

**DECISION OF THE CERTIFICATION OFFICER ON A COMPLAINT
MADE UNDER SECTION 103 OF THE TRADE UNION AND
LABOUR RELATIONS (CONSOLIDATION) ACT 1992**

**IN A MATTER OF A COMPLAINT AGAINST
THE CIVIL AND PUBLIC SERVICES ASSOCIATION**

Date of Complaint : 14 October 1997

Date of Decision : 4 December 1997

Date reasons published : 18 December 1997

DECISION

1. On 14 October 1997 I received a letter from a member of the Civil and Public Services Association (“CPSA”) alleging that the Association had failed to notify members of the name of the scrutineer responsible for the ballot on the resolution to approve the instrument of amalgamation between CPSA and the Public Services Tax and Commerce Union before the scrutineer began to carry out his functions. The instrument had been approved in ballots held by both unions and I received an application to register the Instrument of Amalgamation on 20 October 1997. I treated the member’s letter as a complaint under section 103(1)(a) of the Trade Union and Labour Relations (Consolidation) Act 1992 (as amended by the Trade Union Reform and Employment Rights Act 1993) (“the 1992 Act”) that the vote on the resolution had not been taken in a manner which satisfied section 100A(8) of that Act.

2. For the reasons which follow I make a declaration at paragraph 12 to the effect that the CPSA failed to comply with the requirements of section 100A(8) of the 1992 Act. I decline however to make an order specifying any steps which must be taken before I will entertain an application to register the instrument of amalgamation.

Legislative Provision

3. Section 100(1) of the 1992 Act makes the following provision relating to the manner in which the ballot approving the instrument of amalgamation must be conducted. It reads:-

“A resolution approving the instrument of amalgamation or transfer must be passed on a ballot of the members of the trade union held in accordance with section 100A to 100E.”

4. Section 100A(8) of the 1992 Act makes the following provision in respect of action that the trade union is required to take before the scrutineer appointed in respect of the ballot begins to carry out his functions. It reads:-

“The trade union shall, before the scrutineer begins to carry out his functions, either -

- (a) send a notice stating the name of the scrutineer to every member of the union to whom it is reasonably practicable to send such a notice, or*
- (b) take all such other steps for notifying members of the name of the scrutineer as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.”*

The Complaint

5. In his initial letter, which raised other matters which I have decided fall outside my jurisdiction, the member stated that he understood “that a technical point of contention exists which relates to the union’s failure to comply with section 100A of the 1992 Act,

by a notice stating the name of the scrutineer was issued before they began to carry out their functions.”

6. In response to questions put in correspondence with the member he indicated that, whilst he did not know the date on which the scrutineer began to carry out his functions, he assumed that it must have been before the start of the ballot on 17 September 1997 but could not confirm this. He also originally indicated that he believed that his union had failed to issue any notification of the name of the scrutineer but could not prove this.
7. Later in commenting on the union’s response to his complaint he conceded that the union had produced a circular (NAT/GEN/8/97) which had been sent to his branch for distribution to each member and the union had also posted the leaflets to individual members. Whilst the leaflet was undated he recalled that they first arrived on 10 September 1997 which was after the date that the scrutineer performed his first function. He also stated that the leaflet was not recognised as “NAT/GEN” referenced material” but was mistaken as propaganda material in support of the proposed merger.

The Union’s Response

8. In response to the complaint the CPSA indicated that the scrutineer’s first function in connection with the ballot on the instrument of amalgamation was an inspection of the membership register undertaken on 8 September 1997.
9. The union produced a circular (NAT/GEN/8/97) which, amongst other details relating to the proposed amalgamation, gave details of the CPSA scrutineer. It was stated that the

circular was distributed by the usual method employed by the union when matters of general interest to all its members need to be brought to their attention. Sufficient copies of the leaflet were produced to enable distribution to members on an individual basis. The leaflets were due to be despatched by first class post on 5 September from the CPSA Head Office to 6493 predetermined distribution points at the members' places of work for distribution by branch representatives. In the event not all the circulars were despatched on Friday 5 September and some were not despatched until Monday 8 September with the remainder going out on Tuesday 9 September.

10. It was further explained that the CPSA's constitution provided that the union's "Chartered Accountants shall act as returning officers over all ballots of the Association" (Rule 13.2(a)). This was incorporated in the union's Financial Report which was distributed to members annually and which also gives the name and address of the union's chartered accountants. It was therefore argued that members were generally aware of the identity of the scrutineer/returning officer in all ballots of the CPSA.

Reasons for my Decision

11. Section 103(3) of the 1992 Act requires that before I find a complaint justified I must give the complainant and the trade union the opportunity of being heard. I conducted my enquiries into this complaint by correspondence with both the complainant and the CPSA. Both parties declined the opportunity to make oral representations at a hearing before me before I reached my decision on the complaint.

12. I do not accept that naming the union's Chartered Accountants as returning officers and circulating members to that effect at the beginning of the year satisfies the requirement to notify members of the scrutineers appointed in respect of a particular ballots held in that year. The functions of a returning officer are not necessarily the same as those of the statutorily defined scrutineer. The first notice of the scrutineers name that the union gave its members was in NAT/GEN/8/97 which on the union's evidence was circulated between 5 and 9 September. The union's evidence is also clear that the scrutineer had begun his functions by at least 8 September. In the circumstances I do not have to determine the precise date on which the scrutineer's functions began. By the union's own admission the scrutineer for the ballot on the instrument of amalgamation began his duty before every notice giving the name of the scrutineer had been sent to members. For that reason I made the following declaration:-

"In the ballot of members of the Civil and Public Services Association for approval of a resolution proposing an amalgamation with the Public Services Tax and Commerce Union, the union failed to notify members of the name of the scrutineer responsible for the ballot before the scrutineer began to carry out his functions as required by section 100A(8) of the Trade Union and Labour Relations (Consolidation) Act 1992."

Remedy

13. I am satisfied that the breach, which was essentially a minor procedural one, did not affect the outcome of the ballot, in which the resolution to amalgamate with PTC was accepted by a substantial majority. All members would have been informed of the name of the scrutineer in the week beginning 8 September 1997. It therefore appears most unlikely that the infringement prevented any member raising with the scrutineer any issue of concern before the ballot closed on 15 October 1997. In light of this I do not think it necessary for the union to take any particular steps before I will entertain an application

to register the instrument of amalgamation. I therefore decline to make an order under the provisions of section 103(3)(b) of the 1992 Act.

E G WHYBREW
Certification Officer