

D/7/86

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

Applicant: R HAGGARTY

Trade Union: TRANSPORT AND GENERAL WORKERS' UNION

DATE OF DECISION:

18 August 1986

DECLARATION

Under section 5 of the Trade Union Act 1984 I am empowered to make a declaration applied for by 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. In making the declaration I am required to specify the provisions with which the trade union has failed to comply.

For the reasons which follow I declare that, in relation to the election held in November - December 1985 for a representative of the Western constituency of Region No.7 (Scotland) of the Transport and General Workers' Union to serve on the General Executive Council of the Union, the Union failed to comply with (i) section 2(8)(c) of the Act and (ii) section 2(7) (or with that section as it may be modified by section 3(1)) in that:- (i) the Union failed to secure that the votes given at the election by the members of Branch 7/62/14 were fairly and accurately counted; and (ii) the Union failed to do all that was reasonably practicable to ensure that the members of Branch 7/62/41 were sent or had made available to them or were supplied with voting papers and were given an opportunity to vote.

The Application

1. This decision concerns an application under section 5 of the Trade Union Act 1984 ("the Act") made by Mr R Haggarty on 17 February 1986. Mr Haggarty's application can be considered in two parts. First, as regards the most recent election for territorial representatives on the General Executive Council of the Union the essence of his complaint was that the Union had not done all that was reasonably practicable to ensure that every member of Region No.7 had an opportunity to vote. Second, as regards the same election, his complaint was that his Branch had breached the Union's nomination procedure for candidates in such elections in such a way as to bring about an unreasonable exclusion of members of that Branch from standing as candidates for election.

The Facts

2. Mr Haggarty's application concerns an election for a territorial representative on the General Executive Council of the Union. The territorial representatives are elected from each Region, which in some cases are broken down into smaller constituencies. Mr Haggarty was in the Western Division of Region 7 (Scotland). The ballot was held during November - December 1985.

3. Mr Haggarty was, until 17 September 1985, in local authority employment in Saltcoats. He had in consequence been a member of the Saltcoats Local Authority Branch of the Union (Branch 7/62/14). On that day, however, he lost his job. As a result and with effect from 19 October 1985, the Union transferred him to what they term a holding Branch (Branch 7/62/41). Mr Haggarty's application originally concerned the Local Authority Branch, but during the course of my investigations information was obtained about both Branches.

The Nomination Procedure

4. I deal first with the complaint concerning the nomination procedure because, as will be explained below, I have decided not to make a declaration on this point. Mr Haggarty said that to the best of his knowledge the candidate nominated by his Branch - he was referring to Branch 7/62/14 - had been chosen without consulting the members.

He went on to say that neither he nor anyone to whom he had spoken knew how his Branch's candidate had come to secure nomination. The Union, however, provided statements signed by the Branch Chairman and the Branch Secretary of Branch 7/62/14 to the effect that a meeting of the Branch had taken place on 3 October 1985 for the sole purpose of selecting a candidate. The statements said that notices of the meeting were posted, in the normal fashion, at each depot where the Branch had members, one week in advance of the meeting giving the date, time, venue and agenda for the meeting. A note of the meeting was also produced as well as a copy of the nomination form, dated 4 October 1985, submitted by the Branch following the meeting.

Decision on the complaint relating to the nomination procedure

5. Section 2(9) of the Act says -

"No member of the trade union in question shall be unreasonably excluded from standing as a candidate at the election."

The Union has provided evidence of a meeting, notified to and open to the membership of Branch 7/62/14, at which nominations for the election in question were sought. I found no reason not to accept this evidence. Given the date Mr Haggarty lost his job I would not be surprised if, through no fault of his own or of the Union, he was not aware of the date of the meeting. In the circumstances I find the complaint of unreasonable exclusion from standing for election has not been proved.

The Election Arrangements

6. The Union also provided me with information about the arrangements for the conduct of the ballots within Branches 7/62/14 and 7/62/41. In relation to Branch 7/62/14 arrangements were made through local officials. The ballot was held at workplaces during the period 11 November - 6 December 1985. Stewards were appointed scrutineers at the various sites and they were responsible for holding the ballot and returning the appropriate documentation to the Branch Secretary concerned. The Branch Secretary retained the early returns from sites within his area in order to make one return covering them all. In the

event it seems he waited too long, with the consequence that the returns received by him in good time were not included in the final count at the Regional Office. The total membership of the Branch was given by the Union as 102.

7. With regard to Branch 7/62/41, the Union said that ballot papers are normally issued by post because the Branch concerned is designated for administrative purposes as a holding Branch, that is to say it is composed mainly of members within the District who are not attached to a territorial Branch either because they are unemployed or because they are the only member at a particular workplace. The system for checking the conduct of the ballot is determined by the Regional Scrutineers. However, during the course of my investigations it transpired that the Union had no record of Branch 7/62/41 having taken any part in this particular election. The total membership of the Branch was given by the Union as 110.

Reasons for making the declaration

8. I turn now to my reasons for making the declaration recorded above. Section 2(8)(c) of the Act says:-

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

It appears, on the Union's own admission, that votes recorded by members of Mr Haggarty's former Branch - Branch 7/62/14 - were left out of the final count. I accept that their omission, in terms of scale, could not have affected the final result of the election. However, the votes in question had been returned as far as the Branch Secretary whose job it was to send them to his District officer. Since in the event he had the returns but did not despatch them in time to be included in the final count I am bound to find that the Union failed to comply with section 2(8)(c) in relation to the election of the territorial representative of Region No.7 (Western).

9. In the case of Branch 7/62/41 - of which, by the time the ballot was due, Mr Haggarty had become a member - the Union have admitted that they failed to do all that was reasonably practicable to ensure that the members of the Branch were sent or had made available to them or were supplied with voting papers and were given an opportunity to vote.

Steps to be taken to remedy the declared failures

10. As in the case of an earlier decision on a complaint concerning the Transport and General Workers' Union (Mr B Liley 21.4.86) the General Secretary gave me assurances that, as a result of a rules revision conference in December 1985, revised arrangements had already been made for future territorial elections. The effects of these arrangements were that the Union would devote more resources to future elections, would improve their publicity to their membership, and would strengthen their instructions to permanent officials. Indeed, I was told that the arrangements had already been implemented for the 1986 Executive Council elections for trade group representatives.

Observations

11. This is the third case I have dealt with concerning the election of territorial representatives to the principal executive committee of the Transport and General Workers' Union where an application was fully justified. Because of administrative shortcomings, the votes of the members of one Branch (7/62/14) were not included in the final count; and the members of another Branch (7/62/41) were not given an opportunity to vote at all. I was told that these two Branches together have 212 voting members and that even if they had all voted their votes could not have affected the result of the election because the successful candidate polled 8390 votes more than his closest contender. In my view this does not affect the point of principle and in no way mitigates the seriousness of the Union's failures so far as the disenfranchised members of these two Branches are concerned. However, the Union have acknowledged their errors and I am glad to note that they are working on improved arrangements which should reduce the risk of administrative shortcomings in future elections.