

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 CIVIL AND PUBLIC SERVICES ASSOCIATION**

Date of Decision: 17 May 1995

DECISION

Under section 55 of the Trade Union and Labour Relations (Consolidation) Act 1992 (the Act) I am empowered to make, or refuse to make, a declaration on the 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 Act concerning the need for, and the conduct of, elections to certain positions within the union. In making a declaration I am required to specify the provisions with which the trade union has failed to comply.

For reasons which follow I decline to make a declaration that, by including a list giving the political groupings of some of the candidates with the voting papers for the 1994 national elections, the Civil and Public Services Association failed to comply with the requirements of section 51(4) of the Act.

The application

1. On 30 March 1995 I received a formal complaint from a member of the Civil and Public Services Association ("the union") stating that when conducting the 1994 national elections for president, national vice-presidents and national executive committee members the union had issued a ballot pack that was not in compliance with section 51(4) of the Act in that the pack included a list, separate from the voting paper, listing **some** of the candidates by political grouping.

The Law

2. Section 46(1) in Chapter IV of the Act requires a trade union to 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 ...".

3. Section 46(2) contains a list of positions to which the Chapter applies. The list includes "member of the executive", "any position by virtue of which a person is a member of the executive", and "president".

4. Among the requirements of the Chapter there is at section 51(4)(a) one enjoining the union to secure so far as is reasonably practicable, that every person who is entitled to vote -

"(a) have sent to him by post, at his home address or another address which he has requested the trade union in writing to treat as his postal address, a voting paper which either lists the candidates at the election or is accompanied by a separate list of those candidates; and ..."

5. Section 51 also provides -

"(1) The method of voting must be by the marking of a voting paper by the person voting.

(2) Each voting paper must -

(a) state the name of the independent scrutineer and clearly specify the address to which, and the date by which, it is to be returned,

- (b) be given one of a series of consecutive whole numbers every one of which is used in giving a different number in that series to each voting paper printed or otherwise produced for the purposes of the election, and
- (c) be marked with its number".

The Facts

6. The elections complained of were for the president, vice-presidents (who are members of the union's national executive) and ordinary members of the national executive.

7. The separate list of candidates referred to by the complainant was one of four items in the ballot pack sent to members voting in the elections. The four items in the pack were:

- (i) the election addresses of all the candidates;
- (ii) a pre-paid addressed envelope in which to return the voting paper;
- (iii) a voting paper listing **all** the candidates in the various elections;
- (iv) a separate list of **some** of the candidates in the various elections listing them by political groupings.

The complainant's argument

8. The complainant's argument was that the law does not permit the separate list (referred to in 7(iv)) to be sent out with the ballot paper. The basis for his contention rested on an interpretation of section 51(4) of the Act in which a number of key words were emphasised by the complainant as follows:

"so far as is reasonably practicable, every person who is entitled to vote must -

- (a) have sent to him by post ... a voting paper which **either** lists the candidates at the election **or** is accompanied by a separate list of those candidates".

9. The complainant contended that the provisions of this sub-section have two effects namely:-

- (a) that the union had to choose whether it sent a voting paper which listed **all** the candidates or a separate list of **all** candidates (ie. "those candidates" in the words of section 51(4)(a) of the Act); it could not do both: and
- (b) the words prevent the union including with the ballot paper any other extraneous material not expressly required to accompany the ballot paper under the provisions of the Act.

10. The complainant further argued that if it were concluded that section 51 does not prevent the union from sending a separate list which includes some of the candidates provided that the union has included a ballot paper which lists all of them, by applying the same principle of interpretation it should follow that the law would permit a union to send a **voting** paper which listed some of the candidates if the union had included a separate list of all the candidates.

11. He further argued that as the separate list did not include all the candidates and named some of the candidates twice it was misleading and influenced voters against certain candidates - particularly those excluded from the separate list.

Reasons for the decision

12. The elections complained of are clearly ones which have to satisfy the requirements of Chapter IV of Part I of the Act (see paras 3 and 6).

13. It is not disputed that the ballot paper used in these elections satisfied the requirement of section 51(4)(a) in that it contained the name of each candidate standing. It is also the case that the separate list about which the complainant complains did not list all of the candidates. It follows that the separate list which is subject of the complaint is not a list which satisfies the requirements of section 51(4). In order to determine this case I do not therefore need to decide the question whether a union can adopt a "belt and braces" approach by both complying with the requirement to list the candidates on the voting paper as well as sending a separate list of those candidates. However the complainant's contentions rest greatly on the assumption that a union may not do this. It might be helpful therefore if I deal with his arguments about this issue.

14 The purpose of section 51 is very clear. It is to ensure that voters in the election have before them a complete list of the candidates. Section 51(4) gives a union two ways of meeting this requirement. Nothing in the section, in my view, prevents a union from doing both. If this had been Parliament's intention I am sure it would have said so expressly. In my opinion it does not matter that a separate list of all or some of the candidates is also included where the ballot paper lists all the candidates; because the ballot paper lists the candidates there is no need to satisfy the alternative option of including the full list of candidates.

15. In the complainant's view this interpretation of section 51(4)(a) cannot be correct as it would enable the union to satisfy the section by sending a full list of candidates and the voting paper naming only some of them. This view is based on the mistaken belief that there is a symmetrical treatment of voting papers and of lists in section 51 of the Act. There is not. The provisions of section 51 as a whole **require** the despatch of a voting paper which must satisfy certain requirements. It merely **permits** the despatch of a list as an alternative to one of those requirements.

16. The voting paper is required to: state the name of the independent scrutineer; clearly specify the address to which, and the date by which it is to be returned; be given one of a series of consecutive whole numbers and be marked with that number. It is common sense that those voting must be aware of candidates standing in the election. Section 51(4)(a)

provides for this to be done in one of two ways, either by naming all the candidates on the voting paper or by a separate list of all the candidates. A list naming only some of the candidates would not be a list satisfying section 51(4)(a) and a voting paper naming some but not all the candidates would, in my opinion, not be a voting paper in any meaningful sense at all. It follows in my view that section 51(4)(a) does not permit the voting paper to list only some of the candidates. It must list either all or none. In this case the voting paper included a list of all of the candidates standing in the election and therefore satisfied section 51(4)(a). The accompanying list, which did not name all the candidates, is not a separate list to which section 51(4)(a) refers.

17. In order to decide whether the sending of such a list is unlawful I must therefore decide whether the sending of such material with the ballot paper is made unlawful by the provisions of section 51 or by any other provision of Chapter IV of Part I to the Act. I do not find that section 51(4) should be read as preventing a union from including extraneous material with the ballot paper. Again if this had been Parliament's intention I am sure it would have said so expressly.

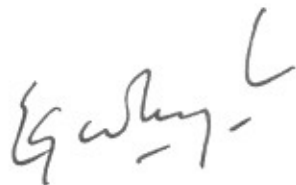
18. Indeed in respect of trade union ballots relating to the approval of an instrument of amalgamation or transfer of engagements section 100C(5) places restrictions on what may be included with the ballot paper in such a ballot. This provision was expressly inserted by the Trade Union Reform and Employment Rights Act 1993. No such express provision has been introduced into Chapter IV of the Act. As there is no other provision excluding inclusion of such a list with the ballot paper in Chapter IV of Part I of the Act I do not find the inclusion of the list to be unlawful.

Observations

19. The complainant made the point that the issue of additional material, particularly incomplete lists of candidates, did not give all candidates equity of treatment and could have influenced the outcome of the ballot. I have commented on the question of "fairness" and "influence" in previous decisions. However "unfair" a member or candidate might feel it to be, the legislation does not prohibit a union seeking to persuade members to nominate and vote for certain candidates rather than others. The law does provide that the process of

preparing and distributing election addresses, of preparing and distributing voting papers, of voting and of counting votes shall be done in an essentially even handed way. Providing the union satisfies these provisions it is not prohibited from giving support and encouragement to selected candidates.

20. In the circumstances it is not for me to interpret the technical requirements of the election and voting process in a way that seeks to impart a degree of "fairness" not inherent in the legislative provisions.

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

E G WHYBREW
Certification Officer