

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE  
UNDER SECTION 55(1) OF THE TRADE UNION AND LABOUR  
RELATIONS (CONSOLIDATION) ACT 1992**

**MR P HILL**

**V**

**THE BAKERS FOOD AND ALLIED WORKERS UNION**

**Date of Decision:**

**31 October 2002**

**Decision**

Upon application by the Applicant under section 55(1) of the Trade Union and Labour Relations (Consolidation) Act 1992.

1. Declaration:

1.1 I declare that the Bakers Food and Allied Workers Union (“the Union”) is in breach of section 46(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) by failing to secure that its General Secretary holds his position by virtue of having been elected at an election satisfying the requirements of Chapter IV of the 1992 Act.

1.2 Where I make a declaration and am satisfied that steps have been taken by the union with a view to remedying the declared failure, or securing that a failure of the same or any similar kind does not occur in the future, I am required by section 55(4) of the 1992 Act to specify those steps.

1.3 At its Annual Conference in June 2002 the Union amended its rules to provide for the election of the General Secretary every five years. Further, the Union held an election for the position of General Secretary in 2002 at which Mr Marino, the incumbent General Secretary, was elected unopposed.

2. Enforcement Order:

The Union shall forthwith treat the election of Mr Marino to the position of General Secretary held in 2002 as having taken effect on 9 August 2002 and his term of office as having commenced on that date.

## **REASONS**

1. By an application received in this Office on 25 March 2002, the Applicant made a number of complaints against his union, the Bakers Food and Allied Workers Union (“the Union”). Following correspondence with my Office, the only application which the Applicant now pursues is that:-

The Bakers, Food and Allied Workers Union (BFAWU) breached section 46(1)(a) of the 1992 Act in that it failed to hold an election for the post of General Secretary of the Union which satisfies the requirements of the 1992 Act.

This is a matter within the jurisdiction of the Certification Officer by virtue of section 55(1) of the 1992 Act.

2. I investigated the alleged breach in correspondence. As required by section 55(2)(b) of the 1992 Act, the parties were offered the opportunity of a formal hearing. Despite the fact that the Union admitted the alleged breach, the Applicant requested a hearing to advance arguments as to the enforcement order that I might make. A hearing was held on 18 October 2002. The Union was represented by Mr C Hantom of Whittles solicitors. Mr Marino, the General Secretary of the Union, was also present. Mr Hill acted in person. The facts were agreed. A bundle of documents was prepared for the hearing by my Office which consisted of the relevant exchanges of correspondence with the parties, together with their enclosures. This decision has been reached on the basis of the representations made by the Applicant and the Union, together with such documents as were provided by them.

### **Findings of Fact**

3. Section 1 of the Trade Union Act 1984 is the predecessor of section 46(1) of the 1992 Act and came into effect on 1 October 1985. Prior to the events in question, Mr Marino was last elected to the position of General Secretary of the Union in November 1979.
4. The Applicant is a member of the Union. He was also one of its full time officials until his dismissal on 14 March 2002.

5. After my Office had put the Applicant's complaint to the Union, the Union's solicitors admitted the breach of section 46(1) of the 1992 Act by their letter of 14 June 2002. The Union's solicitors went on to explain the steps that had been and were being taken by the Union to remedy the breach.
6. The Union's Annual Conference was held between 9-12 June 2002. At that Conference a rule change was approved which amended rule 20.93 (election of General Secretary) by adding the following words, *"Thereafter s/he will face re-election every five years except in the case where such an election would be within five years of his/her retirement date"*. On the 12 June the Executive Council of the Union endorsed the rule change and arrangements were made for an immediate election for the positions of General Secretary and President. Nominations opened on 14 June and closed on 28 June. The ballots, if any, were to have been held between 15 and 30 July.
7. On 1 July 2002 Mr Marino sent a circular or cyclo to all Branch Secretaries, Executive Council members and Full Time Officers in which he stated that the only nomination for the position of General Secretary received by the 28 June deadline was himself and that the only nomination received for the position of National President was Mr Draper. The cyclo continued, *"Therefore both National Officers are re-elected and this term of office will commence 1 January 2003"*. The results of these elections were placed before the Executive Council at its meeting of 8-9 August and duly endorsed.

### **The Relevant Statutory Provisions**

8. The provisions of the 1992 Act which are relevant for the purpose of this application are as follows:-
  - "46(1) A trade union shall secure -*
    - (a) that every person who holds a position in the union to which this Chapter applies does so by virtue of having been elected to it at an election satisfying the requirements of this Chapter, and*
    - (b) that no person continues to hold such a position for more than five years without being re-elected at such an election.*

- 55(1) *A person having a sufficient interest (see section 54(2)) who claims that a trade union has failed to comply with any of the requirements of this Chapter may apply to the Certification Officer for a declaration to that effect.*
- 55(4) *Where he [the Certification Officer] makes a declaration and is satisfied that steps have been taken by the union with a view to remedying the declared failure, or securing that a failure of the same or any similar kind does not occur in future, or that the union has agreed to take such steps, he shall specify those steps in the declaration.*
- 55(5A) *Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements -*
- (a) *to secure the holding of an election in accordance with the order;*
  - (b) *to take such other steps to remedy the declared failure as may be specified in the order;*
  - (c) *to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.*

*The Certification Officer shall in an order imposing any such requirement as is mentioned in paragraph (a) or (b) specify the period within which the Union is to comply with the requirements of the order."*

## **The Union's Rules**

9. The Union rules relevant to the Applicant's complaint are as follows:-

20.93 **Election of General Secretary**

The General Secretary shall be elected under the Unions balloting procedure, on a national basis, as laid down under Standing Order 18.

20.94 **Duties of General Secretary**

- (a) ...
- (b) ...
- (c) The General Secretary shall be a permanent Official so long as s/he continues to give satisfaction to the majority of the Union.

## **Conclusions**

10. The Union admits that it is in breach of section 46(1) of the 1992 Act by failing to secure that Mr Marino holds his position as General Secretary by virtue of an election satisfying the requirements of Chapter IV of the 1992 Act and I so declare.
11. The Applicant requested that I make an enforcement order that the Union complies with the spirit and intent of Chapter IV of the 1992 Act, observing that the Union has only complied with the law with considerable reluctance. I decline to make such an enforcement order as I consider that to do so would be inappropriate and outside the scope of section 55(5A) of the 1992 Act.

12. Insofar as the Union has stated that Mr Marino's term of office as General Secretary pursuant to his re-election in 2002 will begin on 1 January 2003, the Union continues to be in breach of section 46(1) of the 1992 Act. The Union offered no explanation of a practical or constitutional nature as to why 1 January 2003 had been chosen as the operative date for the commencement of the term of office of the General Secretary. Having regard to the Union's long history of having failed to comply with the relevant legislation on the election of General Secretary, I make an enforcement order that the Union shall forthwith treat the election of Mr Marino to the position of General Secretary as having taken effect on 9 August 2002 and his term of office as having commenced on that date.

David Cockburn  
Certification Officer