

D/1/93

**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 GRAPHICAL, PAPER & MEDIA UNION**

DATE OF DECISION

11 March 1993

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 their trade union has failed to comply with one or more of the provisions of Part I Chapter IV of the Act which imposes a duty to hold elections for certain positions. For the reasons set out below, I decline to make a declaration in this case.

The application

1. On 2 October 1992 I received a formal complaint from a member of the Graphical, Paper and Media Union (the union) alleging that the union had failed to ensure that four non-voting members of its National Executive Council (NEC) had been elected to their posts within the last five years. The four named were Mr G Beattie, Mr E Chard, Mr E Gillespie and Mr J Mitchell, each of them a National Officer of the union.

The Facts

2. The Graphical Paper and Media Union (GPMU) was formed on 30 September 1991 as a result of an amalgamation between the Society of Graphical and Allied Trades 1982 (SOGAT) and the National Graphical Association (1982). The union

agreed that the National Executive Council is their principal executive committee and drew my attention to Rule 6 clause 1 of their rules which provides:-

"Upon vesting date of the new union there shall be an Executive Council comprising of 40 representatives. Twenty of whom shall be elected by and from the former National Graphical Association and 20 of whom shall be elected by and from the former Society of Graphical and Allied Trades. The first Executive Council shall hold office for a three year period".

3. Relying on the provision of this Rule the union stated that, "Messrs, Beattie, Mitchell, Gillespie and Chard are not members of the GPMU National Executive Committee, and thus no election requirement exists". The union also confirmed that, as the Officers concerned are not members of the union NEC, no elections had been held.

4. In response to my enquiries Mr Tony Dubbins, General Secretary of GPMU gave the following assurance:

"(a) It is the union's practice for Messrs Beattie, Mitchell, Gillespie and Chard to attend and speak at meetings of the Executive Council.

(b) They are often not in attendance for the entire Executive Council, and their role is to provide factual information and technical and professional advice.

You have my assurance that that is their sole role, and therefore they are not deemed to be a member of the principal Executive Committee by statute".

The requirements of the legislation

5. Section 46 in Chapter IV of the Act provides:

"(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 the 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.

(2) The positions to which this Chapter applies (subject as mentioned below) are -

- (a) member of the executive,"...
- (b) any position by virtue of which a person is a member of the executive ..."

6. Section 46(3) of the Act is also relevant to this case and provides that:

"member of the executive" includes any person who, under the rules of practice of the union, may attend and speak at some or all of the meetings of the executive, **otherwise than for the purpose or providing the committee with factual information or with technical or professional advice with respect to matters taken into account by the executive in carrying out its functions**" (my emphasis).

Reasons for refusing to make a Declaration

7. Mr Dubbins does not contest the fact that the four National Officers who are the subject of this complaint have not been elected to the union's executive committee. He contends that the Officers concerned are not members of the GPMU NEC and therefore not subject to the election requirements. The question I have to decide is whether the four officers are members of the executive committee (whether deemed by statute or otherwise). In the absence of any other evidence this requires me to decide whether their attendance at executive meetings is "for the purpose of providing the committee with factual information . . ." as permitted by section 46(3) of the Act. I have the assurance from Mr Dubbins that their role in specific terms is that which is permitted by this section.

8. As is my normal practice the applicant has been given ample opportunity to comment on both the assurance given by the union and other explanations provided. The applicant drew attention to Rule 9:7 which states:-

"NATIONAL OFFICERS

The National Officers referred to in Clause 1 of this rule shall perform such duties as may be assigned to them by the Executive Council and the General Secretary. They shall attend all Delegate Council Meetings with a right to speak on any question but not to vote".

As the rulebook is otherwise silent on Delegate Council Meetings clarification was sought from GPMU. In response the union explained that the Delegate Council Meeting was the Biennial Delegate Conference referred to in Rule 5 and was not the executive committee of the union. I have accepted this explanation.

9. Whilst the applicant made other observations and comment he has provided no evidence that the role of the four National Officers was other than that set out in Mr Dubbins' assurance.

10. In the absence of evidence to support the allegation that the four officers are members of the union's executive committee, for the purpose of section 46 of the Act I am unable to make the declaration sought by the applicant.

Observations

11. In any decision on an application to me under section 55 of the Act I may accompany my written reasons to the decision with written observations. In this case I make the following observation. In 1990 and 1991 the Certification Officer made declarations against the Society of Graphical and Allied Trades 1982 (SOGAT) (The Society). The declarations (D/3/90 and D/1/91) concerned the failure to secure the proper election of the Society's General Officers to the unions' principal executive committee. Two of the officers featuring in one of the decisions were named in the present application. The Society merged to form the Graphical Paper and Media Union on 30 September 1991.

12. In both those applications the Society argued that the Officers were non-voting members of the executive, did not participate directly in policy making and only spoke for the purpose of providing technical or professional advice. The Society's rulebook, however made it clear that they were members of the executive and the declarations were made accordingly.

13. In this application the roles of the National Officers are not apparently dissimilar from those of the Society's general officers. It is the rule books that are different in that the GPMU rule book (at 6.1) describes the National Executive in terms that exclude the National Officers.

14. However, as Mr Dubbins himself pointed out to me, that rule ceases to have effect on 30 September 1994. The rule provides that "The first Executive Council shall hold office for a three year period" (ie. until 29 September 1994). "Thereafter" rule 6.2 provides "there shall be an Executive Council comprising 37 representatives to be elected in accordance with the following Schedule together with the National Officers ...". It is therefore clear that, from 30 September 1994 the National Officers will be members of the Executive Council.

15. That being so, the GPMU will need to ensure that the provision of Section 46 of the 1992 Act are properly complied with before the National Officers take their seats on the Executive Council.