

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE
UNDER SECTION 108A(1) OF THE TRADE UNION AND LABOUR
RELATIONS (CONSOLIDATION) ACT 1992**

MR G SAUNDERS

v

**THE MUSICIANS' UNION
(No 2)**

**Date of Decision:
Date Decision sent to the parties**

**9 September 2004
23 September 2004**

DECISION

Upon application by the Applicant under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act").

I refuse to make the declaration sought by the Applicant that on or about 1 May 2004 the Musicians' Union acted in breach of paragraph 3 of rule XIX.C of its rules by allegedly issuing a rule change ballot without ensuring that its membership had an opportunity to discuss the proposals before a ballot vote of the membership.

REASONS

1. The Applicant is a member of the Musicians' Union ("the Union" or "MU"). By an application dated 5 April 2004 the Applicant made a complaint against his Union. The application alleges a breach of the rules relating to the balloting of members. This is a matter within the jurisdiction of the Certification Officer by virtue of section 108A(2)(c) of the 1992 Act. The alleged breach is that:-

"On or about 1 May 2004 the Musicians' Union issued a rule change ballot without ensuring that the membership had an opportunity to discuss the proposals before the ballot vote of the membership on the proposals, in breach of union rule XIX section C3."

2. I investigated this alleged breach in correspondence. As required by section 108B(2) of the 1992 Act, the parties were offered the opportunity of a formal hearing and such a hearing took place on 9 September 2004. The Union was represented by Mr M Seaward of counsel, instructed by Mr J O'Hara of Messrs. Thompsons. Mr J Smith, the Union's General Secretary, Mr D Ashley, Assistant General Secretary, Mr K Ames, Communications Official and Mr D Fenton of the Union's Legal Department were in attendance at the hearing. Mr Saunders acted in person. Neither side called any witnesses, but a witness statement from Mr. Smith was tendered. A bundle of documents containing relevant exchanges of correspondence was prepared for the hearing by my Office. The rules of the Union were also in evidence. The Applicant presented an outline argument and the Union presented a written submission and chronology.

Findings of Fact

3. Having considered the representations made to me and the relevant documents I make the following findings of fact.
4. In August 2001 the Union set up a Strategic Review Group to consider modernising its structures. The Musicians' Union is a union of over 31,000 members who were then organised in 72 branches. In 2002/2003 the Union made operating losses of some £3 million. The Strategic Review Group made a report to the Biennial Delegate Conference in July 2003 and Conference decided, on a straw poll, to proceed with the consideration of two alternative proposals. These were the so called "Three Tier" and "Streamlined" proposals. Under the Three Tier proposal, the branches were to be reduced in number to about 20 large branches. Under the Streamlined proposals, the branches were to be replaced with "regional governance". At a meeting of the Executive Committee ("the EC") in August 2003 it was decided that the choice between these alternatives would be the subject of a consultative ballot.
5. In the period September to December 2003, the Union engaged in an extensive information and consultation exercise with its members. It did this using its journal (The Musician), its website, branch bulletins, newsletters and 12 regional meetings. The Applicant submitted that only 109 members in total attended these meetings. The consultation ballot was held in January 2004. Members were asked which of the two alternatives they preferred. On a low turn out of 12%, there was a 6:1 majority for the Streamlined proposal. The implementation of this proposal required the rules of the Union to be amended and the required amendments were such that the EC decided that the members should vote on an entirely new rule book. The rules provided that any alteration of rules required there to be a ballot vote of the membership.
6. On or about 9 March 2004 the branches were informed by a circular that the proposed rule changes would be distributed to them by 5 April and that the ballot vote would commence no earlier than 23 April. The EC considered the first draft of the new rules at a Special Meeting on 24 March and, on 1 April, the General Secretary sent out a memo to all Branch Secretaries which enclosed a copy of the proposed new rule book and explained the effect of the "Streamlined" structure.

7. Mr. Saunders submitted his application to the Certification Office on 5 April 2004.
8. During the course of April 2004, the Union provided information to its members about the impending ballot vote and urged them to vote in favour of the proposed new rule book. This was done by way of branch bulletin, newsletters, circulars, the union's website and "The Musician". On 22 April the General Secretary sent a further memo to all Branch Secretaries. He enclosed with the memo copies of the documents to be sent to the membership the following week with the ballot paper, namely a covering letter and a further version of the draft rules. This further version of the draft rules made drafting improvements to the earlier version. It has not been suggested to me that it contained any differences of substance.
9. The ballot papers were despatched to members on 28 April 2004 and the result of the ballot was declared on 21 May. On a 22% turnout, 2,201 members (92% of those voting) voted to accept the new rule book and 509 members (8% of those voting) voted to reject it.

The Relevant Statutory Provisions

10. The provisions of the 1992 Act which are relevant for the purpose of this application are as follows:-

"108A.-(1) A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).

(2) *The matters are –*

(a) ...

(b) ...

(c) the balloting of members on any issue other than industrial action;

(d)...

11. Section 108B(2) of the 1992 Act empowers me to make such enquiries as I think fit and, after giving the applicant and the union an opportunity to be heard, to make or refuse to make the declarations asked for. I am required, whether I make or refuse the declaration sought, to give reasons for my decision in writing.

The Union Rules

12. Rule XIX section C has the heading "Alteration of Rules" and provides that:

"1. These Rules may be altered by a ballot vote of the members.

2. *No proposal to alter the Rules shall be submitted to the vote of the members unless it is either made by the EC or supported by at least two thirds of the Union's Branches.*
3. *In the case of a Rule change emanating from the EC all Branches will be circulated with the proposals of the EC before a ballot vote of the membership on the proposals is taken.*
4. *In the case of a Rule change emanating from a Branch at a specially summoned meeting called for the purpose, the proposal, if passed, should be forwarded to the EC. Provided that the EC considers the wording to be satisfactory and that the proposals do not necessitate further alteration of the Rules which are not included in the proposal, the EC shall circulate to every Branch the Rule change proposal. The Branch making the proposal may include the reasons for making such a proposal and the EC has the right to produce a statement giving its own views. Following a period of three months from the date on which the proposals were circulated to the Branches, if the proposal is supported by a majority of two thirds of all the Union's Branches, the EC shall arrange for a ballot vote of the membership upon those proposals. The EC shall have the right to provide a statement giving its views on the proposals included with the ballot paper."*

The Submissions

13. Mr. Saunders submitted that rule XIX(C)(3) should be interpreted as meaning that the EC's proposals to alter the rules of the Union must be circulated to members before any ballot vote of the membership is taken. He accepted that the rule in question refers expressly to "all Branches" but he argued that these words must be interpreted as meaning "all members". He based this argument on a passage in my decision in an earlier case that he had brought against the Union, **Saunders v. Musicians' Union (D/23/02), 14 June 2002**. Mr. Saunders referred in particular to paragraph 23 of the reasons in that decision, which states as follows:

"The rules of the Musicians' Union dealing with the alterations of rules are quite brief. They provide for two ways of initiating rule change; one by the EC and one by a branch. When a rule change is initiated by a branch there is to be a lengthy consultation process whereas a rule change to be initiated by the EC enjoys a more straightforward procedure. In the latter case, the only procedural requirement is that the EC's proposal is circulated to branches before the ballot vote is taken. The purpose of the pre-balloting procedures in both cases appears to be quite clear. They are intended to give members the opportunity of considering the proposed rule changes before being asked to vote upon them. This was clearly regarded as being a significant procedural step by the body which adopted these rules as, indeed, it is the only step preceding the actual ballot in the case of a proposal emanating from the EC. It may be that in some branches the proposal will lie on the table and arouse no debate but this does not mean that it is a step which can be either ignored or regarded as a mere technicality or formality. There may well be other branches which would wish to debate the proposed changes in detail and lobby vigorously for or against them. The failure to circulate the branches deprives the members of those branches of that fundamental protection given to them by the rules."

In Mr. Saunders' submission, communication of the terms of the new rule book through the branches was unlikely to achieve the objective of informing individual members. He argued that the spirit of rule XIX(C)(3) could only be achieved if the draft rule book were

to have been sent to individual members in advance of the ballot and that rule XIX(C)(3) should be interpreted accordingly.

14. For the Union, Mr. Seaward submitted that rule XIX(C)(3) has a plain meaning which can in practice be applied as it stands without the need for any implied terms. He argued that the expression “all Branches” means just that and that there is no scope for replacing or qualifying it with other words. In Mr. Seaward’s submission, the interests of individual members are protected by the requirement to circulate branches, affording an opportunity for debate at branch level. He argued that the Union had not only complied with its obligations under the rules by circulating the proposed new rule book to its branches on 1 and 22 April 2004, prior to the ballot vote, but that the Union had engaged in an extensive information and consultation exercise with its members that could have left no interested member in any doubt about the nature of the rule changes upon which they were being balloted.

Conclusion

15. As a general rule of construction, words are to be given their ordinary literal meaning unless there is some good reason why this should not be so. The argument addressed to me by Mr. Saunders did not suggest that rule XIX(C)(3) was unclear or ambiguous or difficult to apply in practice. He rather argued that the spirit of the rule could only be achieved if the expression “all Branches” were to be replaced with the expression “all members”. Mr Saunders considered that the spirit of the rule, and accordingly the way it should be interpreted and applied in the present case, was reflected by the words of paragraph 23 of my decision in his earlier case against the Union in 2002.
16. In my judgment, Mr. Saunders has misunderstood the effect of my decision in his earlier case against the Union. In that case, the Union conceded liability. It accepted that it had failed to circulate all branches with its rule change proposals before a ballot vote of the members. I then had to determine the appropriate remedy and paragraph 23 of the decision forms part of the reasoning as to why I considered it appropriate to make an Enforcement Order on the facts of that case. However, it is clear from the terms of paragraph 23 of my earlier decision that there would have been no breach of rule XIX(C)(3) if the Union had circulated the proposals of the EC to all branches, even if, in some cases, those proposals had laid on the table and aroused no debate.
17. Accordingly, in my judgment, there is no sufficient reason to give the words of rule XIX(C)(3) anything other than their ordinary literal meaning. This requires the Union to circulate all branches with the proposals of the EC before a ballot of the membership is taken on those proposals. It is not disputed that the Union circulated its Branch Secretaries with the EC’s proposals on both 1 and 22 April 2004, which was before the ballot papers were distributed to the membership on 28 April. The Union therefore complied with its obligations under rule XIX(C)(3) in this regard.

18. For the above reasons, I dismiss this application and refuse to make the declaration sought by the Applicant that on or about 1 May 2004 the Musicians' Union acted in breach of paragraph 3 of rule XIX(C) of its rules by allegedly issuing a rule change ballot without ensuring that its membership had an opportunity to discuss the proposals before a ballot vote of the membership.

David Cockburn
The Certification Officer