

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION
MADE UNDER SECTION 55(1) OF THE TRADE UNION AND LABOUR
RELATIONS (CONSOLIDATION) ACT 1992**

Mr J ECCLESTONE

v

NATIONAL UNION OF JOURNALISTS

Date of Decision:

2 July 2003

DECISION

Upon application by the Applicant under section 55(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):-

1. I declare that the National Union of Journalists (“the Union”) failed to accord equally to all members of the Union entitlement to vote in the election for membership of the National Executive Council of the Union for 2003/2004 in breach of section 50(1) of the 1992 Act.
2. Enforcement Order. I order that the persons elected to the National Executive Council of the Union for 2003/2004 representing disabled members and black members cease to hold office forthwith.

REASONS

1. By an application dated 24 March 2003, the Applicant made a complaint against his union, the National Union of Journalists (“the Union”) alleging a breach of the 1992 Act in respect of the election processes of the Union. This

is a matter within the jurisdiction of the Certification Officer by virtue of section 55(1) of the 1992 Act. Following correspondence with my Office the complaint was identified in the following terms:-

The union acted in breach of section 50(1) of the 1992 Act in that entitlement to vote in the elections for the National Executive Council for the year 2003/2004 was not accorded equally to all members of the union.

2. I investigated this matter in correspondence. As required by section 55(2) of the 1992 Act, the parties were offered the opportunity of a formal hearing and such a hearing took place on 5 June 2003. The Union was represented by Michael Ford of Counsel. Ms C Kirby, Legal Officer of the Union was in attendance. Mr Ecclestone acted in person. A bundle of documents in respect of the complaint was prepared for the hearing by my Office which consisted of relevant exchanges of correspondence with the parties, together with their enclosures. 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

3. The facts in this matter are agreed and short. In or about 1993 the Union amended its rules to provide for there to be a representative of black members on its National Executive Council ("the NEC"). In each year since there has been elected to the NEC a representative of black members by and from those members of the Union who completed a form on which they indicated their colour or ethnic origins as being other than white. For the electoral period 2003/2004 the person so elected was Mr Leigh Gordon.
4. In 2002 the Union amended its rules to provide for there to be a representative of disabled members on its NEC. The first person elected under these rules was Ms Valerie Sweeney, who was elected for the electoral period 2003/2004. Ms Sweeney was elected by and from those members of the Union who completed a form on which they indicated that they were disabled. The report of the scrutineer for this election states that 91 ballot papers were distributed;

23 members voted for Ms Sweeney and 11 members voted for her opponent.
The Union has in the region of 24,000 members.

The Relevant Statutory Provisions

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

Section 50

- (1) "Subject to the provisions of this section, entitlement to vote shall be accorded equally to all members of the trade union.
- (2) The rules of the union may exclude entitlement to vote in the case of all members belonging to one of the following classes, or to a class falling within one of the following -
 - (a) members who are not in employment;
 - (b) members who are in arrears in respect of any subscription or contribution due to the union;
 - (c) members who are apprentices, trainees or students or new members of the union.
- (3) The rules of the union may restrict entitlement to vote to members who fall within-
 - (a) a class determined by reference to a trade or occupation,
 - (b) a class determined by reference to a geographical area, or
 - (c) a class which is by virtue of the rules of the union treated as a separate section within the union,or to members who fall within a class determined by reference to any combination of the factors mentioned in paragraphs (a), (b) and (c).

The reference in paragraph (c) to a section of a trade union includes part of the union which is itself a trade union.
- (4) Entitlement may not be restricted in accordance with subsection (3) if the effect is that any member of the union is denied entitlement to vote at all elections held for the purposes of this Chapter otherwise than by virtue of belonging to a class excluded in accordance with subsection (2).

Section 119

- (1) In this Act, in relation to a trade union -

'rules', except where the context otherwise requires, includes the rules of any branch or section of the union.

Section 55

- (1) A person having a sufficient interest (see section 54(2)) who claims that a trade union has failed to comply with any of the requirements of this Chapter may apply to the Certification Officer for a declaration to that effect.

- (2) On an application being made to him, the Certification Officer shall -
- (a) make such enquiries as he thinks fit, and
 - (b) give the applicant and the trade union an opportunity to be heard,
- and may make or refuse the declaration asked for.
- (3) If he makes a declaration he shall specify in it the provisions with which the trade union has failed to comply.
- (4) ...
- (5) Whether he makes or refuses a declaration, he shall give reasons for his decision in writing; and the reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.
- (5A) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements -
- (a) to secure the holding of an election in accordance with the order;
 - (b) to take such other steps to remedy the declared failure as may be specified in the order;
 - (c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

The Certification Officer shall in an order imposing any such requirement as is mentioned in paragraph (a) or (b) specify the period within which the union is to comply with the requirements of the order.

The Union Rules

6. The Union rules most relevant to the Applicant's complaints are:-

Rule 8: National Executive Council

- (a) "There shall be a central administrative body called the National Executive Council (NEC), which shall consist of members elected to represent industrial sectors, geographical sectors and disabled members.
- (b) There shall be one representative for disabled members and one from each of the following industrial sectors:

- Black members
- Books
- Broadcasting
- Freelance
- Magazines
- Newspapers and agencies
- Public relations and information

There shall be one or more representatives from each of the following geographical sectors:

- Continental Europe
- East Anglia
- London
- (...and nine other sectors)

The number of NEC members elected to represent each geographical sector shall be determined according to the number of members entitled to vote in that sector.....

The number of members entitled to vote in each geographical sector shall be determined by the NEC.....

The geographical electoral areas of each NEC member representing a geographical sector shall be determined from time to time by the NEC in consultation with the members in the sector.

- (c) A member who is eligible for election to the NEC shall be entitled to vote in the industrial sector in which s/he is registered as working and in the geographical sector in which s/he lives and stand for office either in the industrial sector in which s/he is registered as working or in the geographical sector in which s/he lives.

(d) - (aa).....

Rule 13: Industrial councils, branches and sections

(a) - (f)

(g) (i) - (ii)

- (iii) Each council shall have a black members' representative elected by the membership in its sector as a member of both the sector council and the Black Members' Council. Where no such representative is nominated, the Black Members' Council shall appoint one of its members to serve on the appropriate industrial council.

- (iv) Each council shall have a disabled members' representative elected by the membership in its sector as a member of both the sector council and the Disabled Members' Council. Where no such representative is nominated, the Disabled Members' Council shall appoint one of its members to serve on the appropriate industrial council.

(h)-(k)

Rule 17: Black Members' Council

- (a) There shall be a Black Members' Council consisting of eight members elected from the black membership (as defined in the NUJ application form) at an annual conference of black members; the Black Members' representative on the IEC, the Black Members' representative on the SEC and one member from each of the industrial councils.

- (b) The purpose of the Black Members' Council shall be:

- (i) Monitoring the progress of relevant legislation and campaigning for improvements where necessary;
- (ii) Opposing and publicising, where possible, cases of racial discrimination within the union;
- (iii) Promoting equality within the union;
- (iv) Campaigning against racism in the media.

Rule 18: Disabled Members' Council

- (a) There shall be a Disabled Members' Council consisting of and organised by seven disabled members elected by each annual delegate meeting on nomination from branches, plus one representative from each of the industrial councils and the SEC and the IEC.

- (b) The purposes of the Disabled Members' Council shall be:

- (i) to monitor relevant legislation;
- (ii) to campaign for improved access for disabled members;
- (iii) to highlight instances of discrimination on the grounds of disability within the union;

- (iv) to act on all issues relevant to disabled members;
- (v) to campaign against discrimination on the grounds of disability in the media;
- (vi) to work with other unions towards the full integration of disabled members.

Rule 20: Elections

- (a) -
- (b) All ballots shall be in accordance with conditions laid down by the NEC. All elections shall be conducted by the single transferable vote method other than those within chapels, chapel branches, branches and for all ADM-elected bodies and delegations which shall be by the first past the post method.
- (c) - (k)

The Submissions

7. The Applicant submitted that the Union had for many years elected NEC members on the basis of geographical and industrial sectors but that each qualifying member had a vote under both these categories. All members had two votes, so members were treated equally under the rules. The Applicant explained that he considered the creation of special interest classes had led to inequality as some members enjoyed more votes than others. He stated that under the current balloting arrangements the majority of members would have two votes, whilst a black or disabled member would have three votes and a member who is both black and disabled would have four votes. The Applicant submitted that this inequality was in breach of section 50(1) of the 1992 Act, having regard in particular to section 50(4) which he maintained explicitly prohibits a union using section 50(3) to restrict the right of members to vote in, “...*all elections*...”. The Applicant further submitted that the Union could not avail itself of section 50(3) as there is nothing in the rules of the Union which states that members who are not disabled or black cannot have a vote in NEC elections for these special seats.
8. For the Union, Mr Ford submitted that the voting arrangements for the special sections were permissible by reason of section 50(3) of the 1992 Act. He contended that a section could be created of those members who were black or disabled as demonstrated in the Employment Appeal Tribunal in *Gates v BECTU* (EAT/1462/00 at para 14) and that the rules of the Union treat each of those classes as a separate section as demonstrated by rules 8(b), 13(g)(iii) and

(iv), 17 and 18. Mr Ford submitted that it followed that voting for the black and disabled representatives could properly be restricted to members who fall within those classes.

Conclusions

9. I reject the Applicant's argument that section 50(1) of the 1992 Act creates a situation by which all members of the Union must always have an equal number of votes in elections to the NEC. The requirement that the entitlement to vote must be accorded equally to all members in section 50(1) is made subject to the remaining provisions of section 50. It is therefore necessary to examine these provisions to determine whether on the facts of any particular case entitlement to vote must be accorded equally to all members of the union.
10. I also reject the Applicant's interpretation of section 50(4) as preventing section 50(3) from having the effect of permitting different members to have a different number of votes in an NEC election. In my judgment section 50(4) only impacts on subsection (3) in circumstances in which the restriction imposed by that subsection denies entitlement to any member to vote at all elections held for the purposes of Chapter IV. Such elections are listed in section 46(2). They are elections to the executive, to any position by virtue of which a person is a member of the executive, as President and as General Secretary. It is not suggested that in this case any member has been denied entitlement to vote at all such elections.
11. The central issue of this case is whether the Union can avail itself of section 50(3) to enable it to create special interest sections by and from which members can be elected to the NEC, to the exclusion of other members of the Union. Section 50(3) provides that the union's rules must deal with two separate matters. First, the restricted entitlement to vote must be given to members who fall within, inter alia, a class which is by virtue of the rules treated as a separate section. Secondly, the restriction on the entitlement to vote must itself be contained in the rules of the Union.

12. The rules of the NUJ provide for the interests of black and disabled members to be given special consideration by the creation of a black member's council (rule 17), a disabled member's council (rule 18) and for each industrial council to have on it a black member's representative and a disabled member's representative (rule 13(g)(iii)&(iv)). The rule relating to the composition of the NEC is less happily worded. Rule 8(a) provides that, *"There shall be a central administrative body called the National Executive Council which shall consist of members elected to represent industrial sectors, geographical sectors and disabled members"*. Rule 8(b) provides, *"There shall be one representative for disabled members and one from each of the following industrial sectors; Black members, Books, Broadcasting, Freelance, Magazines, Newspapers and agencies, Public relations and information"*. The description of black members as being an industrial sector, comparable to the other listed industrial sectors, is clearly inapposite. Nevertheless, I find that the Union has defined black members and disabled members as classes which by virtue of the rules of the Union are treated as separate sections within the Union.
13. With regard to the industrial and geographical sectors rule 8(c) restricts the entitlement to vote to members within those sections. It provides:-

"A member who is eligible for election to the NEC shall be entitled to vote in the industrial sector in which s/he is registered as working and in the geographical sector in which s/he lives and stand for office either in the industrial sector in which s/he is registered as working or in the geographical sector in which s/he lives."

There is no similar rule with regard to black or disabled members. Mr Ford observed that the definition of *"rules"* in section 119 includes the rules of any branch or section of the Union and submitted that accordingly the word *"rules"* should be given a broad interpretation. He developed his argument by reference to rule 20(b) which states that, *"All ballots shall be in accordance with conditions laid down by the NEC"*. Mr Ford asserted that the conditions laid down by the NEC for this NEC election contained a restriction on those who could vote in the relevant elections and that those restrictions were well known to members. This may be the case but I was not provided with a copy

of those conditions and the Applicant stated that he was unaware of the restriction on who could stand as a candidate in the relevant elections. Accordingly, on the evidence before me, I am not persuaded that the conditions laid down by the NEC under rule 20(b) satisfied the requirements of section 50(3). In addition, it is arguable that a statutory requirement that a matter must be expressed as a rule of the Union cannot ordinarily be met by “conditions” laid down by the NEC under delegated powers. It would be usual for the adoption of such rules to have been subject to the full scrutiny of a union’s normal rule revision procedure, although the rules themselves may provide unambiguously for their amendment by some other means. Whether such “conditions” or “bye-laws” form part of the rules of a union is a matter which must be decided on a case by case basis. In my judgment, on the facts of this case, the condition-making power delegated to the NEC by rule 20(b) is a power to make conditions for the procedural conduct of the ballot, not a power to make rules determining the constituency from which candidates can be drawn or the voting constituency. This is apparent when rule 20(b) is read as a whole, in the context of the remainder of rule 20. Accordingly, I find that any “conditions” laid down by the NEC regulating the constituencies for the purposes of the NEC election were not rules of the Union.

14. I therefore find that the Union has not provided in its rules that it may restrict entitlement to vote to members who fall within the black members section or the disabled members section. The Union cannot therefore avail itself of section 50(3) of the 1992 Act to avoid the application of the principle contained in section 50(1) that entitlement to vote must be accorded equally to all members. Unless and until the rules of the Union are amended appropriately all members of the Union must be given entitlement to vote in elections for the black members’ representative and the disabled members’ representative on the NEC.

15. I accordingly declare that the Union failed to accord equally to all members of the Union entitlement to vote in the election for membership of the NEC of the Union for 2003/2004 in breach of section 50(1) of the 1992 Act. In the circumstances of this case I consider that it is appropriate that I make an enforcement order pursuant to section 55(5A) of the 1992 Act. I order that the

persons elected to the NEC of the Union for 2003/2004 representing disabled members and black members cease to hold office forthwith.

Observations

16. The 1992 Act permits the creation of special interest sections, such as those representing the interests of members from ethnic minorities or members with disabilities, the representatives of which are elected exclusively by and from the membership of those sections. However, it is possible to envisage situations in which the creation of such special interest sections may be capable of abuse. Places on the executive of a union may be reserved for tightly defined groups which might then have a disproportionate impact on the democratic balance of the executive. The safeguard provided for this in section 50(3) of the 1992 Act is the requirement that the rules of the union must specifically enable such a restriction on voting to be applied. The safeguard against abuse is the union's own democratic process.

David Cockburn
Certification Officer