

DECISION OF THE CERTIFICATION OFFICER ON COMPLAINTS MADE UNDER
SECTION 4 OF THE TRADE UNION (AMALGAMATIONS, ETC.) ACT 1964

C C AMMONDS

AND

SOCIETY OF LITHOGRAPHIC ARTISTS, DESIGNERS,
ENGRAVERS AND PROCESS-WORKERS

Date of decision:

26 March 1982

1. Mr Charles Ammonds, who is a member of the Society of Lithographic Artists, Designers, Engravers and Process-Workers ("SLADE") has complained to me under section 4(1) of the Trade Union (Amalgamations, etc.) Act 1964 ("the Act") about a ballot held during January 1982 to approve an instrument of amalgamation of SLADE and the National Graphical Association ("NGA").

2. His complaints are:-

1. First Complaint

Under section 4(1)(c) of the Act, that the vote was taken under provisions in the rules of SLADE but the manner in which it was taken was not in accordance with those rules because certain classes of members of SLADE voted in the ballot on the resolution to approve the instrument of amalgamation between SLADE and the NGA when, under rule 35(4) of the rules of SLADE, they were not entitled to do so.

2. Second Complaint

Under section 4(1)(d) of the Act, that the votes recorded did not have the effect of passing the resolution

because the words "Providing a majority of SLADE members again vote in favour" appearing in the notice to members approved by the Certification Officer committed SLADE to proceed with the transfer only if a majority of all the members voted in favour of the resolution to approve the instrument;

and additionally under section 4(1)(a) of the Act, that the manner in which the vote on the resolution was taken did not satisfy the condition in section 1(2)(b) of the Act that every member of the union must be allowed to vote without interference or constraint because the words "Providing a majority of SLADE members again vote in favour" appearing in the notice amounted to an interference or constraint upon voting because they were capable of misleading voters into thinking that the resolution would not be passed unless a majority of all the members voted in favour of it.

3. Under section 4(3) of the Act I have the power to dismiss complaints without holding a hearing but I may only find them to be justified after giving the complainant and the union an opportunity of being heard. I have decided to dismiss Mr Ammonds' complaints without holding a hearing for the reasons which follow.

4. The First Complaint This ground of complaint only applies where the vote is taken under provisions in the rules of the union. In fact, it seems likely in view of the terms of rule 35(4) that the vote was taken under arrangements made under section 2(2) of the Act rather than under the union's rules. In that event, no complaint could lie under section 4(1)(c).

5. However, even if the vote had been taken under rules of the union section 1(2)(a) of the 1964 Act provides that "every member of the union must be entitled to vote on the resolution" and section 2(1) of the Act provides that section 1 shall apply notwithstanding anything in the rules of any of the trade unions concerned. It follows that the requirement in section 1 overrides the provision in rule 35(4) which purports to exclude certain classes of members from voting in an amalgamation with the result that all members of SLADE including those classes were required to be entitled to vote. This is therefore not a complaint which could be justified under section 4(1)(c).

6. The Second Complaint Section 2(3) of the 1964 Act provides that a simple majority of the votes recorded is sufficient to pass a resolution to approve an instrument of transfer or amalgamation notwithstanding anything in the rules of a union unless the rules expressly provide that subsection (3) shall not apply. Rule 35(a) does expressly exclude the operation of the subsection but it provides instead that a resolution for transfer or amalgamation "shall be declared carried if approved by a majority of those voting", and this is, materially, no different.

7. I consider that the expression "a majority of those voting" means that a resolution is passed if more than 50 per cent of those voting vote in favour of the resolution. More than 50 per cent of the SLADE members who voted voted in favour of the resolution; accordingly the votes recorded did have the effect of passing the resolution. The statement complained of was open to interpretation that the resolution could only be approved if more than 50 per cent of the total membership voted in favour, but it was not capable of altering the requirement laid down in rule 35(a).

8. Further, the fact that the statement was open to that interpretation and could have been misunderstood by a proportion of members does not make the statement an "interference or constraint" upon voting. Those words are aimed primarily at intimidation, physical interference and the like, and an ambiguous

statement in the notice to members is very far from amounting to interference or constraint.

9. I therefore dismiss both the complaints.

W. B. R. King

26 March, 1982.