

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

MR D BROOKS

v

UNION OF SHOP, DISTRIBUTIVE AND ALLIED WORKERS

Date of Decision:

6 November 2003

DECISION

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

1. I refuse to make the declaration sought by the Applicant that the Union of Shop, Distributive and Allied Workers ('USDAW', 'the Union') breached rule 8(4) of the rules of the Union by the decision of its Executive Council on 21 October 2002 to receive and note the report of the General Secretary on the terms of a collective agreement agreed between the Staff Salaries Sub-Committee of the Executive Council and the relevant Staff Associations.
2. I refuse to make the declaration sought by the Applicant that USDAW breached rule 9(10) of the rules of the Union by the decision of its Executive Council on 21 October 2002 to receive and note the report of the General Secretary on the terms of a collective agreement agreed between the Staff Salaries Sub-Committee of the of the Executive Council and the relevant Staff Associations.
3. I refuse to make the declaration sought by the Applicant that USDAW breached rule 9(11) of the rules of the Union on or about 24 March 2003 by its refusal to allow Mr Brooks to attend and be heard at the Union's next Executive Council meeting.
4. I refuse to make the declaration sought by the Applicant that USDAW breached rule 38 of the rules of the Union by holding its Annual Delegate Meeting in April 2003 in accordance with its Executive Council's decision of 21 October 2002, which allegedly introduced a variation to rule 8(4) of the rules of the Union.

REASONS

1. By an application dated 5 May 2003, the Applicant made a number of allegations against his union, the Union of Shop, Distributive and Allied Workers ('the Union') claiming breaches of the Trade Union and Labour Relations (Consolidation) Act 1992 ('the 1992 Act'). Following correspondence with my Office the complaints were identified as applications potentially under section 108A(2)(d) of the 1992 Act ('the constitution or proceedings of any executive committee or of any decision-making meeting'), in the following terms:-

1.1 *'That on 21 October 2002 by the Executive Council of the union agreeing, with effect from the union's Annual Delegate Meeting 2003, that only 50% of Area Organisers and Deputy Divisional Officers in any one year would attend, the union breached rule 8 section 4 of the rules of the union.'*

1.2 *'That on 21 October 2002 by the decision of the Executive Council that only 50% of Area Organisers and Deputy Divisional Officers in any one year would attend the Annual Delegates Meeting, the Executive Council acted outside the authority given to it within the written constitution of rule 9 section 10 of the rules of the union.'*

1.3 *'That on or about the 24 March 2003 in refusing to allow Mr Brooks to attend and be heard at the next Executive Council Meeting the union acted in breach of rule 9 section 11 of the rules of the union.'*

2. By a letter of 23 July 2003 to my office, the Applicant sought to add a further complaint which, following clarification, was accepted in the following terms:

'That at the Annual Delegate Meeting held from Sunday 27 to Wednesday 30 April 2003, the union, by the act of implementing the decision of the Executive Council of 21 October 2002 (by which only 50% of Area Organisers and Deputy Divisional Officers in any one year would attend the Annual Delegate Meeting), introduced a variation to Rule 8 section 4 of the rules of the union in breach of rule 38 of the rules of the union.'

3. I investigated these matters 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 7 October 2003.

4. The Union was represented by Kate O'Neill, Legal Officer of the Union. Sir Bill Connor, General Secretary of the Union and Mrs Carey, its President, gave evidence. Witness statements made by Mr N Slater, Divisional Officer, and Mr W Snell, Secretary of the Officials' Association, were presented. Mr Slater and Mr Snell were not present at the hearing. Mr Brooks acted in person. Ms J Mitchell attended as note-taker for Mr Brooks. A bundle of

documents was prepared for the hearing by my Office which consisted of relevant exchanges of correspondence with the parties, together with their enclosures. There were written witness statements for each of the Union's witnesses, each of which incorporated the Union's 'Statement of Case'. The Applicant provided an 'Outline Summary' which was a combined statement and written submission. This decision has been reached on the basis of the representations made by the parties, together with such documents as were provided by them.

FINDINGS OF FACT

5. The facts in this matter are short and largely undisputed. Having heard the witnesses and considered the documents before me, I find the facts to be as follows:-

6. The Applicant has been a member of the Union since 1974 and a full time official since 1977. He is an Area Organiser of the Union in its Eastern Division. From 1978 to 2002 the Applicant, in his capacity as an official, had been contractually required to attend the Union's Annual Delegate Meeting ('the ADM') unless otherwise excused. This requirement arose from either the terms of the Applicant's contract of employment or as a reasonable instruction given to him by the Union in its capacity as his employer. In addition, Rule 8(4) of the Rules of the Union provides '... all permanent officials of the Union ... shall have the right to attend and take part in any Delegate Meeting, but they shall not be entitled to vote ...'

7. The Union's ADM normally begins on a Saturday with Standing Orders and runs to the following Wednesday. Officials normally stay over on Wednesday night to attend the AGM of their Officials' Association on the Thursday. When attending the ADM, officials receive their regular salary and set expenses. For attending at the weekend, officials receive an additional 'special payment'. In 2001 this was £40 a day. There was also an overnight allowance, which from August 2002 was £62.50 per night. The Union has 113 full time officials, being made up of 7 National Officers, 7 Divisional Officers, 8 Deputy Divisional Officers ('DDOs') and 91 Area Organisers ('AOs').

8. The terms and conditions of full time officials are set through collective bargaining. The Union recognises a number of bodies for this purpose, including the Officials' Association. Rule 9(13) of the Rules of the Union provides that the Executive Council ('the EC') shall fix the remuneration of organisers and other officers. This obligation is discharged by the Salaries Sub-Committee of the EC agreeing terms with the relevant union. A report of that agreement is then received and noted by the EC.
9. In 2002 the Officials' Association sought to achieve a salary of £30,000 for its members. Following negotiations, the General Secretary wrote to Mr. Snell, Secretary of the Officials' Association on 18 September 2002, putting forward an offer which would provide for a £30,000 salary in two stages. The letter goes on to state:

'As part of the overall package, your Association agreed to the following changes:

1. Attendance of Officials at the Annual Delegate Meeting

It was agreed that with effect from the Annual Delegate Meeting in 2003, only 50% of Area Organisers and Deputy Divisional Officers in any one year would attend the Annual Delegate Meeting. An agreed roster will be drawn up to apply to this new arrangement.'

On the 21 October 2002 the EC received and noted the report of the General Secretary on the discussions of the Staff Salaries Sub-Committee with the relevant Staff Associations. This report contained the following paragraph:

'That to improve the service of the membership, it was agreed that with effect from the Annual Delegate Meeting 2003 only 50% of Area Organisers and Deputy Divisional Officers in any one year would attend the Annual Delegate Meeting.'

In his evidence, the General Secretary explained that the purpose of this provision was partly financial and partly organisational. He explained that to agree the salaries at the proposed level required some savings to be made elsewhere, some "quid pro quo" from the Association, and that to have all officials at the ADM left no one at local level to service the membership for almost a week.

10. The Officials' Association conducted a vote of its members on this offer, which resulted in a 56-51 vote in favour. Mr. Snell wrote to the General

Secretary on the 22 October 2002, advising him of the result of the ballot and seeking that the pay increase be given effect in the November payroll.

11. On the 7 November 2002 the Applicant wrote to Mr. Snell seeking the support of his Officials' Association to a challenge to that part of the collective agreement relating to the attendance of officials at the ADM. The Applicant noted that the Association had negotiated 'a good package' but expressed his view that the proposed roster for DDOs and AOs to attend the ADM should not have been open to negotiation as the officials had a right to attend the ADM under rule 8(4). The Applicant stated that in order to achieve the intended result, there would have to be a rule change under rule 38. Mr. Snell responded to the Applicant on the 20 November. He stated,

'... we are signatories to a negotiated, recommended and endorsed deal and our view (which we have sought legal opinion about) is that it would be unacceptable and dishonourable to be party to any challenge.'

12. The rota for the officials in the Eastern Division for the ADM in 2003 was agreed between Divisional Officer, Mr. Slater, and Divisional Officials Association representative, Mr. Whale. This rota was put to a meeting of Divisional Officials on the 6 January 2003 and was approved. The Applicant gave evidence that although he raised objections to the principle of the rota, he accepted that it was logical, sensible and fair. The Applicant was put down on the rota to attend the ADM in 2003 but not in 2004. The Applicant subsequently sent a memorandum to his Divisional Officer, Mr. Slater, on 21 March asking to be excused attendance at the ADM in 2003, which request was granted by Mr. Slater in a letter of 24 March.
13. Also on 21 March 2003 the Applicant wrote to the General Secretary requesting a hearing before the EC under a procedure which is provided for in rule 9(11) of the Rules of the Union. The Applicant wanted to raise a grievance that the EC had exceeded its rights under the rule book in respect of officials attending the ADM. In his attached 'Case Stated' the Applicant referred to rules 8(4) and 9(10). He stated, *'I would readily accept that in order to give a first class service to our members the proposed change is desirable.'* He proposed that the situation could be put right by an amendment

to rule 8(4) being made at the ADM in 2003. The General Secretary responded by a letter dated 24 March. He noted that the Applicant was seeking to exercise his right as an individual member for a hearing before the EC under rule 9(11) but concluded that it was not appropriate for him to attend a hearing ‘as there has been no breach of Union Rules as suggested in your letter, but a voluntary arrangement agreed with the Officials’ Association ...’. The General Secretary referred to the arrangement as now being a contractual obligation.

14. The ADM in 2003 took place between the 27-30 April 2003. The Applicant did not attend nor did he seek to attend. No official who sought to attend was refused permission. However, only approximately 50% of DDOs and AOs did attend. The rules of the Union relevant to this application were not amended at the ADM.
15. The Applicant completed a registration of complaint form to the Certification Officer on 5 May 2003.

The Relevant Statutory Provisions

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

Section 108A .-(1) A person who claims 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) *the appointment or election of a person to, or the removal of a person from, any office;*
 - (b) *disciplinary proceedings by the union (including expulsion);*
 - (c) *the balloting of members on any issue other than industrial action;*
 - (d) *the constitution or proceedings of any executive committee or of any decision-making meeting;*
 - (e) *such other matters as may be specified in an order made by the Secretary of State.*

The Union Rules

17. The Union rules most relevant to the Applicant’s complaints are:-

Rule 8 Delegates and Delegate Meetings

Section 3 (a). – The Delegate Meeting shall consist of representatives from the branches – one delegate from each branch up to 500 members, one additional

delegate up to 1,000 members, and one additional delegate for each complete 500 members thereafter. They shall be elected by the branch members at the commencement of each year for a period of 12 months, and in the event of more than one meeting being called in that period, they shall be empowered to attend, provided they remain duly qualified members.

(b). – Branches may volunteer to be grouped for the purposes of representation. Delegates from such branches shall be elected at a conference specially called for the purpose within the appropriate Division. Representation from any such grouped branches shall be as for single branches under Section 3 (a) of this Rule.

(c). – Branches and Federations who have sufficient funds available may, with the consent of the Divisional Council, assist local branches to be represented at the Annual Delegate Meeting subject to a maximum contribution of 50 per cent of the expenses of one delegate.

Section 4. – The Executive Council, National Officers, all permanent officials of the Union, Trustees, Scrutineers and Auditor, together with members of the Divisional Councils shall have the right to attend and take part in any Delegate Meetings, but they shall not be entitled to vote except in the case of the President who may give a casting vote, if necessary.

Section 8. – The expenses of the delegates authorised by Section 3 of this Rule to attend Annual and Special Delegate Meetings shall be borne from the branch funds, covering necessary travelling fares for all delegates in excess of one, and an amount determined from time to time by the Branch Committee which they may deem adequate for other expenses. The necessary travelling fares of one delegate from each branch authorised by Section 3 of this Rule to attend Annual and Special Delegate Meetings shall be borne from the Central Funds.

Rule 9 Executive Council

Section 10. – The Executive Council shall have full control of the business of the Union, and shall have power to do anything not inconsistent with these Rules or the Acts of Parliament under which the Union is certified as an independent trade union. In the event of any question arising on which the Rules are silent or obscure, the Executive Council shall have power to decide thereon.

Section 11. – Every decision and order of the Executive Council shall be binding on members and branches subject to appeal to the next succeeding Delegate Meeting, or by referendum to the membership, which shall take place at any time on request of 10 per cent of the branches, and every member of the Union, both present and future, agrees that this clause shall be of full force and effect, and shall form the essential basis of the contract between the Union and its members. Any member of the Union being aggrieved at a decision of the Executive Council shall have the right to attend and be heard by them at their next meeting, the expenses of such attendance to be borne by the member, but in the event of her/his appeal being successful the Executive Council shall reimburse her/him for all reasonable out-of-pocket expenses. A poll of the members of the Union on any subject may be taken at any time by the Executive Council.

Section 13. – The Executive Council shall cause the accounts of the Union to be regularly entered in proper books, examine the state of the accounts, provide for the payment of all liabilities, and determine all investments. They shall have power to purchase or take upon lease in the names of the Trustees for the time being any real or personal property and to sell, let, exchange such property, raise or borrow money by way of mortgage or otherwise on the same. They shall be empowered to engage, discharge and fix the remuneration of such assistants, organisers and other officers as may be necessary to carry on the business, organisation and propaganda of the

Union efficiently and promptly, and, for the same purposes, to divide the country into divisions, districts or areas otherwise defined. They shall also fix the remuneration of the President, Trustees, Auditor and all other officers of the Union. The Executive Council shall pay from the Central Funds to the Trustees or Committee of the Staff Superannuation Fund, in respect of the employees of the Union who are contributors to that Fund, periodical amounts on an agreed basis between the employees and the Executive Council.

Rule 38 Alteration of Rules

These Rules shall not be varied, altered or amended, except by the votes of not less than two-thirds of the members represented by delegates present and voting on a proposed Rule, variation, alteration or amendment submitted at a Special Delegate Meeting called for that purpose in the manner prescribed in Section 2 of Rule 8 (Part 1 of Rule Book), of which due notice has been given. A period of not less than three years shall elapse between any two Special Delegate meetings called for the purpose of varying, altering or amending these Rules. Notwithstanding the foregoing provision, however, the Executive Council shall have power to summon a Special Delegate Meeting for the purposes defined in this Rule whenever a three-fourths majority of their number deem it advisable to do so.

THE COMPLAINTS

Complaint 1

‘That on 21 October 2002 by the Executive Council of the union agreeing, with effect from the union’s Annual Delegate Meeting 2003, that only 50% of Area Organisers and Deputy Divisional Officers in any one year would attend, the union breached rule 8 section 4 of the rules of the union.’

18. Rule 8(4) of the rules of the Union provides:

‘The Executive Council, National Officers, all permanent officials of the Union, Trustees, Scrutineers and Auditor, together with members of the Divisional Councils shall have the right to attend and take part in any Delegate Meetings, but they shall not be entitled to vote except in the case of the President who may give a casting vote, if necessary.’

Submissions

19. At the hearing the Applicant submitted that for as long as he had been an Area Organiser, he had been required to attend the ADM and that it was his understanding that this was an obligation that he had under rule 8(4). The Applicant accepted that the actual words of rule 8(4) merely give relevant individuals a right to attend, but he submitted that the true meaning of this rule, having regard to custom and practice, was that all permanent officials were required to attend. In the Applicant’s submission, the EC had breached rule 8(4) of the rules of the Union at its meeting on 21 October 2002 by ratifying an agreement which had the effect that only 50% of DDOs and AOs would attend the ADM in any one year. The Applicant stated that although his

representatives had stressed to him at their report back the voluntary nature of the ADM rota, he had been told at a later staff meeting that officials would not be allowed to attend the ADM on the year they were not rostered.

20. Ms.O'Neill, for the Union, submitted that the Union had not amended rule 8(4) which remained in effect as it always had. She stated that as a permanent official, the Applicant retained his right under rule 8(4) to attend the ADM. Ms. O'Neill argued that the relevant restriction was part of the annual wage negotiations as a quid pro quo for a substantial wage increase and that as such it was tantamount to an agreement of voluntary restraint whereby officials would not exercise their rule book right to attend the ADM. She further noted that neither the Applicant nor any other official had been denied the right to attend the ADM in 2003. In these circumstances, Ms. O'Neill argued that there was no evidence that a breach of the rule had occurred. She also submitted that the Applicant had brought the complaint as an official complaining about the terms of a collective agreement affecting his contract of employment, whereas the jurisdiction of the Certification Officer is limited to complaints by members relating to breaches of relevant rules.

Conclusion – Complaint 1

21. The Applicant stated that he had brought this complaint with considerable reluctance to secure what he understood to be the integrity of the relevant rule. In my judgment, however, the Applicant's understanding of rule 8(4) and the effect of the collective agreement reached in 2002 is fatally flawed. I do not find that there is any basis for the gloss which the Applicant puts on rule 8(4). By its terms, rule 8(4) does not impose a requirement on all permanent officials to attend delegate meetings. It gives them a right to do so. Furthermore, I find that the obligation on the Applicant to attend the ADM prior to 2003 arose from his contract of employment, either as a term of that contract or as a standing instruction. Accordingly, the appropriate means for the Union to amend the contractual obligation to attend was through the Union's traditional collective bargaining machinery. In my judgment, the effect of the collective agreement reached in 2002 was to amend the individual contracts of employment of officials so as to remove any obligation to attend

each ADM and to replace it with an obligation to attend those ADMs for which they were rostered. When attending an ADM for which they are rostered, officials remain entitled to be paid salary and the usual allowances.

22. On this analysis, the Applicant retains the right under rule 8(4) to attend each ADM and all other delegate meetings, but he no longer has a right under his contract of employment to be paid in respect of those years in which he is not rostered. The Union stated that it is reserving its position with regard to payments in the years which are not rostered.
23. For the above reasons, I refuse to make the declaration sought that the Union breached rule 8(4) of the rules of the Union on 21 October 2002 by its Executive Council agreeing that with effect from the Union's Annual Delegate Meeting 2003, only 50% of Area Organisers and Deputy Divisional Officers would attend the Annual Delegate Meeting in any one year.

Complaint 2

'That on 21 October 2002 by the decision of the Executive Council that only 50% of Area Organisers and Deputy Divisional Officers in any one year would attend the Annual Delegates Meeting, the Executive Council acted outside the authority given to it within the written constitution of rule 9 section 10 of the rules of the union.'

24. Rule 9(10) of the rules of the Union provides as follows:

'The Executive Council shall have full control of the business of the Union, and shall have power to do anything not inconsistent with these Rules or the Acts of Parliament under which the Union is certified as an independent trade union. In the event of any question arising on which Rules are silent or obscure, the Executive Council shall have power to decide thereon.'

Submissions

25. The Applicant submitted that by the EC's decision of 21 October 2002 it had introduced a variation to rule 8(4) and had therefore acted inconsistently with the rules of the Union. In his written submissions, the Applicant also argued that the EC could not take advantage of the power in rule 9(10) to decide any question upon which the rules are silent or obscure as the rules, on this issue, are very explicit.

26. Ms. O'Neill, for the Union, submitted that the Union had not varied rule 8(4) either by the EC exercising its power under rule 9(10) or in any other way. She argued that in concluding the collective agreement, the EC has exercised its power under rule 9(13). In the Union's submission, the Applicant's complaint was misconceived.

Conclusion – Complaint 2

27. This complaint has been advanced on the basis that the inconsistent act committed by the EC in breach of rule 9(10) was its variation of rule 8(4). I have already found, however, that the Union did not vary rule 8(4) and the inconsistency alleged by the Applicant is therefore not established.
28. For the above reason, I refuse the declaration sought that the Union breached rule 9(10) of the rules of the Union on 21 October 2002 by the Executive Council's decision that only 50% of Area Organisers and Deputy Divisional Officers would attend the Annual Delegate Meeting in any one year.

Complaint 3

'That on or about the 24 March 2003 in refusing to allow Mr Brooks to attend and be heard at the next Executive Council Meeting the union acted in breach of rule 9 section 11 of the rules of the union.'

29. Rule 9(11) of the rules of the Union provides as follows:

'Every decision and order of the Executive Council shall be binding on members and branches subject to appeal to the next succeeding Delegate Meeting, or by referendum to the membership, which shall take place at any time on request of 10 per cent of the branches, and every member of the Union, both present and future, agrees that this clause shall be of full force and effect, and shall form the essential basis of the contract between the Union and its members. Any member of the Union being aggrieved at a decision of the Executive Council shall have the right to attend and be heard by them at their next meeting, the expenses of such attendance to be borne by the member, but in the event of her/his appeal being successful the Executive Council shall reimburse her/him for all reasonable out-of-pocket expenses. A poll of the members of the Union on any subject may be taken at any time by the Executive Council.'

Submissions

30. The Applicant submits that rule 9(11) should be read literally and that such a reading requires the EC to allow the attendance at its next meeting of any member who is aggrieved at any decision of the EC. He argued that he had

demonstrated in the 'Case Stated', enclosed with his letter to the General Secretary of 21 March 2003, that he was a member, that he was aggrieved and that he was aggrieved by the decision of the EC of 21 October 2002. In the Applicant's opinion, the decision of the EC amounted to a change in the rules of the Union without having gone through the proper procedure.

31. Ms. O'Neill, for the Union, submitted that the General Secretary was entitled to reject the Applicant's request under the authority delegated to him by the EC and/or by virtue of his decision having been subsequently ratified by the EC on the 15th September 2003. Ms. O'Neill went on to argue that it was not within the intention, spirit or meaning of rule 9(11) that a right was afforded to an employee of the Union to raise grievances relating to his capacity as an employee, and not in his capacity as a member. In Ms. O'Neill's submission, it would be unreasonable, impracticable and would undermine industrial relations if such a right were to be extended to members of staff disgruntled by the outcome of the collective bargaining process. In the Union's submission, rule 9(11) must be interpreted so as to exclude any request which relates to the terms and conditions of staff. As to the interpretation of Union rules, the Union included in the bundle copies of the following authorities; **Edwards & Anor v. Halliwell & Others** (1950) All ER 1064, **British Actors Equity Association v. Goring** (1978) ICR 791, **Jacques v. AUEW** (1986) ICR 683, **Hamlet v. GMBATU** (1986) IRLR 293 and **Gates v. BECTU** (D/23-24/00 Certification Officer). Ms. O'Neill further argued that in any event the Applicant had no live dispute or grievance with the Union as he had been offered and had declined the opportunity of attending the ADM in 2003, which fact was known to the General Secretary when he rejected the Applicant's section 9(11) request.

Conclusion – Complaint 3

32. Rule 9(11) is expressed very simply and very broadly. Its relevant provisions are that '*Any member of the Union being aggrieved at a decision of the Executive Council shall have the right to attend and be heard by them at their next meeting ...*' Taken literally the rule requires the EC to permit the attendance of a member at its next meeting if three conditions are met. The

request must be from a member. The member must be aggrieved and the grievance must be at a decision of the EC. I find that the Applicant meets each of these conditions.

33. The rules of a trade union, however, are not to be construed as if they were drafted by parliamentary draftsmen or in the same way as detailed commercial contracts. I respectfully adopt the passage in **Jacques v AUEW** in which Warner J stated:

'The effect of the authorities may I think be summarised by saying that the rules of a trade union are not to be construed literally or like a statute, but so as to give them a reasonable interpretation which accords with what in the court's view they must have been intended to mean, bearing in mind their authorship, their purpose, and the readership to which they are addressed.'

This approach was expressed in different language in **Gates v BECTU** by Mr Whybrew, the then Certification Officer, who stated:

'In cases like this it is clearly inappropriate to treat union rule books as if they were statutes or subject to all the rules of grammatical construction. Three tests seem more appropriate. First, what was the intention of those who framed the rule? Second what does the rule, taken in the context of the whole rule book, seem to mean? Third what would the ordinary member reading the rule take it to mean?'

34. Applying this approach, I find that it cannot have been the intention of rule 9(11) to provide the possibility of an additional level of bargaining on terms and conditions of employment for employees of the Union who also happen to be members. Employees of the Union have different mechanisms for raising their employment grievances, either through the collectively agreed machinery or through the individual grievance procedure. I also find that those who agreed the rules cannot have intended rule 9(11) to have that effect and that the members generally would not have understood the rule in this way. Indeed, the Applicant accepted that some sort of sifting mechanism would be appropriate in the operation of rule 9(11). Accordingly, I find that rule 9(11) does not give a member who is also an employee of the Union a right to attend and be heard by the EC where his or her grievance is about a decision of the EC which affects that person's terms and conditions of employment with the Union. The questions in each case are (a) whether the grievance is being raised by a member who is also employed by the Union and, if so, (b) whether that grievance is against a decision of the EC which affects his or her terms and conditions of employment, usually a decision made under rule 9(13). A

member who is not an employee of the Union retains the right to attend and be heard at a meeting of the EC on any grievance he or she may have at any decision of the EC. On the evidence before me, there is no warrant for restricting the wide literal meaning of rule 9(11) in the case of such members.

35. On the facts of this case, the General Secretary considered the nature of the Applicant's grievance. This was clearly expressed as being a grievance about a decision of the EC, a decision which accepted and noted the report of the General Secretary on the discussions of the Staff Salaries Sub-Committee. As such the decision of the EC was one which affected the terms and conditions of the Applicant's employment. The Applicant wrongly but genuinely considered that this was a decision which varied rule 8(4) and that he was raising a point of basic constitutional importance to the members of the Union. The sifting role of the General Secretary in such circumstances would be an onerous one if it required him to separate out whether the grievance was being raised by the member as a member or by the member as an employee. In my judgement, the General Secretary has no general discretion to exercise as to whether a grievance goes forward to the EC. His task is to form a view as to whether the grievance is one which it is the duty of the EC to consider under rule 9(11). In carrying out this task, the General Secretary is not bound by the way the grievance is expressed or the subjective intention of the person raising the grievance. Whilst the General Secretary, in the exercise of his general administrative responsibilities, is entitled to form a view as to whether an application to go before the EC comes within rule 9(11), the test he must apply is essentially a legal one which, in the event of a dispute, is one to be determined by the courts or the Certification Officer, as the case may be.
36. In my judgment, regardless of the way in which the grievance was expressed by the Applicant, I find that it was in reality one made by a member who is also an employee and that it was a grievance about a decision of the EC which affected the terms and conditions of his own employment. It was therefore a grievance which fell outside rule 9(11). The arguments advanced by the Applicant with regard to the correct interpretation of rule 8(4) were so misconceived and his failure to take on board the distinction between a rule

book right and an obligation under his contract of employment was such that, in my judgment, the General Secretary was entitled to examine the nature of the EC's decision about which complaint was made. That decision was one which directly concerned the Applicant's terms and conditions of employment. It did not affect the Applicant's rights as a member.

37. For the above reasons, I refuse to make the declaration that the Union breached rule 9(11) of the rules of the Union on or about 24 March 2003 by its refusal to allow Mr Brooks to attend and be heard at the Union's next Executive Council meeting.

Complaint 4

'That at the Annual Delegate Meeting held from Sunday 27 to Wednesday 30 April 2003, the union, by the act of implementing the decision of the Executive Council of 21 October 2002 (by which only 50% of Area Organisers and Deputy Divisional Officers in any one year would attend the Annual Delegate Meeting), introduced a variation to Rule 8 section 4 of the rules of the union in breach of rule 38 of the rules of the union.'

38. Rule 38 of the rules of the Union provides as follows:

'These Rules shall not be varied, altered or amended, except by the votes of not less than two-thirds of the members represented by delegates present and voting on a proposed Rule, variation, alteration or amendment submitted at a Special Delegate Meeting called for that purpose in the manner prescribed in Section 2 of Rule 8 (Part 1 of Rule Book), of which due notice has been given. A period of not less than three years shall elapse between any two Special Delegate meetings called for the purpose of varying, altering or amending these Rules. Notwithstanding the foregoing provision, however, the Executive Council shall have power to summon a Special Delegate Meeting for the purposes defined in this Rule whenever a three-fourths majority of their number deem it advisable to do so.'

Submissions

39. The Applicant applied at a late stage to add this complaint, after having received legal advice. The Applicant considered that there might not have been an actual breach of rule until the alleged wrongful variation in rule took effect at the ADM in 2003.
40. Ms. O'Neill, for the Union, submitted that rule 8(4) had not been varied by the Union and that, correctly interpreted, rule 8(4) did not compel the attendance of permanent officials at the ADM. It merely gave them a right to attend. Ms. O'Neill argued that the fact that some officials were not in attendance at

the ADM in 2003 was not a breach of any rule. She commented that the Applicant's complaint appears to be that the ADM in 2003 simply took place.

Conclusion – Complaint 4

41. Rule 38 of the rules of the Union provides the mechanism for amending the rules. The Union did not purport to engage rule 38 with regard to the events in question and, as I have already found, the Union did not introduce a variation to rule 8(4), as alleged. I find that the ADM in 2003 was held in accordance with the rules. The permanent officials of the Union retained a right under the rules to attend that ADM and the fact that a certain number of them did not do so, including the Applicant, does not establish that the rules were varied nor does it establish that there was a breach of rule 38.

42. For the above reasons, I refuse the declaration sought that the Union breached rule 38 of the rules of the Union, by holding its Annual Delegate Meeting in April 2003 in accordance with its Executive Council's decision of 21 October 2002, which allegedly introduced a variation to rule 8(4) of the rules of the Union.

David Cockburn
The Certification Officer