow once a settlement of the 3 Railmen's claim is reached.

4. I have considered whether an offer of compensation could be limited to the other former British Rail employees dismissed under the same closed shop agreement but my conclusion is that we could not justify this. If we were to compensate other former British Rail employees on the grounds that the case brought by the 3 Railmen was a "representative action", we would have to concede that the Hull City Corporation case constituted a similar precedent. There are bound to have been other dismissals in strictly comparable circumstances under closed shop agreements drafted in terms very similar to the British Rail and Hull agreements (modelled on the 1976 Act): it would be difficult to defend a refusal of any compensation in other cases once we had conceded it in these cases. I see no alternative therefore to offering compensation to anyone dismissed in a closed shop

in the same circumstances as the 3 Railmen between 1974 and 1980.

5. I am of course mindful of the danger of setting a precedent for cases on other subjects which have or may in the future come before the Commission and Court at Strasbourg. There are about 100 individual applications against the UK Government currently before the Commission. Some recent adverse judgements of the Court (eg detention on grounds of mental disorder and homosexuality in Northern Ireland) have received considerable publicity and other cases likely to attract publicity (eg corporal punishment in schools, compensation for airport noise and the effect of recent changes in the immigration rules) are in the pipeline and may also go against the Government. Clearly we should take every possible step to ensure that the action I propose in relation to the closed shop cannot be used to justify claims for similar schemes of general compensation in other cases. I believe that a distinction can be drawn between the British Rail and other Human Rights cases on the grounds that this breach of the Convention resulted from a particular piece of legislation, very recent in its enactment and politically controversial in nature which, moreover, was repealed before the case was heard by the Court and well before the judgement was delivered. The breach of the Convention related to a specific six year period in the past and would not have occurred under current legislation. On this basis I believe that we can make it clear that the action we are proposing in this case does not bind us to offer compensation in any other case where people claim that they have grievances which are comparable with those which have been found by the Court to constitute a breach of the Convention.

6. I realise that claims for comparable treatment in other cases may still be made if we proceed as I propose. Nevertheless,

I believe that the difficulty of resisting such claims, if they are made, will be much less than the difficulty we would face if we were to refuse in this case to provide any compensation - on the grounds that we were under no legal obligation - to a group of people whom our supporters and many people in the country will see as highly deserving.

7. The details of the compensation scheme I propose are set out in the attached note. The cost is unlikely to exceed £2m and in practice I would expect it to be a good deal less. I propose to seek legislative cover for the scheme in the forthcoming industrial relations legislation. The necessary provisions should not be complex and need not delay introduction of the Bill. I would, however, like to be able to ensure that Parliamentary Counsel receives instructions on this matter within two weeks and I would therefore be grateful to know by the end of this week if you or colleagues consider that I should not proceed on the lines I propose so that the issue might then be considered by E on 10 December.

8. I am sending copies of this minute and the attached note to the Home Secretary, the Lord Chancellor, the Foreign Secretary, the Chancellor of the Exchequer, the Secretary of State for Northern Ireland, the Secretary of State for the Environment, the Secretary of State for Industry, the Secretary of State for Trade, the Secretary of State for Transport, the Secretary of State for Social Services, the Attorney General and to other members of E Committee.

NT

N T

1 December 1981

COMPENSATION FOR CLOSED SHOP VICTIMS 1974-1980

Eligibility

The European Court, while not pronouncing on the general issue of dismissal for non-membership of a trade union in a closed shop, gave particular weight to the fact that the three railmen were existing employees when the closed shop agreement was introduced and that two of them had conscientious objections to union membership. We clearly need to reflect these concerns in deciding who should benefit from a wider compensation scheme. I therefore propose that compensation should be paid to anyone dismissed for non-membership of a trade union in a closed shop under the 1974 and 1976 legislation providing either that he or she:

(1) was an existing employee when the closed shop agreement came in and did not subsequently join a union in accordance with the agreement; or

(2) had a conscientious objection to union membership (as defined in the 1980 Act).

I appreciate that there may be difficulty in some cases in establishing whether or not there were genuine conscientious objections some years after the event but there are advantages in aligning the criteria with the two major grounds on which dismissal in a closed shop is unfair under the Employment Act. Moreover, it would invite controversy about the implications of the judgement to exclude conscientious objection.

The compensation scheme would exclude (in addition to anyone who could not meet the criteria above):

(1) dismissals during the currency of the 1971 Act (improbable) or before 1971 when there was no statutory protection against unfair dismissal;

(2) the rare cases where closed shop dismissals were found to be unfair (eg on religious grounds) under the 1974 and 1976 Acts since there has already been a remedy; and

(3) any dismissals since the 1980 Act came into force.

Level of compensation

As far as the three ex-British Rail employees are concerned, the compensation we offer will need to reflect various factors, which Industrial Tribunals are not always able to consider, eg the actual extent of subsequent unemployment. However, as far as the compensation scheme is concerned, I think it important to relate the rate of compensation as closely as possible to the structure of Industrial Tribunal awards since these would have provided the domestic remedy had one been available. Thus I propose that compensation should comprise (a) a basic award dependent on length of service and subject to the appropriate tribunal maximum (£2,400 in 1976) and (b) a compensatory award calculated according to the actual loss of earnings, pensions etc suffered in the period since dismissal but similarly subject to the appropriate upper limit on compensatory awards (£5,200 in 1976). Interest would be paid on both sums. Total compensation in individual cases would range from a few hundred pounds for a short service employee who found another equally good or better job immediately after dismissal, to around £10,000 (including interest) for a long-service employee who has been unable to find other work.

These amounts will be substantially lower than the sums of compensation which we are likely to pay to two of the three ex-British Rail employees. The distinction can, however, be defended on the basis that it is only the three former railmen who have to face the costs and stresses of fighting a case lasting several years through the Commission and the Court.

Cost

The total cost of compensation under my proposals depends crucially on the number of cases of closed shop dismissals between 1974 and 1980. It has been suggested in the Press that there were over 400 such cases. However, research recently carried out for my Department suggests that the actual figure is unlikely to exceed 400. Assuming 400 cases and

an average compensation payment of £5,000 (possibly on the high side), the total cost would be around £2 million. To the extent that some of those eligible may in the event not come forward the final cost could be lower.

Procedure

The procedure which I have in mind for dealing with these cases is to invite people who think they may be eligible to apply for compensation by a given date. The cases would then be considered by an assessor with a legal background appointed by me who would advise on the payments to be made in individual cases. The payments themselves would be at my discretion.

While it would be possible to make payments of the order anticipated without specific legislative cover, I am advised that the normal practice is to seek legislative authority. I therefore propose to include the necessary provisions in the forthcoming industrial relations legislation. Some 5 clauses may be required.

Department of Employment
1 December 1981

N T

Mr. Atkins: The Egyptian Government have signified their agreement. We hope that the Israeli Government will follow suit later today.

Mr. Healey: Is the Lord Privy Seal aware that the bewilderment of the House has been increased by the way in which he has dealt with questions over the past half hour? If he cannot say precisely how many troops there will be, what their composition will be, what the command structure will be, or whether the Israeli Government will accept the force on the conditions that he states, why was it necessary for Her Majesty's Government and the other Governments concerned to make a statement, when only six weeks ago they stated that they were in favour of such a force?

Mr. Atkins: Because I believed that it would be courteous to the House to announce the Government's decision. If the right hon. Gentleman and the Opposition would prefer me not to announce to the House what the Government decide, I shall take note of what they say.

4.9 pm

Industrial Relations Legislation

The Secretary of State for Employment (Mr. Norman Tebbit): With permission, Mr. Speaker, I should like to make a statement on the Government's proposals for further industrial relations legislation.

These proposals have been prepared in the light of the extensive consultations on the basis of the Green Paper on "Trade Union Immunities" published in January this year. These consultations have shown that there is a wide measure of agreement on the issues which need to be tackled and widespread support for a further legislative step in this Session of Parliament.

Our proposals are therefore a direct response to those consultations. I have today placed in the Library and in the Vote Office copies of a document explaining the proposals in detail. They cover the closed shop, the definition of a trade dispute and the immunity for trade unions themselves.

In formulating these proposals our aim has been twofold: first, to safeguard the liberty of the individual from the abuse of industrial power; and, secondly, to improve the operation of the labour market by providing a balanced framework of industrial relations law. These aims are fundamental to any civilised and prosperous society. The need for further legislation to help to achieve them is clear, and we believe the time is right.

On the closed shop we propose; first, that the compensation for someone who is unfairly dismissed because he is not a member of a trade union should be increased substantially; secondly, that existing, established closed shops should be subject to a periodic ballot; and, thirdly, that anyone who is unfairly dismissed in a closed shop because of trade union pressure should be able to seek compensation directly from that trade union.

We also propose that the practice of requiring contractors to employ only trade union members as a condition of seeking or obtaining a contract should be made unlawful.

We propose to tighten up the definition of a trade dispute which is now unacceptably wide. Our proposals are designed to ensure that disputes which are predominantly political or personal, and disputes which do not directly involve an employer and his own employees, are excluded from the statutory definition and therefore do not attract immunity.

Finally, we propose that the immunity of trade unions themselves should be brought into line with the immunity for individual trade union officials and their members. We do not believe that it is right or necessary for trade unions to continue to enjoy an immunity which, as the Donovan Commission pointed out, is wider than that of any other organisation or person, even the Crown.

The Government's intention is to bring forward a Bill as soon as possible after the Christmas Recess. In the meantime, the document being published today invites comments on our proposals.

Mr. Eric G. Varley (Chesterfield): May we now take it that the Secretary of State is very keen to make statements to the House and that he will come here tomorrow and make a statement about the unemployment figures? His statement today has been shown to be what it is—an ill-thought-out, tawdry little gimmick to help to influence the electorate at the Crosby by-election.

Is the right hon. Gentleman aware that the legislation that he has foreshadowed today is nothing more than an irresponsible, irrelevant diversion to hide the catastrophic failure of the Government's economic policies? How will it help the hundreds of thousands of firms which have gone into liquidation over the past two-and-a-half years, all of which had excellent industrial relations?

Is the right hon. Gentleman further aware that the proposals in the document to which Parliament will be asked to devote so much time will create not one extra job or solve one industrial dispute? On the contrary, as with the Industrial Relations Act 1971, they are likely to provoke conflict and cause strikes. If the Secretary of State is so concerned about the rights of the individual, will he now restore the protection from unfair dismissal which the Government removed from 1 million workers two years ago?

Does the right hon. Gentleman realise that if we are to overcome the serious economic problems that face our nation, the Governent must work in co-operation with the trade unions and will have to do so before this Parliament is over? We shall fight the proposals that the right hon. Gentleman has announced. They are a recipe for conflict and are just a kick in the teeth for trade unions.

Mr. Tebbit: It is regrettable that the right hon. Gentleman has not dealt with a single aspect of the statement that I made. If there were a precedent for Secretaries of State to come to the House to make statements on unemployment, I would not be too fussed about coming to the Chamber tomorrow to make a statement. The right hon. Gentleman spoke about those who lost their jobs, but it is only fair to give the right hon. Gentleman an opportunity some time to say whether he has a scrap of concern for those who have lost their jobs as a direct result of the closed shop——

Mr. Bob Cryer (Keighley): The right hon. Gentleman should get on his bike.

Mr. Tebbit: —let alone those whose jobs have been lost as a result of the inefficiencies in British industry that have been fostered by restrictive practices, buttressed by trade union immunities.

Mr. Raymond Whitney (Wycombe): May I congratulate my right hon. Friend on the proposals, which

Mr. Atkins: Yes, Sir. The treaty requires Israel to withdraw from Sinai, and the Israeli Government have agreed to do so. United Nations resolution 242 requires a country to withdraw from territory that it has taken by war, and naturally we shall pursue the resolution.

Mr. Peter Temple-Morris (Leominster): I welcome my right hon. Friend's statement, but does he agree that it is vital to make it clear to Israel that she has to worry not only about the United States in resolving her Middle Eastern problems? Therefore, does not a wider, more effective and active European involvement in the overall situation mean that the Americans may take more notice?

Mr. Atkins: There is no doubt that the countries of the Middle East have to take account of everybody else in the Middle East, and that is what the Venice declaration, which we and our partners made in June 1980, recognises. As I said, it places emphasis on guarantees for the security of the State of Israel, justice for the Palestinian people and the rights of everyone in the area. I am sure that the Israeli Government will come to recognise that. Indeed, I believe that they do now.

Mr. James Callaghan (Cardiff, South-East): Where two former enemies are gradually gaining confidence in each other, is it not commonsense that those nations that are ready to do so should, for a limited period, supply a number of troops, under well-defined conditions, to ensure that the confidence is maintained when one side retires from territory that is in conflict? Is it not necessary also to set a limit on the time that we shall stay there, so that confidence may be seen to grow and so that the exercise does not drift away, as others have done, in mutual recriminations about the precise role? I totally support the move being made and hope that the right hon. Gentleman's sub-clauses will not mean that either Egypt or Israel will veto the proposal, but may I strongly urge him to set a time limit?

Mr. Atkins: I am grateful to the right hon. Gentleman for his support for what the Government are doing. I note his second point. At the moment we have not set a time limit on our contribution. It is difficult to set a specific time limit in weeks, months or whatever phrase would be appropriate in the circumstances.

Sir John Biggs-Davison (Epping Forest): Is the cost to be borne on the public funds of this country?

Mr. Atkins: My understanding is that the normal cost of maintaining the soldiers, which would fall on this country in any case, will be borne by us, but that under the terms of the treaty the extra costs will be borne by the three countries that requested the assistance.

Mr. George Foulkes (South Ayrshire): Since a properly constituted United Nations force finds such a task difficult, can the right hon. Gentleman tell us what the status of our troops will be and to whom they will be directly responsible?

Mr. Atkins: The hon. Gentleman will note that in my statement I spoke about the practical and legal arrangements. They are not yet finalised, and our agreement cannot be confirmed until they are. However, we understand that the arrangements for United Nations peacekeeping forces, which are well understood and of long standing, will apply.

Mr. Tony Marlow (Northampton, North): Am I right in believing my right hon. Friend to say that the provisions for Sinai would apply also to any other part of Arab land vacated by the Israelis, and could that in particular be the West Bank if that became a Palestinian State? As the Israelis purport to remain there only for security reasons, is that not reassuring to them and can they not now get on immediately with negotiating the setting up of a Palestinian State?

Mr. Atkins: I am sure that the Government of Israel will hear what my hon. Friend says. What I said in my statement was:

> "We are ready to participate also in such arrangements in the other territories currently occupied in the context of Israeli withdrawal."

At the moment we do not have that context.

Several Hon. Members *rose*——

Mr. Speaker: Order. One hon. Member on the Opposition and two hon. Members on the Government Benches have been rising all the time, so I shall call them, if they please.

Mr. Ernie Ross (Dundee, West): Does the Minister accept that the more likely response of the Israeli Government is in line with what my hon. and learned Friend the Member for Leicester, West (Mr. Janner) said, and is that not preferable, if Britain is to have an independent role, as the Arab world would find it difficult to distinguish our participation in such a peacekeeping force from independence from the Camp David accord?

Mr. Atkins: Yes, Sir. That is why I made a detailed statement to the House, which is being communicated to the Governments of the United States, Egypt and Israel and distributed to the other Governments in the area. I hope that when they read it they will understand precisely what our position is.

Mr. Keith Stainton (Sudbury and Woodbridge): Will my right hon. Friend accept that one point that I find obscure, which is not a matter of detail, is the command structure? With the heavy involvement of the Americans, who are seeking participation of other nations and may well seek to shift the command accordingly, could there not be grave consequences for Europe? What will happen if the balloon goes up?

Mr. Atkins: The force will be commanded by a military officer appointed by the United States, but it will also be responsible to the Director-General, who is part of the treaty. We believe that there may need to be a group to exercise political control drawn from the participating countries. With regard to my hon. Friend's question about what happens if the balloon goes up, as I said before, that is something that is understood and exercised in the case of United Nations peacekeeping forces. This is not a United Nations peacekeeping force, because the Security Council would not agree to it. However, I believe and hope that it will be run on exactly the same lines.

Mr. Teddy Taylor (Southend, East): Is it right that we do not yet know the attitudes of the Israeli and Egyptian Governments to the complex form of wording? Why was an attempt not made to agree a form of words, in view of the danger of putting at risk the Camp David agreement, which, despite all the other grand plans, is the one that has actually achieved something in the Middle East?

M/S Mr Pattison

P. Bunyan

INSTITUTE OF DIRECTORS

Very good statement. With keeping for use as general answer to critics of new Proposals.

23 NOVEMBER 1981

DW.

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London
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01-839 1233

PRESS INFORMATION

TEBBIT PROPOSALS GOOD FOR BUSINESS AND FOR UNIONS SAY DIRECTORS

The package of measures for legislative reform of industrial relations announced by Employment Secretary Norman Tebbit today received an enthusiastic welcome from the Institute of Directors, which has played the leading role in campaigning for effective measures to redress the balance of power between unions and employers.

"Mr Tebbit's proposals are aimed at those areas of trade union activity which are in most urgent need of reform", said IOD Director General Walter Goldsmith. "They begin to bring unions within the framework of law that applies to the rest of society, invite them to undertake a long-overdue reform of their internal democracy and, above all, put some onus on trade union leaders to act responsibly in the interests of all their members".

"Our discussions with many other business bodies have reinforced the overwhelming desire of our members to equalise the balance of power in industrial relations. By starting to make unions legally accountable for the actions of their officials and members and by tightening up the law on the closed shop, irresponsible activity will be curbed and improvements in productivity made possible.

"Far from attacking trade unions, these plans give them an incentive to become more effective, and invite union leaders to join the rest of the community in working together for more competitive industry and commerce - the only way to make lasting reductions in unemployment. The unions still enjoy unique legal privileges, and it is now incumbent on the TUC to institute major internal reforms to ensure that those privileges are used in a responsible and democratic way.

"Mr Tebbit's proposals in no way undermine the basic rights of trade unionists - to organise, to assemble, to bargain, to picket or to strike. Nor do they 'plunder' union funds, as Len Murray has claimed. What they do is make the trade unions financially accountable if they break the law. And let us not forget that the law allows them considerably more scope than it allows anyone else in society".

For further information please contact:

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SW

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Mike Pattison Esq
Private Secretary
10 Downing Street
LONDON SW1

23 November 1981

Dear Mike

As promised in my earlier letter of today's date, I am enclosing guidance notes for Ministers on the proposals for industrial relations legislation my Secretary of State will be announcing in the House this afternoon.

I am copying this letter and its attachment as before.

Yours

Marie Fahey

MISS M C FAHEY
Private Secretary

PROPOSALS FOR INDUSTRIAL RELATIONS LEGISLATION

Notes for Ministers

1 In introducing this further legislation the Government has two main purposes

- to provide further safeguards for the liberty of the individual against the abuse of industrial powers;

- to improve the operation of the labour market by providing a balanced framework of industrial relations law.

2 The Employment Act made some important changes, particularly as regards secondary picketing and secondary action. The time is now right for a further measure. This was confirmed by the responses of over 300 organisations to the Green Paper on Trade Union Immunities which showed overwhelming support for a further legislative step this Parliament.

3 These proposals will contribute to the Government's policies as a whole, because

- we must improve the performance and competitiveness of industry;

- there is no doubt that poor industrial relations for the last 20 years have contributed to our economic decline and to high unemployment. Improving industrial relations is an essential element in our economic recovery.

4 The proposed changes in the law will improve industrial relations because

- in recent years the law has tipped the balance of bargaining power too far towards the trade unions at the expense of the individual and of employers.

- the result has been the abuse of industrial power in the closed shop and on the picket line, damaging and disruptive industrial action against those not involved in the dispute.

- all of this has soured the climate of industrial relations.

The Proposals
Closed Shop

5 Closed shop agreements unacceptably restrict the freedom of individuals. Since the loss of employees union membership directly forces closed shop employers to dismiss loyal workers it enables militant unions to discipline workers who refuse to strike, who defy blacking orders and other instructions to damage their employer or other firms. It acts as a barrier to improved efficiency and competitiveness. It is not practicable in today's circumstances to outlaw the closed shop but the need for further legislation has been strengthened in recent months by the actions of Sandwell and Walsall Councils who have dismissed non-union employees regardless of their rights and of the wishes of their workforce.

6 The Government, therefore, propose:

- substantially higher compensation for closed shop dismissals and a right to seek compensation from the trade union;

- periodic reviews (ballots) for all existing closed shops;

Union Labour Only Requirements

7 The practice of requiring contractors to use only union labour has increased in recent years, not least among local authorities.

8 Such practices are a means of forcing into unions employees who have no interest in being union members. A small non union firm may have no choice but to submit to union labour only requirements in order to avoid being put out of business.

9 The Government, therefore propose:

- to make union labour only clauses in contracts void

- to outlaw discrimination against non union firms in inviting tenders for, offering or awarding contracts.

Trade Dispute

10 The statutory definition of a trade dispute (on which immunity depends) has been shown to allow unacceptably wide scope for industrial action, including that for political ends and that arising from disputes or other matters abroad.

11 The Government, therefore propose:

- to amend the definition so as to exclude disputes which are predominantly political and disputes which do not directly involve an employer and his own employees;

Trade Union Immunities

12 Trade unions enjoy virtually unlimited immunity from civil actions - an immunity wider than that accorded to the Crown and much wider than that for individual union officials.

13 This breadth of immunities is unnecessary in modern conditions to enable trade unions effectively to represent their members. Since unions have no legal responsibility for their actions the law provides no incentive for trade unions to ensure that their officials operate within the law and that industrial action is restricted to legitimate trade disputes.

14 The Government, therefore, propose:

- to bring the immunities for trade unions into line with those for individual trade union officials;

- thereby to make trade unions (and their funds) liable for unlawful acts (eg secondary picketing, secondary action, industrial action outside trade dispute) carried out by trade union officials on their behalf.

Selective Dismissal in a Strike

15 Since 1971 the law has enabled an employer to dismiss employees who are on strike without being liable for unfair dismissal proceedings provided that he dismisses them all. A House of Lords judgement in 1978 interpreted this as requiring an employer using this provision to dismiss not only all employees on strike but also those who had been on strike but who had returned to work.

16 The Government propose to correct this anomaly.

SP

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Mike Pattison Esq
Private Secretary
10 Downing Street
LONDON SW1

23 November 1981

Dear Mike

... I am enclosing a copy of the statement my Secretary of State will be making in the House this afternoon about his proposals for further industrial relations
... legislation. I am also enclosing a copy of the consultative paper to be issued at the same time. Guidance notes for use by Ministers will follow shortly.

Copies of this letter and its attachments go to Private Secretaries to the Lord President, Members of E, the Secretaries of State for Scotland, Wales, Social Services, the Law Officers, the Chief Whip, the Captain of the Gentlemen at Arms, the Lord Chancellor, Robin Ibbs and Sir Robert Armstrong.

Yours

Marie Fahey

MISS M C FAHEY
Private Secretary

DEPARTMENT OF EMPLOYMENT

STATEMENT BY RT HON NORMAN TEBBIT

SECRETARY OF STATE

MONDAY 23 NOVEMBER 1981

PROPOSALS FOR INDUSTRIAL RELATIONS LEGISLATION

With permission, Mr Speaker, I should like to make a statement on the Government's proposals for further industrial relations legislation.

These proposals have been prepared in the light of the extensive consultations on the basis of the Green Paper on Trade Union Immunities published in January of this year. These consultations have shown that there is a wide measure of agreement on the issues which need to be tackled and wide spread support for a further legislative step in this session of Parliament.

Our proposals are therefore a direct response to those consultations. I have today placed in the library copies of a document explaining the proposals in detail. They cover the closed shop, the definition of a trade dispute and the immunity for trade unions themselves.

In formulating these proposals our aim has been twofold: first, to safe-guard the liberty of the individual from the abuse of industrial power; and secondly, to improve the operation of the

/labour market by.....

labour market by providing a balanced framework of industrial relations law. These aims are fundamental to any civilised and prosperous society. The need for further legislation to help to achieve them is clear and we believe the time is right.

On the closed shop we propose - first that the compensation for someone who is unfairly dismissed because he is not a member of a trade union should be increased substantially; - secondly that existing, established closed shops should be subject to a periodic ballot; and thirdly, that anyone who is unfairly dismissed in a closed shop because of trade union pressure should be able to seek compensation directly from that trade union.

We also propose that the practice of requiring contractors to employ only trade union members as a condition of seeking or obtaining a contract should be made unlawful.

We propose to tighten up the definition of a trade dispute which is now unacceptably wide. Our proposals are designed to ensure that disputes which are predominantly political or personal, and disputes which do not directly involve an employer and his own employees, are excluded from the statutory definition and therefore do not attract immunity.

Finally, we propose that the immunity of trade unions themselves should be brought into line with the immunity for individual trade union officials and their members. We do not believe that it is right or necessary for trade unions to continue to enjoy

/an immunity which, as.....

an immunity which, as the Donovan Commission pointed out, is wider than that of any other organisation or person, even the Crown.

The Government's intention is to bring forward a Bill as soon as possible after the Christmas recess. In the meantime the document being published today invites comments on our proposals.

PROPOSALS FOR INDUSTRIAL RELATIONS LEGISLATION

Introduction

1. The Government intend to introduce further legislation to improve the operation of the labour market by providing a fairer and more balanced framework of industrial relations law and to curb a number of continuing abuses of trade union power. The Employment Act 1980 was an important first step in this process, particularly in relation to the closed shop, secondary picketing and secondary industrial action. The Government believe that the time is now right to take a further step. Their proposals for legislation, to be introduced in this session of Parliament, are set out below.

2. The Government have drawn up their proposals after extensive consultations on the basis of the Green Paper on Trade Union Immunities (Cmnd 8128). Over 300 organisations and individuals submitted comments. These showed that there is overwhelming support in industry for a further legislative step in this Parliament. The Government have also taken into account - particularly in developing their proposals on the closed shop - the experience of the operation of the Employment Act.

The closed shop

3. The consultations on the Green Paper have shown that there remains widespread public concern about the closed shop. Closed shop agreements restrict unacceptably the freedom of individuals to choose for themselves whether or not they wish to join a trade union. In some cases their existence is a barrier to the removal of restrictive practices and to improved efficiency and competitiveness.

4. Public concern has been increased in recent months by the actions of Sandwell and Walsall Councils. Their enforcement of closed shop agreements, regardless of the wishes of their employees, and their dismissal of non-union employees regardless of their rights have reinforced the need for legislation to strengthen further the protection for individuals provided by the Employment Act.

5. The Employment Act 1980 greatly increases the protection for individuals in a closed shop. It makes it unfair to dismiss an employee for non-membership of a trade union in a closed shop on three grounds:

(a) where the employee is an existing employee of the employer concerned before the closed shop agreement came into effect and has not been a member of one of the specified trade unions since;

(b) where the employee can show a genuine objection to trade union membership on grounds of conscience or other deeply held personal conviction; or

(c) in the case of a new closed shop set up after the provisions of the Employment Act came into force (on 15 August 1980), where the agreement has not been approved by 80% of the employees concerned voting in a secret ballot.

The remedy for an employee who is unfairly dismissed is a complaint to an industrial tribunal which may award compensation, and, if it thinks it practicable, reinstatement.

6. The Government propose to reinforce these provisions in four ways.

(i) Increased compensation

7. The present levels of compensation available to closed shop victims do not act as a sufficient deterrent to an employer who is minded to dismiss an employee unfairly in order to enforce a closed shop agreement. Nor do they provide adequate compensation to dismissed employees, particularly low paid employees, whose dismissal involves a serious loss of livelihood. The Government, therefore, propose to increase substantially the levels of compensation available in cases of unfair dismissal in a closed shop.

8. At present compensation for unfair dismissal for an 'inadmissable reason' - eg unfair dismissal in a closed shop or for trade union membership or activities - is in three parts:

(a) a basic award of between ½ week's pay and 1½ weeks' pay for each complete year of employment (depending on age) subject to a maximum of £3,900 (ie £130 x 30 weeks for a maximum of 20 years' service);

(b) a compensatory award based on loss of earnings in the past and future, loss of pension rights, subject to a maximum of £6,250;

(c) an additional award of 26-52 weeks' pay at the tribunal's discretion (subject to a maximum of £6,760) if the employer refuses to comply with an order for reinstatement.

The maximum award is £10,150 if no reinstatement order is made; and £16,910 if the employer does not comply with a reinstatement order.

9. In deciding whether to make an order of reinstatement the industrial tribunal must take into account three tests:

(a) whether the complainant wishes to be reinstated;

(b) whether it is practicable for the employer to comply with an order for reinstatement;

(c) where the complainant caused or contributed to some extent to his dismissal, whether it would be just to order his reinstatement.

10. Under the Government's proposal an employee would be differently treated according to whether he sought reinstatement.

11. If the employee did not seek reinstatement then the following compensation would be available:

(a) a basic award calculated as now (up to the present £3,900 maximum) but subject to a minimum of £2,000;

(b) a compensatory award calculated as now but with the upper limit abolished.

12. If the employee sought reinstatement, the tribunal would be required, in deciding whether to make an order for reinstatement, to consider only whether it was practicable for the employer to comply with an order for reinstatement. If it decided that it was not practicable for the employer to comply, compensation would be awarded as follows:

(a) a basic award calculated as above (ie as now but subject to a minimum of £2,000);

(b) a compensatory award calculated as now but with the upper limit abolished;

(c) a special award of $2\frac{1}{2}$ x annual salary subject to a minimum of £12,000.

13. If the tribunal made an order of reinstatement which was complied with, then the present rules would apply ie any loss incurred between the dismissal and reinstatement would be made good by the employer.

14. If the tribunal made an order of reinstatement which was not complied with, then the tribunal would make an additional award of 3 x the annual salary subject to a minimum of £15,000 (ie in place of the "special award" described in paragraph 12(c)).

15. This would mean that a man on average earnings (about £7,500) could expect total compensation of over £20,000 if the tribunal decided it was not practicable for the employer to reinstate and over £24,000 if the tribunal ordered reinstatement which was not complied with.

16. The Government propose that these enhanced levels of compensation should also apply to dismissal on grounds of trade union membership and activity.

(ii) Interim relief

17. At present an employee who is dismissed for trade union membership or activities can apply to an industrial tribunal for "interim relief" ie for an order requiring the employer to observe the employee's contract of employment until the full hearing of the dismissal complaint. It is proposed that interim relief should also be available to employees dismissed for non-membership of a trade union in a closed shop.

(iii) Periodic review of existing closed shops

18. The Employment Act places an obligation on an employer setting up a new closed shop agreement to test the support for that agreement in a secret ballot of his employees (see paragraph 5(c) above). The Government believe that the same principle should now be applied to all existing closed shop agreements.

19. It is proposed, therefore, that in future dismissal for non-membership of a trade union in a closed shop should be regarded as unfair if:

(a) there has been no secret ballot of the employees covered by the agreement within 12 months of the new legislation coming into effect or within a stated previous period (perhaps 3 or 5 years); or

(b) where there has been a ballot, if it has not shown overwhelming support (perhaps 80% of those covered or 85% of those voting) for the continuation of the closed shop.

Further ballots would be required at regular intervals (perhaps every 3 or 5 years) if liability for dismissal was to be avoided. Anyone dismissed for non-membership in these circumstances would qualify for the proposed increased rates of compensation and be able to apply for interim relief as described in paragraph 17.

(iv) Trade union contribution to compensation

20. In many cases of closed shop dismissals it is pressure (eg the threat of industrial action) from a trade union which leads to the dismissal and which may prevent an employer agreeing to reinstatement. The Government believe that where such pressure is exercised the trade union should be more readily accountable and liable to pay a share of any compensation which the tribunal awards.

21. The Employment Act has made it possible for an employer who has dismissed a non-union employee as a result of pressure from a trade union to "join" the union as a party to the proceedings, but he can do so only at the beginning of the proceedings. The tribunal may then order the union to reimburse the employer for some or all of the compensation awarded to the dismissed person.

22. The Government propose that in addition the dismissed employee should be able to "join" the trade union in the proceedings on the grounds that it has contributed to his dismissal by exerting pressure on the employer. Where a trade union, following joinder by either employer or employee, was found to have acted to enforce dismissal in this way, an award for compensation against it would be directly recoverable by the employee from the union, instead of, as now with employer joinder, from the employer. The compensation due would be obtained through the normal process for the recovery of debt.

23. It is also proposed that joinder should be possible at any stage in the proceedings.

Union labour only requirements

24. The consultations on the Green Paper have shown that there is particular concern about the practice of requiring contractors to use only union labour. Such practices have become more prevalent in recent years, not least among local authorities and some nationalised industries.

25. The Government regard such practices as unacceptable. They are a means of conscripting into unions employees who have no interest in being union members.

In some cases a small non-union firm may have no choice but to submit to the union labour only requirements and put pressure on its employees to join a union in order to avoid being put out of business.

26. The problem is often seen as being no more than the insistence on union labour only clauses in contracts. But some local authorities have also invited tenders from, or included on a list of recognised contractors, only those firms which have a closed shop or are prepared to guarantee to use only union labour. The Government, therefore, propose that:

(a) any clause in a contract requiring the employment only of persons who are or who are not members of a union should be void (ie unenforceable at law); and

(b) discrimination in inviting tenders for, offering, placing, or making contracts for the provision of goods or services on the grounds that anyone employed in connection with the performance of the contract should or should not be a member of a trade union should be unlawful.

27. In addition the Government propose to remove the statutory immunity from being sued in tort from any person who organises or threatens industrial action to put pressure on an employer to put a union labour only clause in a contract or to discriminate unlawfully.

28. A wider but connected question is that of industrial action with the objective of preventing an employer with a contract from fulfilling it because not all his employees are members of a trade union. The refusal of union members to work alongside non-union employees is deep-rooted in some industries and is often tolerated by employers. It has also to be accepted that it is not possible to eradicate this practice simply by changes in the law. It is nevertheless arguable that the Government's proposals on union labour only requirements would be incomplete if it continued to be lawful for a person to organise industrial action to prevent non-union employees fulfilling a contract which had been lawfully awarded. The Government are therefore considering whether to propose that the immunity for industrial action which interferes with the performance of a contract primarily on the grounds that those employed to perform that contract are or are not union members should be removed.

Trade union immunities

29. Trade unions enjoy a much wider legal immunity than their individual officials or members. Under section 14 of the Trade Union and Labour Relations Act 1974 trade

unions as such have virtually unlimited immunity from actions in tort, even where they organise industrial action outside a trade dispute. This means that trade unions cannot be sued for their unlawful acts or for unlawful acts done on their behalf by their officials.

30. The Government do not accept that the breadth of the immunities is any longer necessary in modern conditions to enable trade unions to represent their members effectively. It is unfair and anomalous that while trade union officials may be sued for organising unlawful industrial action on behalf of a trade union, the union itself can escape liability altogether. In these circumstances there is a lack of incentive for trade unions to ensure that their officials operate within the law and that industrial action is restricted to legitimate trade disputes and is otherwise lawful.

31. The consultations on the Green Paper show that there is substantial support for a reduction of the immunities for trade unions. The Government, therefore, propose that the immunities for trade unions should be brought in line with those for individuals in section 13 of the 1974 Act (as amended). The main effect of this would be to make trade unions themselves liable to be sued in tort when they are responsible:

(a) for unlawful acts which are not "in contemplation or furtherance of a trade dispute"; and

(b) for action which is unlawful for individuals by virtue of the limitations to section 13 made by the Employment Act 1980 (ie secondary picketing, indiscriminate secondary action and industrial action to compel union membership) and any amendments which may be made as a result of other proposals relating to immunities in this paper.

32. The Government believe that it is desirable to provide guidance in legislation as to when trade unions are to be held vicariously liable for unlawful acts committed by their officials. Such guidance would help unions and employers to establish more clearly the limits of immunity and liability.

33. The Government believe that any guidance on vicarious liability should be based on the common law principles which the House of Lords adopted in such cases as Heatons Transport (St Helens) Ltd v. TGWU (1972) and General Aviation Services (UK) Ltd v. TGWU (1976). It is therefore proposed that legislation should provide that where torts were committed by trade union officials the trade union would be held vicariously liable only if:

(a) the national executive of the union had specifically authorised or ratified the action complained of; or

(b) the subordinate body or official of the union whose action was complained of had authority for the action under the rules of the union or was acting on instructions from a body or officials who had such authority and its or his action had not been repudiated by a more senior authoritative body or offical of the union.

34. This may not, however, be sufficient in situations where the trade union rules are ambiguous or unclear about whether a particular official or body has the authority to call industrial action. The Government are therefore considering proposing in addition that where the union rules do not clearly establish whether an official or body is acting within the authority of the trade union, the trade union should be liable unless a more senior authoritative body or official has repudiated the action.

35. Trade unions which were found liable for unlawful action could be sued for both injunctions and damages. The Government propose to limit the damages which could be awarded against a trade union in any one case according to the size of the union involved as follows:

fewer than 5000 members	£12,500
5,000 - 24,999	£62,000
25,000 - 100,000	£125,000
more than 100,000	£250,000

It is further proposed that a union's provident and political funds should be protected from liability in the event of an award for damages.

Definition of a trade dispute

36. The Government also propose to amend the present statutory definition of trade dispute, which as a result of the last Government's legislation and recent court decisions is unacceptably wide. Since the immunities for individuals (and, as proposed, trade unions) apply only to "acts done in contemplation or furtherance of a trade dispute", this will restrict further the immunities for those who organise industrial action.

37. Four amendments are proposed to the definition of a trade dispute in section 29 of the Trade Union and Labour Relations Act 1974:

(a) to require that trade disputes should relate wholly or mainly to the matters listed in section 29(1), rather than, as now, be simply "connected with" those matters. This is necessary in particular in the light of the House of Lords judgement in NWL Ltd v. Nelson and Woods (1979). It would ensure that disputes which were mainly political or personal in character and had only a slight connection with the subject of a trade dispute fell outside the trade dispute definition;

(b) to exclude disputes between "workers and workers";

(c) to exclude disputes relating solely to matters occurring outside Great Britain;

(d) to restrict trade disputes to disputes between an employer and his own employees. This would make disputes between an employer and a trade union where the employer had no dispute with his own employees unlawful. It would thereby remove immunity from secondary action which was directed at an employer whose employees were not taking industrial action themselves and were entirely content with their terms and conditions of employment. It would be necessary to ensure that an employer could not avoid being in legitimate dispute with his own employees simply by sacking those with whom he was in dispute.

Selective dismissal in a strike

38. Section 62 of the Employment Protection (Consolidation) Act 1978 removes from the industrial tribunal jurisdiction to hear complaints of unfair dismissal made by employees involved in a strike where the employer has dismissed all those participating in the industrial action. The tribunals retain jurisdiction, however, to hear complaints from employees on strike where the employer has discriminated by dismissing some but not all of the relevant employees. In 1978 the House of Lords ruled that participation in the industrial action refers to all the employees who have taken part in the industrial action, not merely those on strike at the time of the dismissal. Where, therefore, some employees have returned to work, an employer runs the risk of unfair dismissal complaints if he dismisses those remaining on strike.

39. This is clearly anomalous. It is therefore proposed to amend section 62 so that the tribunals have jurisdiction only where an employer discriminates by dismissing some but not all of those of his employees actually on strike at the

time of the dismissal. An employer would need to give postal or other effective notice (perhaps four working days) to all employees on strike of his intention to dismiss any who had not returned by the end of the notice period.

Ballots

40. Under section 1 of the Employment Act 1980 public funds are available for secret ballots for trade union elections and votes on certain other issues, including the calling and ending of strikes. It is proposed that the list of issues for which funds are available should be extended to cover votes on wage offers. This would be done by affirmative resolution, as provided for by the Employment Act.

Conclusion

41. The Government intend to introduce a Bill to give effect to these proposals early in the New Year. They would, therefore, welcome comments on the proposals by the end of the year. Comments should be sent to the Department of Employment, Caxton House, Tothill Street, London SW1H 9NF.

File BR

19/11

18 November 1981

Thank you for your letter of 17 November, about industrial relations legislation.

As I told you yesterday, the Prime Minister is content that Mr. Tebbit should make a Statement in the House at the time of publication. I understand that this is now scheduled for Monday next, 23 November.

The Prime Minister has not yet had a chance to look at the text. If she has comments on it, I hope to be able to come back to you in the course of tomorrow.

pa ya now
MAP 19/XI

MAP

Richard Dykes, Esq.,
Department of Employment

1

1. MR. SCHOLAR
2. PRIME MINISTER

We had a word on Tuesday about Mr. Tebbit's wish to make a Statement in the House at the time of publication of the proposals for industrial relations legislation. You agreed that he should go ahead.

His intention had been to make the Statement on Thursday. This was deferred, because it looked as if we would be ready for the Statement on the Sinai Force. That one has now fallen through again, but Mr. Tebbit prefers to stick to Monday for his Statement. I attach the draft, together with the draft document. (It is a discussion document, not a White Paper).

At Flag A, I attach some comments from the Policy Unit.

Would you like us to ask Mr. Tebbit to take account of the Policy Unit's comments before finalising his text?

18 November 1981

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MR. PATTISON

INDUSTRIAL RELATIONS LEGISLATION

1. I have a few comments to offer on the draft statement and working paper sent to you by Norman Tebbit's office today.

2. The statement seems to me to underplay slightly the purpose of the proposals. This is partly because the purpose is only stated in the last paragraph. The second purpose stated in that paragraph could be expanded a little in order to bring out the wider economic benefits. At the moment the economic case rests entirely on the rather low key claim "to improve the operation of the labour market". I suggest something along the following lines:

> "It is widely recognised that an imbalance in our industrial relations has been one of the causes of our relatively poor economic performance in the past. The Government believes that further reforms have an important part to play in our economic recovery."

3. I imagine that supplementaries (if the statement is to be oral) would be used by Mr. Tebbit to make more explicit the connection between an improved labour market, economic recovery, and more jobs.

4. The other point which seems to be missing from the statement is a reassurance that nothing in these proposals will affect the right of ordinary trade union members and their unions to pursue claims with their employer.

5. The second sentence of paragraph 28 might be taken to refer to union members' unwillingness to work alongside non-unionists in the same company. In fact, the reference is to an unwillingness to tolerate non-unionists working for other employers. This could be clearer. The sentence also seems to me to appear to condone the practice.

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6. The second sentence of paragraph 34 says that the Government are considering a presumption of liability in ambiguous cases unless a more senior body or official has repudiated the action. Surely this is a necessary element in making vicarious liability stick, and should not therefore be expressed in such tentative terms.

7. Finally, neither the statement nor the working paper emphasise that the Government is not proposing to go nearly as far as many of the Green Paper respondents recommended. In particular, it has not pursued the suggestion that procedure agreements should be made legally enforceable - with much more widespread loss of immunities. Should we not claim credit for realism and moderation? Perhaps this is best done in supplementaries too.

17 November 1981

ANDREW DUGUID

CONFIDENTIAL

cc. MCS.
Policy Unit.

SECRETARY OF STATE FOR EMPLOYMENT

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Mike Pattison Esq
Private Secretary
10 Downing Street
LONDON SW1

17 November 1981

Dear Mike.

INDUSTRIAL RELATIONS LEGISLATION

You told me this morning that the Prime Minister had raised a question about whether it was necessary to make a statement on the publication of the proposals for industrial relations legislation.

I have discussed this with my Secretary of State who is convinced that a statement is essential. He believes it would be certain to cause uproar in the House if these proposals, which are of course awaited with intense interest both within the House and outside, were launched by way of written answer, especially if this were to be followed by a press conference and radio and television interviews. Further, it seems to him that there are positive advantages for the Government in giving these proposals maximum publicity. A statement would clearly help in this respect too.

As we agreed, unless you are able to let me know that the Prime Minister agrees to a statement being made, Mr Tebbit will try to have a quick word with her in the Chamber immediately after Questions this afternoon.

Finally, I am enclosing as promised a copy both of the draft statement and of the working paper.

Yours ever

Richard Dykes

R T B DYKES
Principal Private Secretary

STATEMENT BY MR NORMAN TEBBIT, SECRETARY OF STATE FOR EMPLOYMENT

PROPOSALS FOR INDUSTRIAL RELATIONS LEGISLATION

With permission, Mr Speaker, I should like to make a statement on the Government's proposals for further industrial relations legislation.

These proposals have been prepared in the light of the extensive consultations on the basis of the Green Paper on Trade Union Immunities published in January of this year. These consultations have shown that there is a wide measure of agreement on the issues which need to be tackled and wide spread support for a further legislative step in this session of Parliament.

Our proposals are therefore a direct response to those consultations. I have today placed in the library copies of a document explaining the proposals in detail. They cover the closed shop, the definition of a trade dispute and the immunity for trade unions themselves.

On the closed shop we propose - first that the compensation for someone who is unfairly dismissed because he is not a member of a trade union should be increased substantially; - secondly that existing, established closed shops should be subject to a periodic ballot; and thirdly, that anyone who is unfairly dismissed in a closed shop because of trade union pressure should be able to seek compensation directly from that trade union.

We also propose that the practice of requiring contractors to employ only trade union members as a condition of seeking or obtaining a contract should be made unlawful.

We propose to tighten up the definition of a trade dispute which is now unacceptably wide. Our proposals are designed to ensure that disputes which are predominantly political or personal, and disputes which do not directly involve an employer and his own employees, are excluded from the statutory definition and therefore do not attract immunity.

Finally, we propose that the immunity of trade unions themselves should be brought into line with the immunity for individual trade union officials and their members. We do not believe that it is right or necessary for trade unions to continue to enjoy an immunity which, as the Donovan Commission pointed out, is wider than that of any other organisation or person, even the Crown.

The Government's intention is to bring forward a bill as soon as possible after the Christmas recess. In the meantime the document being published today invites comments on our proposals.

In formulating these proposals our aim has been twofold: first, to safeguard the liberty of the individual from the abuse of industrial power; and secondly, to improve the operation of the labour market by providing a balanced framework of industrial relations law. These aims are fundamental to any civilised and prosperous society. The need for further legislation to help to achieve them is clear and we believe the time is right.

PROPOSALS FOR INDUSTRIAL RELATIONS LEGISLATION

Introduction

1. The Government intend to introduce further legislation to improve the operation of the labour market by providing a fairer and more balanced framework of industrial relations law and to curb a number of continuing abuses of trade union power. The Employment Act 1980 was an important first step in this process, particularly in relation to the closed shop, secondary picketing and secondary industrial action. The Government believe that the time is now right to take a further step. Their proposals for legislation, to be introduced in this session of Parliament, are set out below.

2. The Government have drawn up their proposals after extensive consultations on the basis of the Green Paper on Trade Union Immunities (Cmnd 8128). Over 300 organisations and individuals submitted comments. These showed that there is overwhelming support in industry for a further legislative step in this Parliament. The Government have also taken into account - particularly in developing their proposals on the closed shop - the experience of the operation of the Employment Act.

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3. The consultations on the Green Paper have shown that there remains widespread public concern about the closed shop. Closed shop agreements restrict unacceptably the freedom of individuals to choose for themselves whether or not they wish to join a trade union. In some cases their existence is a barrier to the removal of restrictive practices and to improved efficiency and competitiveness.

4. Public concern has been increased in recent months by the actions of Sandwell and Walsall Councils. Their enforcement of closed shop agreements, regardless of the wishes of their employees, and their dismissal of non-union employees regardless of their rights have reinforced the need for legislation to strengthen further the protection for individuals provided by the Employment Act.

5. The Employment Act 1980 greatly increases the protection for individuals in a closed shop. It makes it unfair to dismiss an employee for non-membership of a trade union in a closed shop on three grounds:

(a) where the employee is an existing employee of the employer concerned before the closed shop agreement came into effect and has not been a member of one of the specified trade unions since;

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(a) a basic award calculated as now (up to the present £3,900 maximum) but subject to a minimum of £2,000;

(b) a compensatory award calculated as now but with the upper limit abolished.

12. If the employee sought reinstatement, the tribunal would be required, in deciding whether to make an order for reinstatement, to consider only whether it was practicable for the employer to comply with an order for reinstatement. If it decided that it was not practicable for the employer to comply, compensation would be awarded as follows:

(a) a basic award calculated as above (ie as now but subject to a minimum of £2,000);

(b) a compensatory award calculated as now but with the upper limit abolished;

(c) a special award of $2\frac{1}{2}$ x annual salary subject to a minimum of £12,000.

13. If the tribunal made an order of reinstatement which was complied with, then the present rules would apply ie any loss incurred between the dismissal and reinstatement would be made good by the employer.

14. If the tribunal made an order of reinstatement which was not complied with, then the tribunal would make an additional award of 3 x the annual salary subject to a minimum of £15,000 (ie in place of the "special award" described in paragraph 12(c)).

15. This would mean that a man on average earnings (about £7,500) could expect total compensation of over £20,000 if the tribunal decided it was not practicable for the employer to reinstate and over £24,000 if the tribunal ordered reinstatement which was not complied with.

16. The Government propose that these enhanced levels of compensation should also apply to dismissal on grounds of trade union membership and activity.

(ii) Interim relief

17. At present an employee who is dismissed for trade union membership or activities can apply to an industrial tribunal for "interim relief" ie for an order requiring the employer to observe the employee's contract of employment until the full hearing of the dismissal complaint. It is proposed that interim relief should also be available to employees dismissed for non-membership of a trade union in a closed shop.

(iii) Periodic review of existing closed shops

18. The Employment Act places an obligation on an employer setting up a new closed shop agreement to test the support for that agreement in a secret ballot of his employees (see paragraph 5(c) above). The Government believe that the same principle should now be applied to all existing closed shop agreements.

19. It is proposed, therefore, that in future dismissal for non-membership of a trade union in a closed shop should be regarded as unfair if:

(a) there has been no secret ballot of the employees covered by the agreement within 12 months of the new legislation coming into effect or within a stated previous period (perhaps 3 or 5 years); or

(b) where there has been a ballot, if it has not shown overwhelming support (perhaps 80% of those covered or 85% of those voting) for the continuation of the closed shop.

Further ballots would be required at regular intervals (perhaps every 3 or 5 years) if liability for dismissal was to be avoided. Anyone dismissed for non-membership in these circumstances would qualify for the proposed increased rates of compensation and be able to apply for interim relief as described in paragraph 17.

(iv) Trade union contribution to compensation

20. In many cases of closed shop dismissals it is pressure (eg the threat of industrial action) from a trade union which leads to the dismissal and which may prevent an employer agreeing to reinstatement. The Government believe that where such pressure is exercised the trade union should be more readily accountable and liable to pay a share of any compensation which the tribunal awards.

21. The Employment Act has made it possible for an employer who has dismissed a non-union employee as a result of pressure from a trade union to "join" the union as a party to the proceedings, but he can do so only at the beginning of the proceedings. The tribunal may then order the union to reimburse the employer for some or all of the compensation awarded to the dismissed person.

22. The Government propose that in addition the dismissed employee should be able to "join" the trade union in the proceedings on the grounds that it has contributed to his dismissal by exerting pressure on the employer. Where a trade union, following joinder by either employer or employee, was found to have acted to enforce dismissal in this way, an award for compensation against it would be directly recoverable by the employee from the union, instead of, as now with employer joinder, from the employer. The compensation due would be obtained through the normal process for the recovery of debt.

23. It is also proposed that joinder should be possible at any stage in the proceedings.

Union labour only requirements

24. The consultations on the Green Paper have shown that there is particular concern about the practice of requiring contractors to use only union labour. Such practices have become more prevalent in recent years, not least among local authorities and some nationalised industries.

25. The Government regard such practices as unacceptable. They are a means of conscripting into unions employees who have no interest in being union members.

In some cases a small non-union firm may have no choice but to submit to the union labour only requirements and put pressure on its employees to join a union in order to avoid being put out of business.

26. The problem is often seen as being no more than the insistence on union labour only clauses in contracts. But some local authorities have also invited tenders from, or included on a list of recognised contractors, only those firms which have a closed shop or are prepared to guarantee to use only union labour. The Government, therefore, propose that:

(a) any clause in a contract requiring the employment only of persons who are or who are not members of a union should be void (ie unenforceable at law); and

(b) discrimination in inviting tenders for, offering, placing, or making contracts for the provision of goods or services on the grounds that anyone employed in connection with the performance of the contract should or should not be a member of a trade union should be unlawful.

27. In addition the Government propose to remove the statutory immunity from being sued in tort from any person who organises or threatens industrial action to put pressure on an employer to put a union labour only clause in a contract or to discriminate unlawfully.

28. A wider but connected question is that of industrial action with the objective of preventing an employer with a contract from fulfilling it because not all his employees are members of a trade union. The refusal of union members to work alongside non-union employees is deep-rooted in some industries and is often tolerated by employers. It has also to be accepted that it is not possible to eradicate this practice simply by changes in the law. It is nevertheless arguable that the Government's proposals on union labour only requirements would be incomplete if it continued to be lawful for a person to organise industrial action to prevent non-union employees fulfilling a contract which had been lawfully awarded. The Government are therefore considering whether to propose that the immunity for industrial action which interferes with the performance of a contract primarily on the grounds that those employed to perform that contract are or are not union members should be removed.

Trade union immunities

29. Trade unions enjoy a much wider legal immunity than their individual officials or members. Under section 14 of the Trade Union and Labour Relations Act 1974 trade

unions as such have virtually unlimited immunity from actions in tort, even where they organise industrial action outside a trade dispute. This means that trade unions cannot be sued for their unlawful acts or for unlawful acts done on their behalf by their officials.

30. The Government do not accept that the breadth of the immunities is any longer necessary in modern conditions to enable trade unions to represent their members effectively. It is unfair and anomalous that while trade union officials may be sued for organising unlawful industrial action on behalf of a trade union, the union itself can escape liability altogether. In these circumstances there is a lack of incentive for trade unions to ensure that their officials operate within the law and that industrial action is restricted to legitimate trade disputes and is otherwise lawful.

31. The consultations on the Green Paper show that there is substantial support for a reduction of the immunities for trade unions. The Government, therefore, propose that the immunities for trade unions should be brought in line with those for individuals in section 13 of the 1974 Act (as amended). The main effect of this would be to make trade unions themselves liable to be sued in tort when they are responsible:

(a) for unlawful acts which are not "in contemplation or furtherance of a trade dispute"; and

(b) for action which is unlawful for individuals by virtue of the limitations to section 13 made by the Employment Act 1980 (ie secondary picketing, indiscriminate secondary action and industrial action to compel union membership) and any amendments which may be made as a result of other proposals relating to immunities in this paper.

32. The Government believe that it is desirable to provide guidance in legislation as to when trade unions are to be held vicariously liable for unlawful acts committed by their officials. Such guidance would help unions and employers to establish more clearly the limits of immunity and liability.

33. The Government believe that any guidance on vicarious liability should be based on the common law principles which the House of Lords adopted in such cases as Heatons Transport (St Helens) Ltd v. TGWU (1972) and General Aviation Services (UK) Ltd v. TGWU (1976). It is therefore proposed that legislation should provide that where torts were committed by trade union officials the trade union would be held vicariously liable only if:

(a) the national executive of the union had specifically authorised or ratified the action complained of; or

(b) the subordinate body or official of the union whose action was complained of had authority for the action under the rules of the union or was acting on instructions from a body or officials who had such authority and its or his action had not been repudiated by a more senior authoritative body or offical of the union.

34. This may not, however, be sufficient in situations where the trade union rules are ambiguous or unclear about whether a particular official or body has the authority to call industrial action. The Government are therefore considering proposing in addition that where the union rules do not clearly establish whether an official or body is acting within the authority of the trade union, the trade union should be liable unless a more senior authoritative body or official has repudiated the action.

35. Trade unions which were found liable for unlawful action could be sued for both injunctions and damages. The Government propose to limit the damages which could be awarded against a trade union in any one case according to the size of the union involved as follows:

fewer than 5000 members	£12,500
5,000 - 24,999	£62,000
25,000 - 100,000	£125,000
more than 100,000	£250,000

It is further proposed that a union's provident and political funds should be protected from liability in the event of an award for damages.

Definition of a trade dispute

36. The Government also propose to amend the present statutory definition of trade dispute, which as a result of the last Government's legislation and recent court decisions is unacceptably wide. Since the immunities for individuals (and, as proposed, trade unions) apply only to "acts done in contemplation or furtherance of a trade dispute", this will restrict further the immunities for those who organise industrial action.

37. Four amendments are proposed to the definition of a trade dispute in section 29 of the Trade Union and Labour Relations Act 1974:

(a) to require that trade disputes should relate wholly or mainly to the matters listed in section 29(1), rather than, as now, be simply "connected with" those matters. This is necessary in particular in the light of the House of Lords judgement in NWL Ltd v. Nelson and Woods (1979). It would ensure that disputes which were mainly political or personal in character and had only a slight connection with the subject of a trade dispute fell outside the trade dispute definition;

(b) to exclude disputes between "workers and workers";

(c) to exclude disputes relating solely to matters occurring outside Great Britain;

(d) to restrict trade disputes to disputes between an employer and his own employees. This would make disputes between an employer and a trade union where the employer had no dispute with his own employees unlawful. It would thereby remove immunity from secondary action which was directed at an employer whose employees were not taking industrial action themselves and were entirely content with their terms and conditions of employment. It would be necessary to ensure that an employer could not avoid being in legitimate dispute with his own employees simply by sacking those with whom he was in dispute.

Selective dismissal in a strike

38. Section 62 of the Employment Protection (Consolidation) Act 1978 removes from the industrial tribunal jurisdiction to hear complaints of unfair dismissal made by employees involved in a strike where the employer has dismissed all those participating in the industrial action. The tribunals retain jurisdiction, however, to hear complaints from employees on strike where the employer has discriminated by dismissing some but not all of the relevant employees. In 1978 the House of Lords ruled that participation in the industrial action refers to all the employees who have taken part in the industrial action, not merely those on strike at the time of the dismissal. Where, therefore, some employees have returned to work, an employer runs the risk of unfair dismissal complaints if he dismisses those remaining on strike.

39. This is clearly anomalous. It is therefore proposed to amend section 62 so that the tribunals have jurisdiction only where an employer discriminates by dismissing some but not all of those of his employees actually on strike at the

time of the dismissal. An employer would need to give postal or other effective notice (perhaps four working days) to all employees on strike of his intention to dismiss any who had not returned by the end of the notice period.

Ballots

40. Under section 1 of the Employment Act 1980 public funds are available for secret ballots for trade union elections and votes on certain other issues, including the calling and ending of strikes. It is proposed that the list of issues for which funds are available should be extended to cover votes on wage offers. This would be done by affirmative resolution, as provided for by the Employment Act.

Conclusion

41. The Government intend to introduce a Bill to give effect to these proposals early in the New Year. They would, therefore, welcome comments on the proposals by the end of the year. Comments should be sent to the Department of Employment, Caxton House, Tothill Street, London SW1H 9NF.

14/11/81

22 to Thursday

Prime Minister

IAN PERCIVAL

1. Herewith copy letter dated 29th October from Norman Tebbit to Michael Havers.

2. Subsequently, you aggeed to the proposals set out in Norman's letter.

3. A very unhappy Ian Percival telephoned this morning to say that the proposed legislation on trade union immunities does not go nearly far enough and that he does not want to be a party topiloting such legislation through the House.

4. Ian Percival has asked to see you, and we are arranging this for next week.

13th November 1981

IAN GOW

CONFIDENTIAL

E COMMITTEE: TUESDAY 10 NOVEMBER 1981

E(81)114 INDUSTRIAL RELATIONS LEGISLATION - MEMORANDUM BY THE SECRETARY OF STATE FOR EMPLOYMENT

Background

1. E Committee on 29 October endorsed Mr Tebbit's proposals for industrial relations legislation subject to further consideration of the practicability of three particular proposals. Paper E(81)112 reports Mr Tebbit's conclusions on these proposals.

Immunity for Trade Union Funds

2. Mr Tebbitt proposes that unions should be held to be liable for the unlawful acts of their officials if a tort is committed by a body or official while acting in an official capacity and a more senior authoritative body or official has not repudiated it. Mr Tebbitt admits that further work will need to be done on the details of this proposal but argues that it appears to be the most promising basis on which to hold consultations. He accepts that his proposals will be vigorously opposed; in the short term it seems likely that the proposals will lead to trade unions challenging the Government and defying the law.

Joinder in Closed Shop Dismissal Cases

3. Mr Tebbitt advocates two changes to his earlier proposal that in closed shop dismissal cases the dismissed person himself should be able to "join" the union in unfair dismissal proceedings:-

(a) an employee who joins the union in proceedings should have to show that the union exercised pressure on the employer to dismiss.

(b) where a union is found to have contributed to dismissal, its contribution to the compensation should be payable direct to the employee instead of, as now with employer joinder, to the employer.

4. In Mr Tebbitt's view the first proposal removes a legal difficulty identified at the E Committee meeting on 29 October, while the second proposal increases the likelihood that some part of the compensation for the dismissed employee will come out of union funds.

Non Labour only Requirements in Contracts

5. Mr Tebbitt has reconsidered his proposals for making unlawful union labour only requirements in contracts, viz:-

(a) provision to declare unlawful any discrimination in seeking tenders or awarding contracts on grounds of union membership or non-membership.

(b) The removal of immunity for a trade union engaging in industrial action which interferes with the performance of contracts primarily on grounds of union membership or non-membership.

Mr Tebbitt is satisfied that these proposals are workable and that no acceptable alternative is available.

Recommendation

6. Ministers have already agreed on 29 October that the overall balance of Mr Tebbitt's proposals is about right. The issue for consideration is therefore how the proposals will work in practice and if the proposals offer the best available means of achieving Ministers' agreed aims. The Lord Chancellor and the Law Officers expressed reservations at the earlier E Committee discussions about the likely consequences of pursuing some of Mr Tebbitt's proposals. Mr Tebbitt himself recognises, particularly in relation to immunity for trade union funds, that there will be "bitter resistance" from the trade union movement and that militant trade unions will probably seek to defy the law and provoke a confrontation with the Government over these issues. However it is Mr Tebbitt's view that there is unlikely to be a more favourable time to make this major change which is generally recognised to be right in principle. We see this issue as being essentially a matter for political judgement - ie how far do Ministers wish to go in changing the balance of trade union power and what political risks are they prepared to incur to achieve their desired objectives.

7. Given the established consensus in favour of Mr Tebbitt's package we recommend that, subject to the opinions of the Lord Chancellor and the Law Officers, the the Secretary of State should raise no objection to Mr Tebbitt's revised proposals.

Scottish Economic Planning Department
3 November 1981

6

CONFIDENTIAL

Qa 05722 9 November 1981

To: MR SCHOLAR

From: J R IBBS

Industrial Relations Legislation

1. I have the following brief comments on the Secretary of State's further Paper E(81)112.

2. Immunity for Trade Union Funds

The benefits that would come from the proposals to remove Trade Union immunities remain a matter of judgement and relevant evidence is very limited. As the Secretary of State points out, the immediate benefits may be to oblige Trade Unions to reform their rule books and reduce the likelihood of secondary action and political strikes. But as the CPRS observed in their study on pay, an important benefit may occur in the longer term if later there is legislation to reform the conduct of bargaining in the work place, such as secret balloting and legal enforcement of procedure agreements. If Trade Union immunities can be removed now for a limited range of unlawful acts, it should be easier later to extend this process by having the same effect on unions as on individuals when further aspects of industrial relations are brought within the law. If the first removal of immunities were to co-incide with a contentious extension of the law the problem would be made much more difficult.

3. Union Labour Only Requirements

I remain concerned about the practicability of the proposal to make unlawful any pressure or industrial action that is aimed at preventing the use of non union labour. In several situations unofficial grass roots opinion, over which neither management nor union leadership have influence, is likely to continue to insist that Trade Union labour be used, no matter what a contract may say. As closed shops are not being outlawed it may be unwise to impose sanctions against unions and individuals for local action pressing for the use of union labour. Indeed if Trade Union immunities are removed it would be better to have the legislation tested on cases such as secondary picketing which are more obviously objectionable to the public than on issues about

union only labour which are likely to be more confused. I still believe it would be best to start by declaring such contracts unlawful and to leave for later legislation the question of making industrial action in this area illegal.

4. Measure to Improve the Conduct of Industrial Relations

In the Prime Minister's summing up of the discussion at E she noted that the balance of the package was about right provided that it was accompanied by a positive policy on improving management/labour relations within companies. I note that the Secretary of State makes no further proposals on this in his paper. Such an improvement in relations is very necessary and the CPRS in its study on pay emphasised the need for better communications. During the discussion of that study the Secretary of State for Industry was asked to consider the possibility of issuing a code of conduct covering communication and possibly greater employee involvement generally. I suggest it would be helpful if positive moves on this could be brought forward at the same time as the new legislation.

5. I am sending a copy of this minute to Sir Robert Armstrong.

Ref. A05920

PRIME MINISTER

Industrial Relations Legislation

(E(81) 112)

BACKGROUND

When the Committee discussed the Secretary of State for Employment's proposals for industrial relations legislation in E(81) 103 on 29 October they approved certain of the proposals (definition of a trade dispute, selective dismissal in a strike and ballots). Further work was to be done on the following proposals:

(i) On the Closed Shop. (Where it was agreed that there should be legislation but where some Ministers, notably the Lord Chancellor, were unhappy about the provisions for joining trade unions as well as employers in the legal actions).

(ii) On "Union Labour Only" Requirements. (Where it was agreed that there should be legislation but where some Ministers wanted to go less far than the Secretary of State for Employment or to explore other ways of dealing with the problem, such as placing obligations on local authorities).

(iii) On Immunity for Trade Union Funds. (Where some Ministers were not convinced that the gains would justify the effort, and the dangers of confrontation).

The Secretary of State for Employment's latest paper, E(81) 112, seeks to answer these points.

2. In addition the Secretary of State is likely to mention orally his proposals relating to the political levy.

MAIN ISSUES

3. You may wish first to try and resolve the remaining points of detail about the closed shop and "union labour only" requirements and then move on to the major policy issues relating to the immunity of trade union funds and the political levy.

Closed Shop

4. This is dealt with in paragraphs 6 and 7 and Annex 2 of the paper. The Secretary of State concedes that there is some force in two points raised in the Committee's earlier discussion - that a tribunal may find it difficult to assess the relative blameworthiness of the trade union and the employer and that there may not in practice be much incentive to join trade unions in these actions. He does not favour the alternative approach of "automatic joinder". Two variants are considered but are open to several objections - notably the objection of principle against the automatic bringing of prodeedings against a third party when no other party to the dispute wishes this. The Secretary of State has however proposed two modifications to his earlier proposals:

(i) An employee who joins the union in proceedings would have to show that the union exercised pressure on the employer to dismiss (this might make it easier for tribunals to assess relative blame).

(ii) Where a union is found to have contributed to dismissal, its contribution to the compensation is to be payable direct to the employee (this might increase the incentive for employers to join trade unions in actions; it does not however increase the financial incentive for the employee to bring the union into the proceedings).

5. The Committee will have to consider whether they regard the modified proposals as better than the original ones, and whether they are satisfied that the alternative approach of automatic joinder should not be pursued.

"Union Labour Only" Requirements

6. This is dealt with in paragraph 8 and Annex 3 of the paper. The Secretary of State accepts that there may be problems for contractors in taking advantage of the provisions for action against employers, but he argues that they may have useful deterrent effect, especially in the case of local authorities where there may be scope for an action for mandamus, for the intervention of the District Auditor and for the surcharging of individual councillors. He does not think that it would be sufficient to confine the legislation to local authorities, but is prepared (paragraph 12, Annex 3) to consider including a specific requirement that local authority standing orders relating to contracts should be in conformity with the requirements of the general provision of the law in discrimination. He suggests that various

other options for dealing with the "union labour only" problem (eg through the Director General of Fair Trading and Government Departments) should be seen as supplements to, rather than replacements for, his proposed legislation.

7. The Committee will need to consider whether, in the light of these arguments, they regard the proposed provisions for action against employers as justified and worthwhile. There is the separate question of action against unions and employees for interfering with the performance of contracts. In their earlier discussion the Committee recognised that the exercise of these additional powers (which the Secretary of State accepts are contentious) could lead to confrontation in the docks and on building sites, but the majority of Ministers appeared willing to take the risk.

Immunity for Trade Union Funds

8. This was the issue on which the Committee was most divided on 29 October. In paragraphs 3 to 5 and Annex 1 of his paper the Secretary of State has sought to clarify further the difficult legal issues (and particulary those relating to vicarious liability), to show how the proposals would work in practice, and to assess the likely effects. The Committee will need to consider in particular:

(i) Whether the proposals for vicarious liability will clear up the uncertainties which arose under the 1971 Industrial Relations Act in establishing a union's responsibility for unlawful industrial action.

(ii) Whether they are satisfied, despite the objections of the Lord Chancellor, that there should be limits on the damages which could be awarded against trade unions.

(iii) Whether the proposed legislation will actually reduce trade union power and lead to less industrial action.

9. The point at (iii) is the most important one. The Secretary of State argues (paragraph 22) that the knowledge that unlawful official action may lead not only to proceedings against a trade union official but also to putting the unions funds at risk may act as a useful deterrent. On that argument the limits on damages should perhaps be set higher than those proposed. He concedes however (paragraph 23) that the effect on unofficial action is less certain and there might be some undesirable weakening of the unions' authority over such action. The Committee noted that 90 per cent of industrial action is unofficial. He also concedes

(paragraphs 24 and 25) that the success of the proposal depends on the unions' willingness to obey the law, that they may be particularly keen for historical reasons to defy these provisions and that, in the short term at least, the chances of industrial confrontation are likely to be increased.

Political Levy

10. We understand that the proposal under consideration is that trade union members should have to "contract in" rather than "contract out" of the political levy but that this should take effect only after the next General Election. This proposal, like that relating to the immunity of trade union funds, has a historical background; the present provisions date from 1913, were repealed in 1927 and were restored in 1946. As well as considering the proposal on its individual merits, the Committee will need to look at it in the context of the overall balance of the package.

HANDLING

11. When the Secretary of State for Employment has introduced his paper, you may wish to suggest that the Committee deals separately with each of the issues on the lines indicated in paragraph 3 above. The Lord Chancellor is likely to be the major contributor on the detailed issues relating to the closed shop and "union labour only" requirements. On the immunity of trade union funds, the main opponents of the proposal in the earlier discussion were the Lord Chancellor and the Secretary of State for Northern Ireland, but doubts were expressed also, in varying degrees, by the Secretaries of State for Scotland, the Environment, Education and Science and Defence, by the Minister of Agriculture, the Home Secretary, the Chancellor of the Duchy of Lancaster, and the Attorney General; the main supporters were the Chancellor of the Exchequer, the Chief Secretary, and the Secretaries of State for Industry and Social Services.

CONCLUSIONS

12. In the light of the discussion you will wish to reach conclusions on the following points:

(a) Whether the Committee approves the Secretary of State for Employment's detailed proposals relating to the closed shop with the modifications about joinder set out in paragraphs 9 and 10 of Annex 2 of E(81) 112.

(b) Whether the Committee approves the Secretary of State for Employment's detailed proposals on "union labour only" requirements.

(c) Whether the legislation should contain provisions to bring immunities for trade unions in line with those for individuals as proposed by the Secretary of State for Employment in E(81) 103 and further clarified in E(81) 112.

(d) Whether the legislation should contain (depending on what the Secretary of State says at the meeting) a provision on the political levy and, if so, in what form.

(e) Whether the proposals should be published as a basis for consultations after the Debate on the Address, with a view to introducing the Bill next January.

RtA

ROBERT ARMSTRONG

9 November 1981

CONFIDENTIAL

9 November 1981
Policy Unit

PRIME MINISTER

Prime Minister

INDUSTRIAL RELATIONS LEGISLATION: E TOMORROW

MES 9/11

1. We remain convinced that immunity for trade union funds is the key element in the package. The principle that unions are immune in all circumstances is clearly wrong. Establishing now that unions can be held responsible for unlawful acts lays an important foundation stone for a better system of industrial relations. It may be possible to build on this in future years, gradually establishing the principle that unions are accountable for the agreements they sign. But the first essential step is to create a worthwhile sanction by establishing their liability in some circumstances.

2. Critics of this reform will claim that we are putting the clock back to before 1906 - resurrecting all the anxieties raised by the Taff Vale judgment. This argument will be advanced with such ferocity that it may register in the public mind. But it is very misleading. In the interval between Taff Vale (1901) and 1906, unions were widely thought to possess no immunity at all (see paragraph 108 of the Green Paper - annexed for reference). Norman's proposals will leave them with their immunity intact in the vast majority of cases. It is only where they step outside a widely-accepted definition of what is lawful that they will lose their immunity.

3. We think that a number of colleagues did not understand this at the last meeting. Paragraph 2 of the annex to Norman Tebbit's paper does make this very clear. It is only being proposed that actions which are unlawful for individuals should be unlawful for unions too.

4. The proposed position resembles pre-1906 only inasmuch as unions will no longer have total immunity conferred then. Norman Tebbit will need the help of colleagues in explaining and defending the Government's position, to counter the all-too-predictable barrage of misinformed comment. We suggest you remind colleagues of the supportive role they will need to play in explanation later.

I am copying this minute to Geoffrey Howe, Patrick Jenkin, Robin Ibbs and Sir Robert Armstrong.

JOHN HOSKYNS

CONFIDENTIAL

ANNEX

EXTRACT FROM PARAGRAPH 108 OF GREEN PAPER ON TRADE UNION IMMUNITIES

The legislators of 1906 believed that the House of Lords' judgment in the Taff Vale case of 1901 had threatened the very existence of the trade union movement by putting trade union funds at risk as a result of almost any industrial action undertaken by their officials or members.

CONFIDENTIAL

HL

Industrial Relations

cc LOD

cc I. Gow

10 DOWNING STREET

From the Principal Private Secretary

6 November 1981

The Prime Minister has seen your Secretary of State's letter of 29 October 1981 to the Attorney General about the conditions on which Sir Ian Percival might help with the forthcoming legislation on industrial relations.

She understands that the Attorney General is content with this arrangement and, on that basis, she is ready to agree to it.

I am sending a copy of this letter to Jim Nursaw (Law Officers' Department).

CW

CJ

Richard Dykes, Esq.,
Department of Employment.

CONFIDENTIAL

CONFIDENTIAL

cc AD

Caxton House Tothill Street London SW1H 9NA
6400
Telephone Direct Line 01-213
Switchboard 01-213 3000
GTN 213

Rt Hon Sir Michael Havers QC MP
Attorney-General
Law Officers Department
Royal Courts of Justice
LONDON WC2A 2LL

29 October 1981

Dear Michael,

I am now writing, as promised, to set out the conclusions we reached in our conversation yesterday about the involvement of the Solicitor-General in the development and passage of the industrial relations legislation during this next session.

As I told you, I would find it of very great help if I could engage Ian's advice and active support in this area over the coming months, not just because of his legal knowledge but because of his experience of dealing with these matters over many years. At the same time I fully recognise your concern to preserve the proper role of the Law Officers. For them to become involved in the development of policy would clearly call the independence of their legal advice into question.

We therefore agreed that, for the purposes of this Bill only, Ian might be seconded to my Department on the clear understanding that he would not be working here in his capacity as Solicitor-General. If, during the period of this secondment, the advice of the Law Officers were needed, this would be provided by you quite independently.

I am most grateful to you for your help over this and, subject to the agreement of the Prime Minister (to whom I am copying this letter), I hope we can proceed on the basis I have outlined.

A copy of this letter also goes to the Solicitor-General.

Yours

Ref. A05825

PRIME MINISTER

Industrial Relations Legislation

(E(81) 103 and 108)

BACKGROUND

The Government published a Green Paper on Trade Union Immunities in January 1981 (Cmnd 8128). The period of consultation ended on 30th June, and on 27th August the then Secretary of State for Employment circulated to all members of the Ministerial Committee on Economic Strategy, and other interested Ministers, a summary of the views expressed.

2. The Secretary of State for Employment's paper, E(81) 103, sets out his proposals for legislation in the coming Session, as a further instalment of industrial relations reform to follow the Employment Act 1980.

3. The Lord Chancellor in E(81) 108 comments on certain of these proposals (closed shops, "union labour only" requirements in contracts, and the immunity of trade union funds); he argues that they may be difficult to enforce, and insufficiently acceptable to public opinion to survive future changes of Government.

4. The Secretary of State's paper proposes legislation on the following matters:

(a) A range of measures on the closed shop providing for greater protection to individuals (through higher compensation for unfair dismissal, the possibility of action against the trade union as well as the employer, and payment of wages during the period before a case comes to the Tribunal) and supplementing the 1980 Act provisions on ballots for new closed shops by a requirement for periodic ballots on existing closed shops.

(b) Measures to make "union labour only" requirements unlawful in contracts, in seeking tenders and in awarding contracts, and to remove immunity from industrial action which interferes with the performance of contracts primarily on grounds of union membership or non-membership.

(c) The alignment of immunity of trade union funds with the immunity for individuals, subject to a limit on the damages which can be awarded.

(d) Restrictions on the definition of a trade dispute, to exclude, inter alia, cases where the employer is not in dispute with his own employees (e.g. the "Nawala" case).

(e) A provision for selective dismissal of strikers in certain clearly defined circumstances.

(f) An extension of the availability of funds to ballots on wage offers (this would require only Affirmative Resolution under the 1980 Act).

5. In addition we understand that the Secretary of State for Employment will mention orally, because of its political sensitivity, a proposal relating to the political levy paid by trade union members. Under legislation dating from 1913, which was repealed in 1927 and restored in 1946, trade union members have to "contract out" of the political levy; the proposal would be that they should instead have to "contract in".

6. Action is not proposed on the following matters:

(a) "No-strike" agreements.

(b) Enforceability of collective agreements.

(c) Secondary action (although the redefinition of trade disputes will have the effect of further restricting immunity for secondary action).

(d) Picketing.

(e) Compulsory secret ballots.

(f) "Cooling off" periods.

(g) Lay-offs of employees in a strike.

(h) Replacement of immunities by positive rights.

MAIN ISSUES

Far enough or too far?

7. The most important issue for Ministers is whether the Secretary of State's package of proposals for trade union reform does not go far enough, goes too far or is about right. In his paper he accepts the need to maintain a balance between keeping up the momentum of change and going so far ahead of industrial and public opinion that it would be difficult to defend the reforms and

make them stick. It is probable that his predecessor would have been unwilling to go much beyond the proposals on closed shops and "union labour only" requirements in contracts. Mr. Tebbit has however proposed action on two highly contentious issues - the immunity of trade union funds and industrial action which interferes with the performance of contracts on "union labour only" grounds - apart from any proposal he may make for action on the political levy. The Lord Chancellor has reservations on these proposals, and also about some of the less contentious proposals. On the other hand the Secretary of State has not proposed action on two proposals which have found considerable favour - compulsory secret ballots and lay-off of employees in a strike. He will probably argue that he could not add significantly to his package without running the risk of excessive confrontation. He may be prepared to jettison one or two items, if Ministers feel that the package goes too far - perhaps the provision about interference with the performance of contracts on "union labour only" grounds.

Closed shops

8. With the exception of the Lord Chancellor, there is unlikely to be major disagreement with the proposals for action on the closed shop. Although they may have little effect in reducing the bargaining power of trade unions, they give better protection to individuals and they are likely to attract popular support, especially in the light of the recent European Court judgment. As the consultations on the Green Paper indicate, few people believe that it would be practicable to go further and outlaw the closed shop completely. The Lord Chancellor argues that it is not right to pay higher compensation to those dismissed unfairly on closed shop grounds (and also on grounds of trade union membership or activities) than to those dismissed unfairly on other grounds. He also thinks that the proposal for joining the trade union as well as the employer in proceedings is likely to be ineffectual.

"Union labour only" requirements

9. Most of the proposals about "union labour only" requirements (i. e. those concerned with seeking tenders, awarding contracts and drawing up contracts) are likely to attract widespread support. The Lord Chancellor suggests that

some of the proposals may have little practical effect, but Ministers may nevertheless think that they are presentationally and politically desirable. The difficult question, which the Secretary of State discusses in paragraphs 8 and 9 of his paper, is whether to go further and remove immunity from industrial action which interferes with the performance of a contract. The argument against doing this is that such practices are very common, for example in the docks and on construction sites, and are unlikely to be readily abandoned; this may not be the most favourable ground on which to test the workability of the new legislation and particularly the important provisions on immunity of trade union funds. The argument for going ahead is that the other proposals on "union labour only" requirements fail to tackle the main problem; this would no doubt be brought out when the Bill was before the House and the Government would have to justify its reluctance to deal with the problem.

Immunity of trade union funds

10. The proposal to bring immunities for trade unions in line with those for individuals is, as the Secretary of State concedes, his most contentious proposal. This is because it would put the trade unions back in the position they were in between the Taff Vale judgment of 1902 and the Trade Disputes Act of 1906. They would be liable for the unlawful acts of their officials and damages might be awarded against them, to be paid from their funds (other than their provident and political funds) up to certain limits set out in paragraph 24 of Annex 1 of the paper (e.g. £250,000 for a union with more than 100,000 members). The Lord Chancellor argues that it may be undesirable politically to legislate on trade union immunities. But, if the Government decides to do so, he sees difficulties of principle in limiting the damages.

11. In the consultations on the Green Paper many respondents favoured action on this issue, but some of them felt that it was a major step which could be achieved only in the longer term. Many major employers (e.g. Ford, Reed Investment, GKN, Unilever and Shell) and some employer organisations (e.g. the Clearing Bank Employers) were opposed to action of this kind as likely to disrupt industrial relations. The argument for going ahead is that the Government can in this way demonstrate most clearly its determination to bring

the trade unions, as institutions, within the law. The argument against is that the trade unions will be likely to oppose the legislation, and its implementation, to the limit of their strength. A half-way position, not favoured by the Secretary of State, would be to introduce these powers on the basis that they came into effect only after an interval of two years, and thus after a General Election; it is however difficult to argue that such changes are desirable but can be postponed for two years.

12. The discussion of this issue in the Green Paper (especially pages 30-32) drew attention to the practical difficulties in establishing how far a trade union had "vicarious liability" for the actions of its officials. It is proposed to meet these difficulties by a series of tight definitions set out in paragraph 23 of Annex 1 of the Secretary of State's paper. In effect the trade union is rendered liable unless it repudiates the unlawful action by word and by deed. The Lord Chancellor has expressed doubts about the effectiveness of these provisions and the Attorney General may also wish to comment on them.

Definition of "trade dispute"

13. The Secretary of State for Trade, in a letter of 2nd October, pressed strongly, like his predecessor, for legislation to remove immunity from industrial action where there is no dispute between an employer and his employees. This was prompted mainly by the "Nawala" case where a Panamanian vessel at Redcar was blacked in furtherance of the International Transport Federation's world-wide campaign against "flag of convenience" shipping. Although there was no dispute between the shipowner and crew, the House of Lords held that the blacking was not unlawful. It has been argued that the possibility of such action in British ports is harmful to our trade and commerce. The proposals in the Secretary of State for Employment's paper to restrict further the definition of a trade dispute should meet these concerns. They also have much wider implications for the restriction of trade union immunities. There was considerable support for most of the various changes now proposed in the consultations on the Green Paper.

Selective dismissal in a strike

14. Ministers will wish to consider whether the proposals on selective dismissal in a strike go far enough. On the one hand it seems unreasonable that an employer cannot dismiss employees remaining on strike without dismissing also the employees who have returned to work. On the other hand it may be undesirable to allow an employer complete freedom to pick and choose (as, for example, the EEF would have wished). The proposals in the paper would enable an employer to give notice to all employees on strike of his intention to dismiss any who had not returned to work by the end of the notice period.

Ballots

15. The only proposal included on ballots is for an order under the 1980 Act to extend availability of funds for ballots on wage offers. The Secretary of State argues against compulsory secret ballots both for strikes and for elections (paragraphs 7 and 9 of Annex 2). Compulsory ballots have attracted considerable public support. Some argue that such provisions would have an important effect on the longer term in improving the way in which trade unions operate. There are however some practical problems. As the paper explains there is the danger that mandatory strike ballots may sometimes strengthen a trade union's hand. So far as union elections are concerned, there is the difficulty that many unions have few elected officials (the TGWU elects only its General Secretary). There are objections to the Government's becoming involved in prescribing the detailed internal arrangements of trade unions. There are also problems of enforcement since the most obvious sanction would be loss of immunity and this could make trade unions vulnerable to legal action in the course of their normal and proper duties. The Secretary of State suggests that it is preferable for the trade unions to be encouraged, through public and political pressure, to put their own house in order, although he leaves open the possibility of action on union elections in the future.

"No strike" agreements

16. When Ministers discussed the CPRS Report on Pay on 22nd September you particularly asked the Secretary of State for Employment to examine the question of "no strike" agreements in the context of his proposed industrial

relations legislation. His conclusion is the same as that which has been reached whenever the issue has come up before - that such agreements could be reached only at a price which the Government would be unlikely to want to pay (e.g. pay indexation and unfettered arbitration). There may be a few special cases where a bargain of this kind might be thought worth while, and the issue has been posed for the non-industrial Civil Service in the Government's evidence to the Megaw Inquiry. This approach would not however seem suitable for general application.

Lay-offs of employees in a strike

17. These proposals were not included in the Green Paper but were made by the Engineering Employers' Federation (EEF). They are that:

(a) Employers whose business is disrupted by industrial action by some of their employees should be empowered to lay off other employees without pay.

(b) Employers should be freed of all contractual and statutory obligations to their employees if they are laid off because work cannot be provided as a consequence of industrial action by the employees of other employers restricting supply of defined essential goods and services (e.g. electricity, coal, transport).

Earlier this year work was done on proposal (a) as a contingency measure for dealing with selective industrial action during the Civil Service strike. You asked the Secretary of State for Employment to look at this particularly at your meeting on 22nd September, and the Chancellor of the Exchequer has been in favour of action on these lines.

18. There are two main arguments for the proposal. First, it could be presented as putting white-collar workers on the same footing as blue-collar workers and as consistent with the policy of removing such outdated distinctions. Secondly it might help to discourage selective industrial action by a few white-collar workers who can often (e.g. because of the computerisation of modern office activities) cause widespread disruption while the main body of white-collar employees has to receive normal salary.

19. When the proposal was considered earlier this year, both the Lord Chancellor and the Attorney General argued that (outside the Civil Service where it might be held that there was no actual contract between employer and employee)

the legislation would breach an important principle by overriding private contracts. It could also be argued that the proposal would not necessarily improve industrial relations. Employers often rely on their white-collar employees to help them to maintain operations. The legislation would tend towards further alienation of white-collar employees from management. White-collar employees who were opposed to industrial action but had no means of preventing it (e.g. because they were not union members at all, or not members of the union taking the action) would resent being penalised. Moreover there are ways open to an employer of dealing with selective action, for example by suspending employees who refuse to take on certain tasks. It is also possible that, even if there was new legislation on the lines proposed, white-collar unions would devise other forms of harmful industrial action, for example a series of one-day stoppages, which could not trigger the lay-off provisions.

20. Proposal (b), which would lead to the lay-off of white-collar employees generally in a major national emergency, is of a different character. Ministers are likely to agree with the Secretary of State that there might be a case for it in certain circumstances but that it would be better not to legislate until those circumstances arose and the degree of public support could be assessed at the time.

Political levy

21. We understand that the Secretary of State may propose that the change to "contracting in" should take effect only after a delay of two years, so as to avoid any implication that the Government is seeking to influence the outcome of the next General Election. Ministers will obviously wish to consider the political aspects of this proposal very carefully. There is also the argument that inclusion of this item may make it easier for the Opposition to present the legislation as a whole as a partisan measure, rather than a genuine attempt to improve industrial relations.

Implications for legislative programme

22. It is important to minimise so far as possible the difficulties which this legislation will cause for the Parliamentary timetable. The legislative programme for 1981-82 will include a number of other measures which will be

particularly difficult in Parliamentary terms - for example the Bill on Local Government Finance and (probably) the Bill on the Canadian Constitution. There are two other major and contentious measures, the Transport Bill and the Petroleum and Gas Bill, which are not at present expected to be ready for introduction before January, and unless the timetable for those two Bills and for the industrial relations legislation can be improved on it seems inevitable that there will be a lengthy spillover in the autumn of 1982. The Secretary of State may be asked whether there is anything he can do which would enable the Bill to be introduced before the Christmas Recess, for example by publishing his proposals before the Debate on the Address is concluded or by compressing the timetable for consultations.

HANDLING

23. When the Secretary of State for Employment and the Lord Chancellor have introduced their papers, you might invite comments on the overall balance of the proposals particularly from the Chancellor of the Exchequer and the Secretary of State for Industry. The Secretary of State for Northern Ireland will probably wish to comment also from this point of view. The Attorney General should be asked to comment on the legal issues. The Lord President and the Chancellor of the Duchy of Lancaster may wish to comment on the timetable for the Bill and the implications for the legislative programme.

CONCLUSIONS

24. In the light of the discussion you will wish to reach conclusions on the following points:

(a) Whether industrial relations legislation for introduction in the next Session should be drafted on the basis of the proposals made by the Secretary of State for Employment in E(81) 103, with any specific additions, subtractions, or modifications.

(b) Whether the legislation should contain (depending on what the Secretary of State says at the meeting) a provision on the political levy and, if so, in what form.

(c) Whether the proposals should be published as a basis for consultations after the Debate on the Address, with a view to introducing the Bill next January.

RHA

ROBERT ARMSTRONG

28th October, 1981

Prime Minister (2)

You have already seen Mr Tebbit's paper and the Policy Unit's comments.

CONFIDENTIAL

Qa 05709

27 October 1981

MLS 28/10

To: MR SCHOLAR

From: J R IBBS

Industrial Relations Legislation

1. The Secretary of State for Employment puts forward proposals for new legislation on industrial relations and trade union immunities.

2. Rightly, his paper E(81)103 recognises that the trade unions are likely to oppose strongly the proposal to reduce the scope of their immunities, and the proposal that industrial action which interferes with the performance of contracts primarily on grounds of union membership or non-membership should be made unlawful.

3. The fundamental questions are political. Ministers will have to decide, in the light of their assessment of public opinion, whether the risk of confrontation is acceptable in relation to the prospective gains - more equitable treatment of individuals, improving the balance of bargaining power and freeing up the labour market. They will also have to consider the enforceability of the changes proposed.

4. As regards the merits of the proposals themselves, the CPRS has looked extensively at aspects of the industrial relations problem in the course of recent studies. On the central pay issue facing the Government, I would regard the proposal on reducing the immunity of trade union funds as the one most helpful in improving the balance of bargaining power and I would therefore give it priority. I would give similar support to the proposed changes in the definition of a trade dispute.

5. From my own experience I would have doubts about the effectiveness in practice of the proposals on union labour only requirements in contracts.

Whatever a contract may say, behaviour on site when non-union labour is brought in can in some instances become unmanageable. As John Hoskyns has pointed out, it will be important to judge before going ahead with this item whether difficulties of this kind could undermine the credibility of the rest of the package.

6. I am sending a copy of this minute to Sir Robert Armstrong.

JR

CONFIDENTIAL

cc AW
AD

Lord Advocate's Chambers
Fielden House
10 Great College Street
London SW1P 3SL

Telephone. Direct Line 01-212 0515
Switchboard 01-212 7676

The Rt Hon Norman Tebbit MP
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
London SW1N 9NA

27th October 1981

Dear Norman,

E(81)103

Thank you for copying the above paper to me.

I am concerned that your proposals, set out in paragraphs 14 and 15 of Annex 1 to the paper, to allow a dismissed person to sue the union, and to allow an employer to include the union as a party at any stage in the proceedings, may not meet your criterion of being readily explicable and defensible on clear grounds of principle.

The basis of the present action by a dismissed person against his employer is that the employer has acted unfairly in dismissing his employee. Section 10 of the 1980 Act recognised that an employer might have been forced into this action by the conduct of a trade union with whom he had concluded a union membership agreement, and it gave the employer a right of relief against such a union in circumstances where the union had sought to enforce that agreement by improper means, such as by calling or threatening to call a strike. This is unexceptionable from a legal point of view, and fits easily into the existing practice in Scotland and (I believe) England.

Your new proposal seeks to short-circuit the process by giving the dismissed person a right to sue the union as well as the employer. The basis for this right of action, as against the union, is not contractual, for there is no agreement of any kind between the employee and the union. It is not an action in delict (or tort) because there is no requirement for the dismissed person to prove any delict (or tort). All he has to prove is that there is a union membership agreement between the union and his employer, and that the union has consented to the employer's honouring that agreement. This raises two major problems. The first relates to what the tribunal is to do when a dismissed person has established the facts mentioned above? Unless you provide in the statute that a union which has consented to the operation of a union membership agreement is thereby to be liable at least to some extent to compensate

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the victims of it, the tribunal will have no basis upon which to fix any part of the blame for the dismissal on the union, which has not breached any rule. If you say nothing in the statute, I cannot see how the tribunal could attribute any particular share of the blame to the union. If the union's degree of responsibility is to be fixed by reference to the evidence given by the employer, the employee would only succeed against the union if the employer did give evidence, and it would seem pointless in that situation to give a right to the employee to call the union as a party.

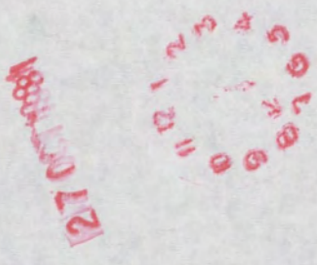
So far as your second proposal is concerned, we already allow an employer to bring a union into an action at any stage before the hearing of the evidence (1978 Act, section 76A(1), as inserted by section 10 of the 1980 Act). This corresponds with the present procedure in ordinary litigation in Scotland, where a defender can call in a third party at any stage up to the hearing of the proof on the merits. The reason for not allowing the calling in of a third party after that stage is that natural justice requires that the third party should hear all the evidence, and be permitted to cross-examine witnesses where appropriate: if he is called in after evidence has been led I can see no alternative to the Tribunal's re-hearing that evidence, which has obvious disadvantages in terms of expense, delay, and conflict of testimony.

I am sorry to have gone into these matters at some length, but both of these proposals would in my view provoke general opposition upon legal, as opposed to political, grounds, and it would be unfortunate if your final policy "package" were vulnerable to attack in such a way.

I am copying this letter to the other members of "E", the Lord Chancellor, the Secretaries of State for Scotland, for Wales, and for Social Services, the Attorney-General, and Sir Robert Armstrong.

Yours ever,

James



jm

Prime Minister (2)

cc J. Vereker
A. Walters
A. Duguid

MLS 26/10

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Rt Hon Sir Geoffrey Howe QC MP
Chancellor of the Exchequer
Treasury
Great George Street
LONDON SW1A OAA

26 October 1981

D Geoffrey.

INDUSTRIAL RELATIONS LEGISLATION

Thank you for your letter of 16 October in which you ask me to re-examine the ideas put forward by the Engineering Employers Federation of giving powers of lay-off to employers whose operations are disrupted by industrial action in one part of the plant or when large sections of the economy are paralysed due to widespread industrial action.

Of course I have considered very carefully these proposals as possible candidates for inclusion in my forthcoming legislative package and for the reasons summarised in paragraph 11 of Annex B of my memorandum to E have concluded that we would not be justified in adopting them for this Bill. The CPRS, you may remember, also took a close look at the EEF proposals in the context of their report on Pay and likewise decided against them. Their reasoning was very similar to my own and I would accept their additional argument that such a move could give a major boost to white collar unionism. I also agree with the CPRS that the time for considering the second of the EEF proposals would be in a major national strike when the need for it would be clear and public support assured.

I doubt very much if the EEF proposals "could usefully be placed alongside the proposal that collective agreements could, with agreement from both sides, be legally enforceable". Employers and unions are of course free under the law as it now is to conclude legally enforceable collective agreements. I do not see that trade unions would be attracted by legal enforceability to return for an undertaking from an employer not to avail himself of such new statutory rights, which he would be legally entitled to go back on. This is on the assumption that the operation of the proposed provisions could not be excluded by an "agreement" which union power might well otherwise exact.

I am not in a position to comment on the operational handling of TRD in the Inland Revenue but I would make two comments on Arthur Cockfield's note generally. First I do not share his lack of enthusiasm for TRD. In my Department's experience, TRD was put to the test during the civil service dispute this summer, and proved an adaptable and effective tool. Secondly the new legislation Cockfield is suggesting in his note is of course quite different from the EEF proposals but no less difficult.

Lastly it is important to remember that the EEF put forward these two proposals as alternatives to any early narrowing of immunities for industrial action. Given the further legislative measures which I am proposing for introduction this session, I have concluded, and I trust that you will agree, that we should not consider the EEF's proposals for this Bill.

I am copying this letter to the Prime Minister.

CONFIDENTIAL

23 October 1981
Policy Unit

PRIME MINISTER

INDUSTRIAL RELATIONS LEGISLATION

1. We think Norman Tebbit has put forward an extremely well-judged package. It accords closely with our view that, as well as correcting obvious abuses, the opportunity should be taken of a further major step towards a more rational bargaining balance.

2. We comment on each of his specific proposals below:

2.1 Closed shop

We support each of the proposals and agree that it would not be sensible to go further by attempting to abolish the closed shop altogether. Large parts of industry may be opposed to revalidation on the grounds that it will destabilise existing relationships. It may be necessary to make the interval 5 years rather than 3, but this could be conceded in response to the final stage of consultation.

2.2 Union-labour-only requirements in contracts

2.2.1 There is widespread support for declaring such contracts - and the restrictive seeking of tenders - unlawful. But Norman rightly points out that discrimination against non-union labour is widely practised on the ground - regardless of what contracts say. Thus, for example, a group of workers on a building site will refuse to allow a non-TGWU member to make a delivery, or refuse access to a non-union sub-contractor.

2.2.2 Under Norman Tebbit's proposals, any union instructions to behave in this way would render the union liable to injunctions and damages. In the case of, say, deliveries to the docks, this could lead to a head-on confrontation with the TGWU if they refused to issue instructions to their members not to obstruct non-unionists. We should consider whether this is likely and, if so, whether these are the best grounds on which to defend and implement the new changes to Section 14.

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2.2.3 If the union did give general instructions not to behave in this way, injured employers would be left to pursue individual shop stewards, local organisers etc if they persisted in refusing access to building sites, etc. We can see this giving rise to quite a large number of cases with potentially troublesome outcomes:

(a) individual "martyrs" being fined or imprisoned; however, such martyrs would probably not attract much public sympathy, provided their behaviour was properly exposed;

(b) the law appearing ineffective if the action can be demonstrated to be genuinely spontaneous (if no-one induces it, there is no tort);

(c) behind-the-scenes pressures on people to keep quiet about unlawful action. (Of course, the existing pressures are often repugnant, and the new proposals would be intended to stop them. But at first they might be intensified.)

2.2.4 Again, we must satisfy ourselves that this change will not generate so many controversial cases at local level that the label "unworkable" will begin to be attached to the whole of this new package - thus putting at risk other more important changes.

2.2.5 Of course, union-labour-only, whether by contract or not, is indefensible: it must be right, in principle, to tackle this problem, about which many employers (and back-benchers) feel very strongly. It is simply a matter of timing and tactics. It might, for example, be better to start by declaring contracts unlawful and only move beyond that if there is then widespread abuse on the ground (which could be well-publicised and would thus strengthen the Government's moral position for going further). But we would have to expect criticism from some of our own back-benchers.

for not very long.

2.3 Immunity of trade union funds

2.3.1 We think Norman has picked the right priority issue. As he says, it will provoke strong opposition, but we will be able to point out that trade unions will only be at risk if they act in ways which are already not lawful for an individual. (This case might be more convincing if the change on union-labour-only practices was deferred.) This message will need to be sold very hard to defeat the misrepresentation that will be attempted. The first likely cases to arise will be important. If union-labour-only issues

were not pushed to the forefront, what would be likely to take their place? Would these be better or worse as a testing ground? Would the adversary be stronger or weaker?

2.3.2 At first sight, the proposed scale of limits to damage might appear too modest. But the limit on damages could be reached by each of several injured parties, and there is no limit on the fines that a court could impose for contempt. On balance, therefore, we would not challenge Norman's judgment about the scale. Its moderation should help to sell the change in some quarters.

2.4 Definition of a trade dispute

These changes are overdue and widely supported.

2.5 Selective dismissal in a strike

Norman Tebbit has not gone all the way with the EEF proposal that employers should be quite free to discriminate between strikers. Instead, he proposes that the employer should be less restricted, treating all those on strike at the time he acts in the same way, but free to choose when he acts. We would have preferred complete freedom for the employer to discriminate as this would be a potent source of insecurity to strikers, especially selective strikers. However, his proposal is a step forward.

2.6 Ballot

As you know, we favour further action on ballots, but accept that this could be done later. There is a limit to the number of reforms that should feature in this package. Ballots for strikers or elections to union governing bodies might be good Manifesto material.

2.7 Lay-off pay

2.7.1 We agree that the wider EEF proposal - to give employers blanket powers of lay-off when affected by a strike in essential services - went too far. But Norman Tebbit does not advance a convincing case against the much more defensible narrow proposal that an employer should be able to lay off his own employees when there is no work for them due to the action of a group of fellow employees.

It would be possible to build in safeguards. For example, the provision need only apply if there is no collective agreement on lay-off pay (so it would not override an agreement), and where those laid off had an interest in the outcome of the dispute.

2.7.2 We feel that employers' present inability to lay off white-collar workers during a strike by their colleagues amounts to an invitation to selective action - which should be seen to be a growing problem. However, there is the difficulty that Jim Prior did not raise this proposal in the Green Paper and, as a consequence, Norman Tebbit is correct in saying that it has not yet received widespread support. It may well be that this change is of more potential value to Government than to private sector employers (who are not uniformly keen on it). But it could be sold as bringing the position of white-collar workers more closely into line with the existing situation for blue-collar workers.

I am copying this minute to Geoffrey Howe, Patrick Jenkin and Norman Tebbit.

JOHN HOSKYNS

Prime Minister

This is in line with the Policy Unit's recent view on the subject.

MLS 16/10

cc J. Vereker
A. Walters
A. Duguid (2)

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

16 October 1981

The Rt. Hon. Norman Tebbit, MP
Secretary of State for Employment

Dear Norman

INDUSTRIAL RELATIONS LEGISLATION

When we discussed the other day your forthcoming E Committee paper on industrial relations, I forgot to mention one proposal which does, I think, deserve to be re-examined.

I have in mind the idea put forward by the Engineering Employers' Federation of giving powers to lay off other or all employees without pay when the employer's operations are disrupted by industrial action in one part of the plant. The EEF have suggested that this power might also apply when large sections of the economy were paralysed due to widespread industrial reaction and the employer was unable to continue operations.

Robert Carr and I considered and, after a good deal of thought, rejected this idea in 1970-1. But a lot has changed since then. The selective strike by a small group of workers has become an increasingly powerful weapon. It inflicts maximum economic damage on the employer while minimising the economic repercussions for the employees, the majority of whom can often find themselves suspended on generous lay-off or even full pay. This tactic is also becoming more widely used. As you will see from the enclosed note which Arthur Cockfield has prepared for me, it was used to disrupt Inland Revenue operations most effectively during the recent Civil Service dispute. Only a negligible proportion of those involved in the disruptive action paid the full economic consequence of lost pay. But vast amounts of revenue were delayed.

I believe that giving power to employers to suspend other employees without pay when their operations are being disrupted by a small group of workers could be an important

/step in

step in redressing the current imbalance in industrial relations. Perhaps it could usefully be placed alongside the proposal that collective agreements could, with agreement from both sides, be legally enforceable. For it would give to employers something of real value to bargain away, for the sake of securing an enforceable agreement.

At all events, I hope you are willing to consider including the idea as an option for colleagues to consider.

I am copying this letter to the Prime Minister.

GEOFFREY HOWE

1. It proved impossible in the recent strike to use suspension as a weapon for dealing with Civil Servants refusing to carry out their normal duties because of the elaborate procedures involved including rights of appeal. I do not know whether this was a reflection of the statutory position: or of agreements with the Civil Service Unions: or of the generally weak attitude of CSD.

2. The chosen weapon was "Temporary Relief from Duty" or "TRD". The CSD have claimed that this was an effective weapon. In fact it was nothing of the sort. Half of the total staff on strike, or "TRD'd", were in the Inland Revenue, and we, and not CSD, are in a position to know what the true position was.

3. The Unions learned very quickly how to circumvent TRD. This took two forms. First evasion of the service of the notices involved eg by absenting themselves when the senior office deputed to serve the notices appeared. To a limited extent we were ourselves able to counter these tactics on the basis of legal advice that the full procedure originally laid down was not necessary.

Second by a process of "box and cox" operated by the Unions. As soon as one group of staff were TRD'd, another group would start disruptive action. When the second group was TRD'd, the first group would return to working claiming that they were prepared to work normally in which event, under the TRD rules they had to be allowed to resume work and of course receipt of pay. The success of this manoeuvre is illustrated by the fact that after three months we had only succeeded in TRD'ing about an eighth of the Collection Staff despite the fact that virtually all of them were failing to work properly. (Another eighth were on strike but less than a quarter of the Collectio Staff and a negligible proportion of the total staff engaged in the disruptive action lost their pay and were a charge on the Union).

4. To some extent these problems may have been due to a failure to take advantage of the letter of the law in the way that the Unions did. With a much tougher attitude on the part of CSD, possibly more could have been done. But basically the difficulty is that the law is loaded, or appears to be loaded, against the employer. What is

needed is a clear right on the part of the employer where a trade dispute exists to suspend members of the staff who are engaged in disruptive activity without going through the elaborate procedures laid down for TRD, and without the obligation to allow staff to resume duty (and receipt of pay) on a claim that they are now prepared to work normally.

5. I suggest that the letter to Mr Tebbitt says that experience in the current Civil Service strike, which affected the Inland Revenue more than any other Department, demonstrated clearly that the TRD procedure was a broken reed and of little use against determined Union tactics. What is needed is a statutory right for the employer, where a trade dispute exists, to suspend employees without pay if they refuse to carry out their normal duties and to continue this suspension as long as the dispute continues even if the employees claim subsequently that they are prepared to work normally.

A C
7 October 1981

PART 7 ends:-

S/S Irodeto S/S Empleyment 2/10/57

PART 8 begins:-

Ch/Exchr S/S Employer 16-10-57

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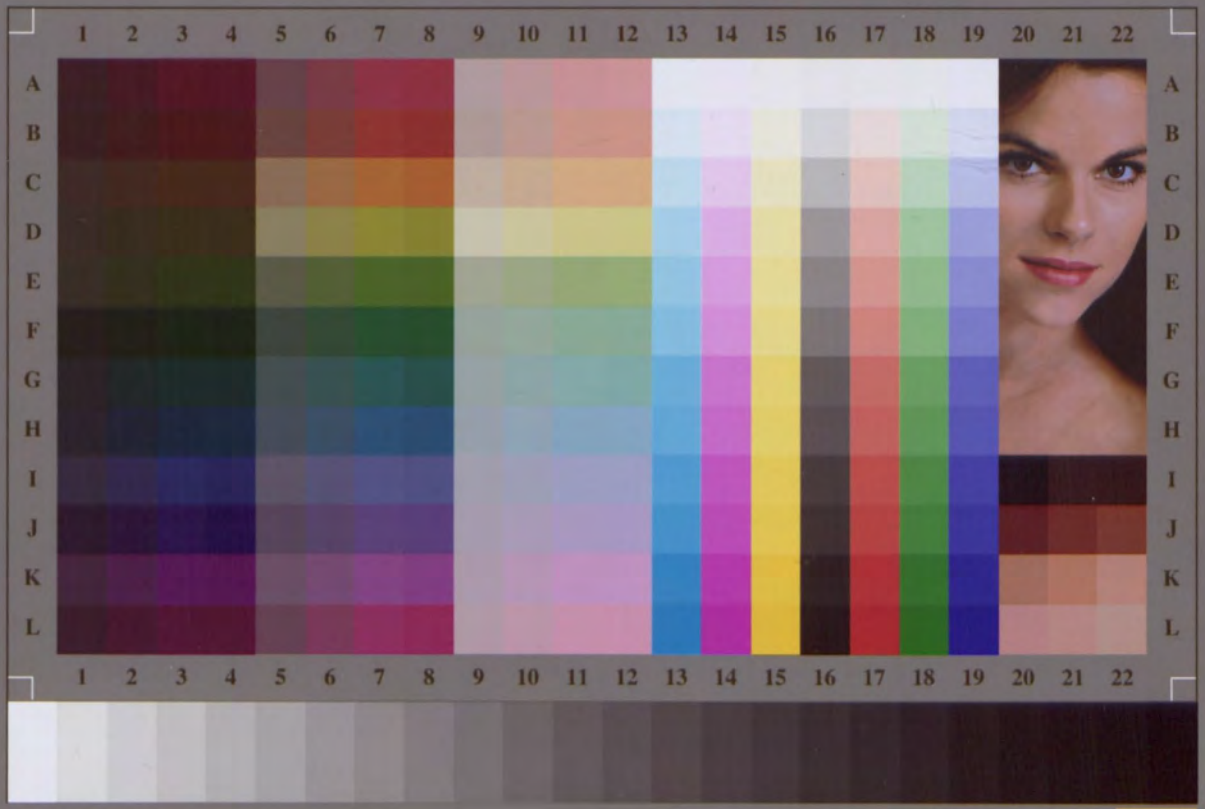

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