

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE
UNDER SECTION 25(1) OF THE TRADE UNION AND LABOUR
RELATIONS (CONSOLIDATION) ACT 1992**

**IN THE MATTER OF A COMPLAINT AGAINST
THE MANUFACTURING, SCIENCE AND FINANCE UNION**

APPLICANT MR D BEAUMONT

Date of Decision:

18 July 2001

DECISION

- 1.1 Under section 25(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (as amended) (“the 1992 Act”) a person who claims that there has been a breach of the Act relating to any of the requirements of section 24 of the Act may apply to me for a declaration to that effect.
- 1.2 Section 25(2) of the Act empowers me to make such enquiries as I think fit and, after giving the applicant and the union an opportunity to be heard, to make or refuse to make the declaration asked for. Whether or not I make the declaration sought, I am required to give the reasons for my decision in writing.
- 1.3 Where I make a declaration under section 25(2), I am required, unless I consider to do so would be inappropriate, to make an enforcement order on the union. My enforcement order is required to impose on the union one or both of the following requirements -
 - (a) to take such steps to remedy the declared failure, within such period as

may be specified in the order;

- (b) 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.

1.4 On 21 March 2001, I received an application from Mr D Beaumont, a member of the Manufacturing, Science and Finance Union (“MSF”, “the union”), complaining that the union had breached section 24 (1) of the Act by failing to maintain an accurate and up to date register of its members’ names and addresses.

1.5 In correspondence with my Office, Mr Beaumont set out his complaint, that:

“in numerous statements by the union it had declared a union membership in excess of 400,000, but that contradictory evidence from the union gave a membership figure of around 30% less.”

1.6 The allegation was accepted by me as a complaint under section 25 (1) of the 1992 Act that MSF had breached the Act relating to matters mentioned in section 24 (1) namely: -

“A trade union shall compile and maintain a register of the names and addresses of its members, and shall secure, as far as is reasonably practicable, that the entries in the register are accurate and are kept up to date”

1.7 I investigated the complaint in correspondence and, on 14 June 2001, held a formal

Hearing of argument on the complaint. The union was represented by Mr C Ettinger (Solicitor, Irwin Mitchell). Mr R Lyons (General Secretary, MSF) and Mr A McKenna (Head Office, MSF) attended in support of the union. Mr P Anderson (Chair, MSF Hayes Branch), attended in support of Mr Beaumont.

- 1.8 For the reasons that follow, I decline to make the declaration sought relating to the union's maintenance of its register of members' names and addresses as required under section 24 (1) of the Act.

Requirements of the Legislation and the Relevant Union Rule

- 1.9 It may be helpful, at this point, if I set out other relevant statutory requirements of the Act to which I have referred in this decision and which have a bearing on this application. I have already referred to section 24 (1), whilst section 25 (1) states:

“A member of a trade union who claims that the union has failed to comply with any of the requirements of section 24 or 24A (duties with respect to register of members' names and addresses) may apply to the Certification Officer for a declaration to that effect.”

- 1.10 In referring to MSF's Rules throughout this decision I have referred to the MSF Rule book, as at January 1999.
- 1.11 That then is the background and relevant legislation. I now set out the facts and arguments put by the parties and the reasons for my decision.

THE COMPLAINT

The Complaint was that MSF had breached section 24(1) of the Act in respect of one matter.

This was :

“the union in numerous statements declared a union membership in excess of 400,000, but that contradictory evidence from the union gave a membership figure of around 30% less. Therefore MSF had failed to maintain an accurate and up to date register of the names and addresses of its members and had thus breached section 24 (1) of the Act.”

Background

2.1 Mr Beaumont cited the union’s Annual Returns submitted to me over the last five years. These showed a relatively consistent union membership figure in excess of 400,000. Ballots of members held by the union from 1999 to 2001 and statements made by union officials, notably Mr Paul Talbot (Head of Manufacturing and Employment Relations, MSF) in February 2001, however, indicated a membership figure of around 300,000. This formed the basis for Mr Beaumont’s complaint that the Annual Returns could not, therefore, have been an accurate reflection of the membership figures for the union and was evidence that MSF had failed to adhere to the requirements of section 24 (1) of the Act.

2.2 The union contended that its processes to maintain an accurate and up to date register of

members was in place, was effective, and that efforts to address a malaise in relevant membership information reaching union Head Office were working. The union further pointed out that there was, within the union movement as a whole, a marked decline in membership.

The Applicant's Case

2.3 In correspondence with my Office, Mr Beaumont stated that the union's Annual Return to me for the year ending December 1999 (received 5 August 2000), gave a membership figure of 404,741, but that the number of ballot papers distributed to the membership in the March 2001 'merger' ballot, was 299,106. Mr Beaumont cited other apparent similar discrepancies, for example, in a ballot held in April 1999, when 303,854 ballot papers had been issued.

2.4 He also queried the seemingly relatively unchanged number of ballot papers issued, indicating members allowed to vote, against increases in the number of members for whom current addresses were not held. Mr Beaumont made the point that he was not challenging the union's assertion that it was endeavouring to ensure that an accurate and up to date register was being maintained in accordance with the requirement of the Act, but that the efforts of the union to secure such a requirement, as far as reasonably practicable, had failed. Further, that that failure had led to MSF providing an inaccurate Annual Return.

2.5 Mr Anderson, in support of Mr Beaumont, outlined his own history within the union and the various positions and duties he had undertaken for different Branches over a considerable number of years. He asserted that the maintenance of membership records,

at whatever level within the union, had never been easy and he did not seek to denigrate any of those who were charged with such a task. He stated that he had, in the past, appointed a specific individual to oversee membership records in the Branch, but acknowledged that generally it was rarely feasible or practical for Branches to make such an appointment.

2.6 He further stated that given the diversity and number of employers from which the union membership was drawn, it was frequently the case that Branch level activity in verifying membership was not as effective as it could be. In response to my question, Mr Anderson confirmed that the union Head Office did issue lists of members, which the Branch was required to follow-up/verify, but he stated that in practice there was very little chance at Branch level for such lists to be actioned.

2.7 Mr Beaumont contended that the situation was exacerbated at Branch level because the Branch Secretary (of which he had direct experience), would receive, from union Head Office, lists of names and addresses, but no telephone number or e mail reference for any given individual. There was rarely time to write to such individuals.

2.8 Mr Beaumont queried the increase in the number of cases where no home or authorised address for union members was held. In recent years, the variation in this figure had usually been within 2% to 3% of the total number of members. In the year for which the most recent figures had been supplied, the figure of 2% to 3% had increased by 25%. For the union, Mr Ettinger responded by stating that the amalgamation of a number of Branches, together with improved procedures within the union, in place since a 1999 rule change, had led to better communication with the membership and greater efficiency in dealing with returned correspondence and verifying addresses.

2.9 In conclusion, Mr Beaumont reiterated his comment that he was not challenging the

efforts that had been, or were being made, by the union to maintain and up date its register of members' names and addresses in accordance with the requirements of the Act. His complaint centred on the summary figures presented in the union's Annual Return for the year ending December 1999, for which the membership figure was, as demonstrated by subsequent ballots and statements by union officials, grossly inaccurate. This, Mr Beaumont contended, illustrated that membership records had not been maintained in a way that complied with the requirements of the Act.

The Union's Response

2.10 In correspondence with my Office, MSF cited changes that had been introduced to improve and make more efficient the maintenance and up keep of its register of members' names and addresses. Such action had been introduced subsequent to the recommendations of an independent consultancy (Active Media), and as a consequence of my decision D/1-5/1998, in which I found the union in breach of section 24 (1) of the Act *"by not securing, so far as is reasonably practicable, that the entries in the register of the names and addresses of its members are accurate and kept up to date"*

2.11 Mr Ettinger outlined the various methods by which the union had sought to implement the recommendations of Active Media, and the measures undertaken directly by the union in response to decision D/1-5/1998. In particular, how union members paid their subscriptions, how that was collated within the subscription and membership sections at union Head Office to ensure that records were as up to date as possible, and how the outturn from such action was communicated to Branches/the membership. A major change was that the union could now allocate all check-off subscriptions received from employers to the member from whose pay the subscription had been deducted. This was

particularly important as 60% of members used this method of payment. There were now some thirty (30) staff employed on membership and subscription record keeping at union Head Office.

- 2.12 The efficiency of the linking of subscriptions to members was now a feature of procedure, given the MSF rule change implemented from January 1999 and ratified by Annual Conference. Union rule 15 c had been amended to read:

“A member exceeding 26 weeks in arrears of subscriptions from the last payment date shall be deemed to be no longer a member of the union, unless the NEC following consultation with the Branch, decides by resolution to keep his/her name on the register of members.”

- 2.13 As indicated in correspondence from the union, an automatic tracking system was now in place, which also kept Branches updated, and, if an individual in arrears of subscriptions by more than 26 weeks had not resigned from the union, rule 15c would automatically be invoked.

- 2.14 Mr Ettinger also outlined the union’s efforts to improve the position in relation to new members whose details would not appear on the register of members, pending confirmation of the ‘check-off’ method of payment (at present, this could defer entries on the register by some two months), and also to verify information for members of the union, who may/may not be entitled to a reduced rate of subscription. Even so, at October 2000, approximately two hundred (200) new union members were not in compliance and although union Head Office would take the lead in trying to resolve such

situations, effort and support from Regional and Branch Offices remained vital.

2.15 Mr Ettinger went on to also highlight union difficulty in resolving incorrect addresses for members of the union. The union magazine “MSF Works”, issued six times a year, specifically provided for members to notify changes in/update relevant details. Nevertheless, failure to advise the union of changes remained a problem. In 1999, no current address details were held on record in respect of 30,000 members. Union Head Office had sought help from the Branches in trying to reduce that number. Their combined efforts had resolved only 1000 of that total.

2.16 In referring to the assistance sought from the Branches, Mr Ettinger also highlighted the role of the Branch Secretary as set out in union Rule 42 I:

“The Branch Secretary shall.....be responsible for maintaining membership records and for notification to members of arrears in contribution.”

He further went on to state that given the myriad of employers (some 12,000), from which the union membership was drawn, successful interaction between union Head Office, Regional Offices and Branches was vital to ensure that the register of members was as accurate as possible, properly maintained, and kept up-to-date. Mr Ettinger presented a statement from Mr McKenna, in which he (Mr McKenna), set out his experience as a Branch Secretary and his duties in relation to membership records.

2.17 In respect of the difference in membership figures for the year ending December 1999, the Annual Return sent to me, (404,741), the National Womens’ Seat ballot (April 1999, ballot papers 303,854) and the ‘merger ballot’ (March 2001, ballot papers 299,106). Mr

Ettinger explained that the overall membership figure was not the same as those members balloted. This was because members balloted excluded those without a confirmed address and retired members (in accordance with union rule 8d). At the time of the 'merger ballot' the figures involved were 32,308 and 14,020 respectively.

2.18 Mr Ettinger maintained that as the 'merger ballot' was some fifteen months (15) after the year ending December 1999 membership figure, a gross membership figure of 345,434, (as opposed to 404,741 as recorded on the Annual Return), was not unrealistic, or inaccurate, given the union rule change, the union's efforts to clear the register of non-members and the downturn in union membership per se.

2.19 In conclusion, Mr Ettinger stated that individuals would always be joining/leaving a union and that membership figures would, therefore, fluctuate on a monthly basis. Similarly, the fact that on each general mailing some 4000 items were returned 'not known' or 'no longer at this address' caused further fluctuations in membership figures. In this context, the implementation of measures recommended by an external consultancy, the requirements placed upon it by my decision D/1-5/1998, and the improvement in its own administrative and computer systems, did, however, mean that the union was complying with the requirements of section 24 of the Act.

2.20 Mr Ettinger continued, that at the present time, the membership and subscription records systems of the union remain in transition following the procedural changes effected from January 1999, and that these would continue to work through those records systems. It was likely, therefore, that further significant changes to membership figures would yet be

seen, but this was not indicative of any failure by the union to comply with the Act.

Reasons for my Decision

2.21 The substance of the complaint is simple. Does the union compile, maintain and secure, so far as is reasonably practicable, an accurate and up-to-date register of members' names and addresses in accordance with the requirements of section 24(1) of the Act? In the application before me, Mr Beaumont argued that for the year ended December 1999, the union did not. MSF argued that it did.

2.22 In presenting its case, the union referred to my decision D/1-5/1998, in which I had found the union to be in breach of section 24 of the Act. As a public document, the union had not previously indicated its intention to refer to that document in its submission at the Hearing. The substance and relevant sections of decision D/1-5/1998 were used by MSF to illustrate its progress in relation to section 24(1) of the Act. Mr Beaumont clearly felt disadvantaged by this. I initially allowed a fifteen (15) minute adjournment for Mr Beaumont to read the relevant parts of the decision. Having done so, Mr Beaumont requested a postponement of the Hearing to another day. The union opposed this, essentially on the grounds that it was unnecessary, and submitted that Mr Beaumont had produced no evidence, other than broad figures, to support his complaint. I refused the request for a postponement, partly on the grounds that it was a public document relating to an almost identical complaint from Mr Beaumont's own region of MSF, but mainly on the grounds that the links with the evidence produced by Mr Beaumont were quite straightforward. I allowed Mr Beaumont a further seventy-five (75) minutes to digest decision D/1-5/1998.

2.23 It is clear to me that a lack of resources at Branch level has affected the scope for membership details to be verified. It is also clear that the union has inaugurated significant changes to improve the compilation and maintenance of its register of members. It has lessened its reliance on Branch Officials, improved its use of computerised procedures for subscription collection, whether by check-off, standing order or other means. It has also altered its rules so that members who cease paying subscriptions are removed from the register of members. These are all significant components in securing an accurate and up-to-date register of members.

2.24 There is no doubt that the figures given on the union's Annual Return relating to December 1999, and repeated by Officers of the union until early in 2001, are no longer accurate figures. It may, or it may not, have been an accurate figure in December 1999, according to the rules of the union on which it was based. In spite of Mr Beaumont's assertions to the contrary, however, that is not the decision I have to take. The decision for me is whether the union is securing "so far as is reasonably practicable, that the entries in the register are accurate and are kept up-to-date". That is, a decision that relates to the present position.

2.25 As far as the present is concerned, the most up to date evidence I have is the number of members who were balloted in the 'merger' ballot - 299,106, to which must be added 32,308 for whom no authorised balloting address was held and 14,020 retired members not entitled to vote under union rules. That gives a total register of 345,434. The difference between that figure and the 404,741 of December 1999, is almost 60,000, but I am of the view that the difference is probably within the range that might be expected from a general decline in membership. More particularly, this difference is also within the

range which might be expected from the proper application of the amended union Rule 15c, which has the effect of automatically removing from the register those members who are six months behind with their subscriptions. Evidence produced in relation to my decision D/1-5/1998 suggested that for some Branches, the register was grossly inflated by the failure to take this step.

2.26 I am therefore of the view that the rules and procedures the union now has in place, while not providing a register of members names and addresses that is 100% accurate, do satisfy the requirements of section 24 of the Act. It is for this reason that I dismiss this complaint.

E G WHYBREW
Certification Officer