

DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE
UNDER SECTION 5 OF THE TRADE UNION ACT 1984

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

DATE OF DECISION

2 June 1989

DECISION

Under section 5 of the Trade Union Act 1984 ("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 of the Act. For the reasons set out below, I decline to make a declaration in this case.

The application

1. On 1 December 1988 I received a letter from solicitors acting for the applicant. The letter stated that the applicant had been a candidate in an election for Territorial Members of the General Executive Council of the Transport and General Workers' Union, the result of which was declared on 27 February 1988. The applicant stood as a candidate in Region 1 (London and Home Counties) Inside "A" Division. It is important to note that the ballot for this Division was primarily a workplace ballot, not a postal ballot. At the material time, section 3 of the Act (which has since been repealed) enabled a trade union to hold

elections for voting positions on its principal executive committee by way of workplace ballot.

2. The letter went on to make allegations concerning the ballot, and contained a request that the letter be treated as a complaint under section 5 of the Act. There was then an exchange of correspondence in which my office sought further details of both the grounds of complaint and the applicant's factual allegations. From this, it appeared that three heads of complaint were being advanced -

- (1) Failure to comply with sections 2(7) and 3 of the Act, through failure to hold a postal ballot in circumstances in which, for the reasons complained of in (2) and (3) below, the Union could not reasonably have been satisfied that the requirements of section 2 of the Act could be met by holding a workplace ballot. It was accepted in correspondence that this complaint was dependent upon the outcome of complaints (2) and (3).
- (2) Failure to comply with section 2(8)(b) of the Act, by failing to secure that only those entitled to vote did so and failing to secure adequately against the possibility of fraudulent or invalid voting.
- (3) Failure to comply with section 2(8)(c) of the Act, on largely the same grounds, the point being made that failure to organise matters in such a way that invalid votes could be distinguished from valid votes amounted to a failure to secure that votes were counted "fairly and accurately".

The nature of the complaint

3. The nub of the complaint was - and I quote from the words used in the first letter from the applicant's solicitors - that "the system adopted by the Union for the conduct of the election was not adequate to ensure that the election was conducted fairly and in a way which could be regarded as free from the possibility of fraud or manipulation ... there was ample opportunity for votes to be cast and counted in the election in a fraudulent manner". In response to my request for particulars it was asserted that the procedure adopted had a number of specific weaknesses. I do not think it necessary to recapitulate every detail of the points made but it was said, for example, that there was no system of checking that those attending to vote were entitled to vote; or of recording the names of those voting as they did so; or of checking the number of completed ballot papers returned against lists of those who had voted.

4. In response to my enquiry whether the applicant was alleging that fraudulent voting actually took place, his solicitors replied: "[The applicant] is not in a position to say whether or not any person cast a fraudulent vote in the election. He certainly believes that fraudulent voting took place and, on his behalf, we are asserting that the system was not adequate to prevent or detect any such fraudulent voting." It was also alleged that members may have voted who were ineligible under the Union's rules. I think it important to record here that, as a matter of fact, no evidence of any kind was put to me to indicate that any vote cast in the ballot was fraudulent or invalid.

The arrangements for the ballot

5. For the purposes of this election the Union issued to Branch Secretaries and Scrutineers a document headed "Ballot Rules and Guidelines". Part 4 of the document deals with workplace ballots. It provides among other things -

- (a) for members to vote only on production of their union membership (or check off) card, which was to be stamped before they were handed a ballot paper. The ballot paper and counterfoil were also to be stamped at the time of handing over the ballot paper.
- (b) for members voting to be checked off or recorded on a list or record of membership, to be kept for six months after the ballot.
- (c) for ballot boxes to be sealed on closure of the ballot, and to be returned to the Regional Office along with a Branch Return form completed by the Branch Secretary recording the number of ballot papers originally received from the Regional Office; the number of ballot papers used for voting; the number of spoiled ballot papers not placed in the ballot box; and the number of unused ballot papers.

6. In reply to my enquiry, the union maintained that the guidelines were complied with, and in particular that members were not allowed to vote without showing a qualifying membership card.

The legal requirements

7. Section 1(1) of the Act, so far as is relevant, provides:

"it shall be the duty of every trade union (notwithstanding anything in its rules) to secure ... that every person who is a voting member of the principal executive committee of the union holds that position by virtue of having been elected as such a member at an election in relation to which section 2 of this Act has been satisfied."

It is not disputed that this was an election to which section 1(1) applied.

8. Section 2 lists a number of detailed requirements. Subsections 8(b) and (c) provide:

"The ballot shall be conducted so as to secure that -
.....

(b) the result of the election is determined solely by counting the number of votes cast directly for each candidate at the election by those voting (nothing in this paragraph being taken to prevent the system of voting used for the election being the single transferable vote); and

(c) the votes given at the election are fairly and accurately counted (any inaccuracy in counting being disregarded for the purposes of this paragraph if it is accidental and on a scale which could not affect the result of the election)."

I need only comment that whilst there is no express reference in these two paragraphs to excluding fraudulent or invalid votes, it would clearly be contrary to commonsense to interpret them in any other way.

Reasons for the decision

9. I have come to the conclusion that the applicant's assertions are insufficient to persuade me that there was failure to observe the requirements of section 2(8).

10. There is no evidence before me that any vote was in fact cast fraudulently or by a person who was not entitled to vote. That is not, of course, sufficient to dispose of the matter. Sections 1(1) and 2(8) of the Act, read together, require the Union to secure the ends set out in section 2(8).

11. The question, then, is whether the Union failed to secure that the ballot was conducted so as to secure that the result of the election was determined solely by counting the number of votes cast directly for each candidate at the election by those voting, and that the votes were fairly and accurately counted. The particular argument advanced in this case is that the ballot procedure taken as a whole was not adequate to prevent the possibility of fraudulent or invalid voting. I have studied the Union's ballot rules and guidelines very carefully, and whilst no doubt any system is capable of improvement Part 4 of the document sets out a detailed system of workplace balloting and it is clear that considerable thought was put into it. I see in it no deficiencies of such a kind as would lead me to conclude that it was obviously inadequate for its purpose. I note in particular that it did provide for no person to be allowed to vote without showing a membership card, for a list to be made of members voting as they did so, and for the stamping of each ballot paper at the moment of issue.

12. That being the case, I do not think that I can hold the Union to have failed to comply with section 2(8) of the Act in the absence of some tangible evidence that fraudulent or invalid voting was in fact liable to occur in a way not provided against by the procedure. Mere speculation that a risk existed, or assertion that the procedure could have been improved by the addition of this or that step, will not suffice. In this case I am not satisfied that such points as were put to me on behalf of the applicant go beyond unsupported speculation or assertion.

13. For these reasons I find complaints (2) and (3) to be unfounded. It was accepted that Complaint (1) was dependent on the other two, and I therefore find it too to be unfounded.