

PRIME MINISTER

EMPLOYMENT BILL

1. THE APPARENT PROBLEM

1.1 Outside experts say that the secondary blacking provisions won't work.

1.2 They also say that Section 17 makes interlocutory injunctions impossible.

1.3 We find the letter from Thomas Morrison QC very convincing indeed. The key point is that, as he says, even if he is wrong he is confident that he is sufficiently correct to prevent an interlocutory injunction. This means that Clause 17 will not provide protection promised in the Manifesto. (Jim Prior's letter does not refer to Mr Morrison's at all, although we understand he has seen it.)

1.4 Jim Prior is, of course, correct in saying that Cabinet did not decide to make all forms of secondary action unlawful. But Cabinet bought a formula from Jim Prior on the basis that it was workable. Powerful evidence has now come forward to the effect that it is not workable as presently drafted.

1.5 Jim maintains that if all secondary action was unlawful, this would be unenforceable. This stems partly or wholly from our failure, so far, to expose trade union funds.

2. OPTIONS OPEN

2.1 Do nothing.

- 2.2 Get the drafting right so that the present Bill achieves its own objectives.
- 2.3 Use this as an opportunity for making all forms of secondary action unlawful.

3. THE LEGAL QUESTIONS

3.1 Are the legal experts right in saying that the secondary blacking provisions won't work?

3.2 If so, is JP right in saying that to remove all immunities for secondary action would make the law unenforceable? If he is, would exposure of trade union funds solve that problem? If it would, can it be done fast or is it a complex change, raising all sorts of other problems (eg Percival appeared to be against that, though with us on most other issues)? If it can be done fast, will JP agree to doing it? He has said that he would change the provisions on secondary blacking if the present ones didn't work. (This is slightly inconsistent because he then says that that wouldn't be enforceable; or else he is saying that the only way of enforcing it - exposure of funds - is something he would not accept.)

4. THE POLITICAL QUESTIONS

4.1 Let's assume the outside experts are right and the unions will be able to ^{abuse} ~~cause a reaction under~~ these provisions. Can we balance the tactical damage caused by that (the actual damage to employers, the further winning of big wage awards and consequent unemployment, the public demonstration that the Tories' Employment Bill didn't work) against the possible strategic advantage both in the country at large and internally?

- For example, it would create the public opinion conditions which are conducive to "a shock package" or a stronger Green Paper.

- It could powerfully influence Cabinet colleagues' minds on JP's whole approach.
- It could allow a general stiffening of our whole posture on industrial relations provided JP was agreeable to it.
- It may be the only way to persuade the trade unions to walk into the "exposure of funds" trap, which seems to be the measure they really fear, for obvious reasons.

4.2 Is a second bite at industrial relations really difficult within the life of this Parliament? Or can it be done provided we start now the necessary contingency planning to ensure that we are ready to do it just as soon as there is evidence of another winter of discontent? Is there a risk that union militants might play it cool and only use the loopholes in the present Bill to start tearing the place apart during the run-up to the next election? (This seems unlikely. Grass roots militants do not seem to be sufficiently well-disciplined to be held back in a conscious game plan of this kind; and the game plan could itself misfire completely and bring exactly the same pro-Tory response from the public as we saw before the last election - we would sail into victory on another anti-union Manifesto.)

4.3 ~~()~~ What is our real objective in moral and legal terms? Do we regard limited secondary blacking as a necessary concession in horse trading with the trade unions? Or do we regard secondary blacking of any kind as simply morally wrong?, Not in the spirit of our Manifesto, out of line with prevailing practice in other countries?

John Hume