

D/3/97

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

**IN THE MATTER OF A COMPLAINT
AGAINST THE TRANSPORT AND GENERAL WORKERS' UNION**

Date of decision:

29 May, 1997

APPLICATION AND DECISION

1. Under section 55 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") I am empowered to make, or refuse to make, a declaration on an application of any person who claims that his or her trade union has failed to comply with one or more of the provisions of Chapter IV, Part I of the 1992 Act concerning the conduct of elections to certain positions. Whether I make or refuse to make a declaration, I am required to give reasons for my decision in writing, and those reasons may be accompanied by written observations on any matter arising from or connected with the proceedings.

2. On 30 December 1996 I received a complaint from a union member who sought a declaration from me that the Transport and General Workers' Union ("TGWU" or "the union") did not comply with requirements of the 1992 Act in respect of a by-election held in January 1997 for one vacant position on the union's executive. The position was that of the member representing the trade group for Food, Drink and Tobacco ("FD&T").

3. The complainant, who is a Branch secretary of the union, alleged that 34 TGWU members received ballot papers in this by-election to which they were not entitled. She claimed this was because these members had been incorrectly allocated by the union to the FD&T trade group.

She said she knew that at least one of these members had voted in the by-election and that therefore the result of the by-election included votes which were not valid.

4. For the reasons set out below I refuse to make the declaration sought. I made enquiries of both the complainant and the union in this matter and decided it was not appropriate in this instance to give the parties an opportunity of being heard before making my decision. This was a case where there was no material dispute about facts and the only issue between the complainant and the union was how the law should be applied to those facts.

Factual background

5. The TGWU is the second largest trade union in Great Britain. Its structure includes thirteen trade groups of which the FD&T is one. Every member of the union is allocated to a particular trade group. This occurs firstly when the member joins the union and can subsequently occur when the member changes his or her job or the job content alters significantly. The allocation is done by a regional officer of the union. Each trade group has "a seat" on the executive of the union. In the particular circumstances of this case a by-election arose at the beginning of this year in respect of only the FD&T member.

6. Prior to the by-election the complainant and another branch official had on a number of occasions complained to their regional officer that certain of their Branch members had been allocated to the wrong trade group. On 2 January 1997 a meeting between the union's regional officer and the complainant took place to discuss the issue of mis-allocation of those branch members to this trade group. The complainant was particularly concerned that the mis-allocation would lead to "ballot rigging". Following that meeting the regional officer decided on the 6 January 1997 to reallocate 34 of the FD&T members of the branch to two trade groups which were more appropriate to the changed nature of the business in which they worked. It is these 34 members and their entitlement to vote which is at the heart of this case.

7. By coincidence also on 6 January 1997, the independent scrutineer appointed to conduct the by-election ballot for the FD&T trade group executive committee member dispatched the ballot papers to the members of that group. The list of members sent ballot papers was based on the membership of the FD&T trade group on 30 September 1996. It consequently included the 34 members who had on 6 January 1997 been transferred to other trade groups.

8. When conducting ballots of this nature, it is the union's policy to base entitlement to vote on the membership list for the relevant trade group as it stood on the last quarter day before the election, provided the quarter day is sufficiently far in advance of the day of dispatch of the ballot papers to enable the necessary checks on validity to be made. In this case the union chose 30 September 1996 (the 31 December being too close). Changes in membership to the FD&T group after that date were ignored. I note in passing that even if the line had been drawn at 31 December these 34 members would have been included among those entitled to vote.

9. This case is therefore about the effect of counting in the result votes by members who may not have been entitled to vote. It is not about a claim that a person did not have a vote to which they were entitled.

10. Section 46 of the 1992 Act requires that every member of the executive of a trade union holds that position by virtue of having been elected to it at an election satisfying the requirements of Chapter IV of Part I of the 1992 Act. Section 50(3) states that the rules of a trade union may restrict entitlement to vote to members who fall within:

- “(a) a class determined by reference to a trade or occupation,
- (b) a class determined by reference to a geographical area, or
- (c) a class which is by virtue of the rules of the union treated as a separate section within the union,

or to members who fall within a class determined by reference to any combination of the factors mentioned in paragraphs (a), (b) and (c).”

11. Section 50(4) however prevents a trade union member being denied entitlement to vote in all elections held for the purposes of the Chapter (unless the member is unemployed, in arrears with subscriptions or contributions or because he is an apprentice, trainee, student or new member).

12. Section 50(1) requires that subject to the provisions I have set out above that entitlement to

vote shall be accorded equally to all members of the trade union.

13. I have noted in a previous decision (D/4-9/96) that there is no express statutory provision relating to invalid votes, other than that section 51(6) requires that the ballot should be conducted so as to secure that "the result of the election is determined solely by counting the number of votes cast directly for each candidate". I took the view in that case that it was Parliament's intention for "votes" to mean valid votes and I remain of that view.

14. Therefore in this case I must first decide whether the 34 members were entitled to vote. If they were not I must consider whether the election was determined by "invalid" votes.

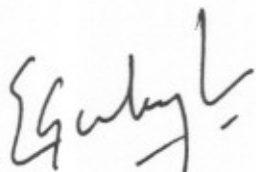
15. The first issue is not simple. The union has decided that these 34 members had been placed in the wrong trade group. It has now rectified this error. The question of allocation to the most appropriate trade group is by no means straight-forward. Many jobs have characteristics appropriate to more than one trade group and of course those characteristics may change from time to time. There are therefore bound to be instances of uncertainty and mis-allocation. It has to be borne in mind however that every member of the union is allocated to a particular trade group at any given time. The misplacement of members in the wrong group does not result in a member being given more than one vote, or (except in the case of by-elections) a member being deprived of the right to vote in an election for a trade group member. The harm is that mis-allocation leads to voting in the wrong "constituency".

16. My investigations into this complaint uncovered no evidence of ballot rigging or deliberate mis-allocation of members to a trade group for any purpose. I found not a hint of any ulterior motive.

17. This means I have to decide whether the union's approach of fixing those entitled to vote in the by-election by reference to a membership set at 30 September 1996 in all the circumstances of this case breached the statutory provisions. I have concluded that they do not. The fact that a group of members were subsequently transferred to another trade group does not in my opinion mean that they were not entitled to vote at the date of the election. The trade group constituency was determined under the rules and by-laws of the union as being the membership of that group on 30 September 1996.

18. If I am wrong in this approach and the members were not entitled to vote, it is the case that even if all 34 members had voted, the ballot would not have been determined by their invalid votes being cast. The winning candidate received 8,962 votes and the runner up only 6,558. In this context, the number of invalid votes is inconsequential.

19. It is for these reasons that I refuse to make the declaration sought.

A handwritten signature in black ink, appearing to read 'E G Whybrew', with a stylized flourish at the end.

E G Whybrew
Certification Officer