

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

MR T HOWLEY

v

THE GRAPHICAL PAPER AND MEDIA UNION

Date of Decision

18 June 2004

DECISION

Upon application by the Applicant for a declaration under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”)

I refuse to make the declaration that the Graphical Paper and Media Union breached rule 41.1 of its rules by the amendment of its rules in June 2003 which removed the category of retired members.

REASONS

1. By an application notified to the Certification Office by a letter dated 13 December 2003, the Applicant made a complaint against his former union, the Graphical Paper and Media Union (“the GPMU” or “the Union”). The complaint was put to the Union in the following terms:

"In June 2003, the Biennial Delegate Conference of the GPMU voted to remove the Retired Members category from the union rule book of the GPMU, such vote was carried and took effect from 30 June 2003, and this was a breach of rule 41.1 of the union."

2. This matter was investigated in correspondence. As required by section 108B(2)(b) of the 1992 Act, the parties were given the opportunity of a formal hearing and such a hearing took place on 11 June 2004. The Union was represented by Mr I Kershaw of Kershaws Solicitors. The applicant acted in person and gave evidence on his own behalf. A 110 page bundle of documents was prepared for the hearing by my office. This bundle consisted of the exchanges of correspondence between the parties, together with their enclosures. Both parties submitted skeleton arguments.

Findings of Fact

3. Having considered the bundle of documents and the representations of the parties, I find the facts to be as follows.
4. Mr Howley had been a member of the GPMU and its predecessors since 1950 and had held most of the positions in those unions which were open to lay members. Mr Howley retired from full-time employment in 1999, since when he has retained membership of the Union in its retired members category. He was a member of the National Committee of the Retired Members Association.
5. By 2002 the Union was in a difficult financial position, facing a projected deficit of about £4 million in 2003/2004. Its dual strategy for dealing with this situation was for it to make economies whilst at the same time seeking a merger with another union. Amongst the economies it contemplated was the removal of the category of retired members, which it considered would lead to savings in the region of £720,000 a year. This strategy was put to meetings of the National Committee of the Retired Members Association in November 2002 and March 2003. The Union stated that, following the proposed rule changes and subsequent merger, the retired members who wished would be admitted into the appropriate section of the new union and that, pending the merger, the Retired Members Association would be offered funding to assist the maintenance of a parallel organisation. The Retired Members Association did not support either the proposal to remove the category of retired members or to set up a parallel organisation. On 12 June 2003 the Applicant wrote to the General Secretary expressing his hope that some accommodation could be reached at the Union's Biennial Delegate Conference ("BDC") to be held in Bournemouth later that month. In his letter, the Applicant raised the possibility of an unspecified application being made to an employment tribunal.
6. The BDC of the Union met in Bournemouth between 23 and 26 June 2003. The proposition to remove the category of retired members came before the conference as Motion 30 on 25 June. Motion 30 proposed various amendments to rule 24. The most significant amendment stated that retired members "*... shall no longer be treated as members of the national union from June 30th 2003, from which date the category of retired members shall cease to exist*". In proposing the motion, Mr Kitchener, the Financial Secretary of the Union, stated that the survival of the GPMU for its working members depended upon the economies being sought at conference that week. After a vigorous debate, the motion was carried by 98 votes to 92 votes.
7. The outcome of the BDC was subsequently reported in the Union's journal but copies of this journal are not sent to retired members as a matter of course. Whilst the Applicant was aware that the motion had been carried on or about the day it was debated, he stated that other retired members might not have known that they had been deprived of their membership until they received a circular letter from the General Secretary dated 4 March 2004.

The Relevant Statutory Provisions

8. 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).....

(d) the constitution or proceedings of any executive committee or of any decision-making meeting.

174 (1) An individual shall not be excluded or expelled from a trade union unless the exclusion or expulsion is permitted by this section.

(5) An individual who claims that he has been excluded or expelled from a trade union in contravention of this section may present a complaint to an employment tribunal.

177 (3) The remedy of an individual for infringement of the rights conferred by section 174 is by way of a complaint to an employment tribunal in accordance with that section, sections 175 and 176 and this section, and not otherwise.

The Union Rules

9. The provisions of the GPMU rules relevant for the purposes of this application are –

24 Retired Members (Prior to the proposed amendment).

24.1 Members who have either:-

- (a) reached State retiral age and who have retired from industry;*
- (b) ceased working and retired under a company early retirement scheme;*
- (c) reached the age of 60 and are unemployed and wish to take early retirement; or*
- (d) been compelled to retire prematurely from the industry through ill-health or incapacity subject to the required medical evidence being furnished and branch recommendation to the Executive Council;*

shall complete a retiral certificate provided by the union for that purpose which shall be submitted through the branch to Head Office. On acceptance of the certificate by Head Office, these members shall be classified as retired members.

They shall be ineligible to vote, to act as members of the Executive Council, or to hold any office in the Union or branch or to be elected as a delegate to any delegate meeting.

24.2 All members will be required to retire from the industry on reaching State retirement age on condition that they will be replaced.

24.3 Retired members shall retain their eligibility for the funeral benefit of the Union.

24.4 On 1 December each year former NGA members and Category A Provident Fund contributors who have retired with over 20 years' full membership of the fund or National Graphical Association (1982) prior to retirement shall receive a superannuation grant of £20. Former NGA members and Category A Provident Fund contributors with ten to 20 years' full membership of the fund or National Graphical Association (1982) prior to retirement shall receive a grant of £12. Past membership of National Graphical Association (1982) and SLADE will count for the purposes of calculating entitlement to such grants with the exception that former SLADE members who retired prior to March 29, 1982 will not be eligible for this grant.

24.5 Members under State retirement age, who have completed a retirement certificate and who later return to the trade shall, on completion of a form provided by the Union for this purpose and payment of full contributions, be entitled to the appropriate benefits of membership and such period of full membership shall be added to membership prior to original retirement.

24.6 A retired member who assists an employer during a dispute with a branch of the union, or who accepts work in an office not recognised by the Union, or who may be guilty of conduct detrimental to the interests of the branch or the Union, shall be dealt with in accordance with the provisions of Rule 58.

Rule 24 (After the proposed amendment – the amendments in bold)

24.1 Members who have either:-

- (a) reached State retiral age and who have retired from industry;
- (b) ceased working and retired under a company early retirement scheme;
- (c) reached the age of 60 and are unemployed and wish to take early retirement;
- or
- (d) been compelled to retire prematurely from the industry through ill-health or incapacity subject to the required medical evidence being furnished and branch recommendation to the Executive Council;

shall no longer be treated as members of the national union from June 30th, 2003, from which date the category of retired member shall cease to exist.

Former retired members, i.e. those who ceased to be members on June 30th 2003, shall be ineligible to vote, to act as members of the Executive Council, or to hold any office in the Union or branch or to be elected as a delegate to any delegate meeting.

24.2 All members will be required to retire from the industry on reaching State retirement age on condition that they will be replaced.

24.3 **Former** retired members shall retain their eligibility for the funeral benefit of the Union **until 1st October, 2003**

24.4 On 1 December each year former NGA members and Category A Provident Fund contributors who have retired with over 20 years' full membership of the fund or National Graphical Association (1982) prior to retirement shall receive a superannuation grant of £20. Former NGA members and Category A Provident Fund contributors with ten to 20 years' full membership of the fund or National Graphical Association (1982) prior to retirement shall receive a grant of £12. Past membership of National Graphical Association (1982) and SLADE will count for the purposes of calculating entitlement to such grants with the exception that former SLADE members who retired prior to March 29, 1982 will not be eligible for this grant. **The final payment under this clause will be made in**

December 2003 and former retired members shall have no entitlement beyond that date.

24.5 *Members under State retirement age, who have **ceased working** and who later return to the trade shall, on completion of a form provided by the Union for this purpose and payment of full contributions, be entitled to the appropriate benefits of membership and such period of full membership shall be added to membership prior to original retirement.*

24.6 **(deleted)**

41 Biennial Delegate Conference

41.1 *The Biennial Delegate Conference is recognised as the supreme policy-making body of the union. Delegate Conferences shall be held every two years, for the purpose of receiving a report from the Executive Council on its previous two years' work and to consider any motions other than those proposing alterations, additions or amendments to Union Rules, submitted by the Executive Council or by Branches relative to that report and to future policy, interests and prosperity of the union, together with such emergency motions as may be received by the Standing Orders Committee and recommended by them for consideration of the delegates. The Executive Council, through National Officers, have the responsibility of ensuring that all National or Regional Conferences take place in towns (or districts) not hostile to the Trade Union movement, where the amenities required for staging such conferences are arranged after consultation with local Branches and Trade Union Councils, to ensure that Conferences are held with correct Trade Union support all round.*

41.2. *Alterations, additions or amendments to the rules of the Union shall be submitted for and considered at each alternate Delegate Meeting when adequate time shall be allowed at such meeting for such motions submitted by the Executive Council or by Branches to be discussed.*

Notwithstanding the provisions of this clause should the Executive Council deem it necessary it shall be empowered to accept motions in respect of alterations, additions or amendments to the Union rules on the agenda of any Delegate Conference.

41.14 *All propositions adopted by the delegates involving an increased subscription by the members must be confirmed by a vote of the members, taken by voting paper under the rules governing the taking of ballots of members, before such can be incorporated in the rules. The vote shall be taken not later than 6 months from the date on which the Delegate Conference adopted such propositions.*

64 Revision or Alteration of Rules

These rules shall be uniformly adhered to, and in no way altered without the consent of the Biennial Delegate Conference, subject to the provision of Rule 41 Clause 14.

The Rules shall be binding on every officer, Branch and member of the union.

The Applicant's Submissions

10. In his registration of complaint form, the Applicant stated that he believed "the conference delegates took a decision to delete reference to retired members

from the rule book which is not within their powers and denied retired members natural justice". He maintained that retired members had not been allowed to participate in the debate at the BDC. He further speculated that the real reason for the deletion of the category of retired member was to prevent the possibility of the 57,000 or so retired members voting against any proposed merger. The Applicant's main submission at the hearing was that the disputed rule amendment was in conflict with section 174 of the 1992 Act and that, as a union rule cannot prevail over a conflicting statutory provision, the disputed amendment was invalid. He maintained that the effect of the rule change was to expel the retired members and that the rules provided expressly and exclusively for the circumstances in which membership could terminate, namely by expulsion, resignation or death.

The Union's Submission

11. Mr Kershaw, for the Union, submitted that the proposed amendment to rule 24 had been correctly approved in accordance with the rules of the Union. He submitted that the Applicant's speculation about the Union's motives behind the amendment was irrelevant. Mr Kershaw argued that there was no conflict between the proposed amendment and section 174 of the 1992 Act. In his submission, section 174 did not impose an obligation on the Union, but gave individuals the right to complain to an employment tribunal if he or she was excluded or expelled in certain circumstances. Mr Kershaw maintained that retired members had never previously spoken at any BDC and that their interests had been vigorously represented during the debate on Motion 30 at conference, as was clear from the transcript of proceedings and the closeness of the vote. He further submitted that there was no obligation in the rules which required the Union to notify retired members individually of the amendment to rule 24 but that, even if such a rule could be implied, any breach of it would be outside the jurisdiction of the Certification Officer.

Conclusions

12. The Applicant seeks to establish that the amendments made to rule 24, removing the category of retired members, are invalid on the grounds that they were made in breach of rule and/or outside the powers of the BDC. He seeks an enforcement order requiring that the retired members be reinstated. It is therefore necessary to examine the Union's constitutional mechanism for the amendment of its rules.
13. The process begins with rule 64 which states:

"Revision or Alteration of Rules

64 "These rules shall be uniformly adhered to, and in no way altered without the consent of the Biennial Delegate Conference, subject to the provision of rule 41 clause 14. The rules shall be binding on every officer, Branch and member of the union."

Rule 41 clause 14 is not material to these proceedings.

14. Rule 41.1 provides that the BDC “*is recognised as the supreme policy making body of the union*” and goes on to state that it shall consider any motion submitted to it by the Executive Council or by Branches “*other than those proposing alterations, additions or amendments to Union Rules*”. It would therefore appear that the disputed amendment cannot have been made pursuant to rule 41.1.
15. Rule 41.2 provides expressly for the amendment of rules in the following terms:

41.2. Alterations, additions or amendments to the rules of the Union shall be submitted for and considered at each alternate Delegate Meeting when adequate time shall be allowed at such meeting for such motions submitted by the Executive Council or by Branches to be discussed.

Notwithstanding the provisions of this clause should the Executive Council deem it necessary it shall be empowered to accept motions in respect of alterations, additions or amendments to the Union rules on the agenda of any Delegate Conference.”

It was common ground that the BDC of 2003 was an alternate Delegate Meeting appropriate for the consideration of amendments to the rules. Nevertheless, there is an obvious tension between rule 41.1 and rule 41.2. I find, however, that, this tension can be resolved by construing rule 41.1 as being subject to rule 41.2. If this were not the case rule 41.2 would be devoid of meaning. In my judgement, the BDC did have the power to amend the rules of the Union in accordance with rule 64 and rule 41.2.

16. I also find that Motion 30 was properly put to the BDC on the 25 June 2003 in accordance with the rules of the Union and was approved by the required simple majority. I accept the Union’s submission that it would not be appropriate for me to undertake any enquiry into the motive for the amendment being put or its likely political consequences. I also find that the validity of the rule change is not affected by any publicity that the union may or may not have given the amendment after it was approved or by the Union’s refusal to permit retired members to address the BDC when they had no right to do so under the rules.
17. The Applicant’s main argument at the hearing related to section 174(1) of the 1992 Act. This section provides that an individual “*...shall not be excluded or expelled from a trade union unless the exclusion or expulsion is permitted by this section.*” Subsection (5) provides that “*an individual who claims that he has been excluded or expelled from a trade union in contravention of this section may present a complaint to an employment tribunal*”. Section 177(3) of the 1992 Act provides that “*The remedy of an individual for infringement of the rights conferred by section 174 is by way of a complaint to an employment tribunal in accordance with that section, sections 175 and 176 and this section, and not otherwise*”. The Applicant argued that, as the effect of the amendment to rule 24 was to deprive retired members of their union membership in breach of section 174, the proposed amendment was outside the powers of the BDC and invalid. In my judgement, this argument misunderstands the relationship between section 174 and the rules of the

Union. Section 174 sets no standard with which union rules must comply but rather gives individuals a right to complain to an employment tribunal in certain circumstances. The remedy decided upon by Parliament for a breach of section 174 is not the invalidation of any rule of the allegedly offending union but a complaint to the employment tribunal. On the facts of this case, someone whose membership of the Union had been taken away could have made an application to an employment tribunal, within the appropriate time limit, claiming a breach of section 174 which would have been treated on its merits and an examination conducted as to whether there was an exclusion or expulsion within the meaning of the 1992 Act and, if so, whether that exclusion or expulsion was permitted by section 174. In my judgement, the validity of the amendment to rule 24 was not affected by section 174. I find that rule 24 was validly amended at the BDC of 2003. This amendment had the effect that the retired members of the GPMU were no longer to be treated as members of the Union from 30 June 2003.

18. For the above reasons I refuse to make the declaration sought by the Applicant that the GPMU breached rule 41.1 of its rules by the amendment of the rules in June 2003, which removed the category of retired members.

David Cockburn
The Certification Officer