

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

**IN THE MATTER OF A COMPLAINT AGAINST
THE PRISON OFFICERS' ASSOCIATION**

APPLICANT MR K CUMMINGS

Date of Decision:

23 February 2001

DECISION

- 1.1 Under section 108A(1) of Part I 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 or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to me for a declaration to that effect.
- 1.2 Section 108B 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 108B 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 -

- (1) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;
- (2) to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.

1.4 On 14 November 2000, I received an application from Mr K Cummings, a member of the Prison Officers' Association (POA/the Association), complaining that the union's National Executive Committee (NEC), had overridden Conference decision (motion 104/99: "*that no membership amnesty be allowed for two years commencing 1st September 1999*"), by issuing Branch Secretary Circular 50/2000 on 18 August 2000, granting a membership amnesty "*.....to take immediate effect and will cease on 31st May 2001*".

1.5 The applicant alleged that, under Rule 10.1, "*The management of the Association is vested in: (a) Conference; (b) the National Executive Committee; and (c) the Officers; in that order of priority (except where these rules provide differently)*", and that by their action the NEC, had breached this rule .

1.6 The allegation was accepted by me as a complaint under section 108A(1) of the 1992 Act that the POA had breached its rules relating to a matter mentioned in section 108A(2)(d), namely: -

“(d) the constitution or proceedings of any executive committee or of any

decision-making meeting;”

1.7 I investigated the complaint in correspondence and, on 7 February 2001, held a formal hearing of argument on the complaint. The union was represented by Mr Brain Caton, (POA General Secretary) who called Mr Peter Hancox, (POA Finance Officer) and Mr Mark Healy (POA National Chairman) as witnesses. In presenting his case, Mr Cummings called Mr M Mullins to support his case.

Decision

1.8 After careful consideration of the documents, evidence and arguments put to me I refuse to make the declaration sought by Mr Cummings. The reasons for my decision are set out below.

Requirements of the Legislation and the relevant union rule.

1.9 It may be helpful, at this point, if I set out the relevant statutory requirements of the Act to which I have referred in this decision and the union rules which have a bearing on this application. The relevant statutory requirements are as follows:

“108A.-(1) A person who claims that 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)
- (b)
- (c)
- (d) *the constitution or proceedings of its executive committee or of any decision-making meeting.*”

1.10 In referring to the Association’s rules, throughout this decision I have referred to the Association’s rule book as printed in May 2000. The relevant union rules relating to the Association’s organisation and management, the National Executive Committee, Conference, and the Constitution are found under Rules 10,11,13 and 29 respectively of the POA rule book.

1.11 Under the rule heading “Authority”, Rule 10.1 provides:

- “ *The management of the Association is vested in:*
- (a) *Conference*
 - (b) *the National Executive Committee; and*
 - (c) *the Officers;*
- in that order of priority (except where these rules provide differently)”.*

1.12 Under the rule heading “Proceedings”, Rule 11.10 provides:

- “ *The National Executive Committee will conduct the business of the Association in accordance with the policy laid down from time to time by Conference, unless these rules provide differently.*”

1.13 Under the rule heading “Annual and Special Conferences”, Rule 13:4 provides that:

“ *Conference will determine the principles and policies of the Association, except where these rules provide differently.*”

1.14 Under the rule heading “Interpretation of Rules” , Rule 29.4 provides that:

“ *The interpretation of these rules is vested in:*
(a) Conference when it is in session;
(b) the National Executive when it is in session and Conference is not;
and
(c) the Chairman and General Secretary (acting together) when neither Conference nor the National Executive Committee is in session.”

1.15 That then is the background, relevant legislation and union rules. I now set out the facts and arguments put by the parties and the reasons for my decision.

The Complaint was that the Association had breached its rules in respect of one matter. This was that the issuing of Branch Secretary Circular 50/2000, by the National Executive Committee, thereby overriding Conference decision (Motion 104/99), was contrary to the Association’s rules.

Facts

2.1 On 23 August 2000, Mr Cummings wrote to Mr Healy in response to Branch Secretary Circular 50/2000 which had been issued on 18 August 2000 and which invoked an immediate membership amnesty to run until 31 May 2001. The amnesty entailed allowing ex-members to rejoin the union without paying arrears of subscriptions due from the time they left. Mr Cummings’ letter queried the authority of the NEC to override Conference

motion 104/99 by which no membership amnesty was to be effected for a period of two years, commencing 1 September 1999; cited Association Rule 11.10, by which the NEC will conduct the business of the Association in accordance with Conference policy and requested the immediate suspension of Branch Secretary Circular 50/2000. In his letter, Mr Cummings also referred to two previous amnesties, both of which had been ratified by Conference. On 24 August 2000, Mr Cummings again wrote to Mr Healy, to request a membership ballot on the action taken by the NEC.

- 2.2 In his letter of 25 August 2000, in response, Mr Healy advised Mr Cummings that the NEC had undertaken its course of action in relation to a changing situation; that to call a Special Delegates Conference would not have made best use of membership monies; that the NEC had acted in the best interests of the membership and, therefore, Branch Secretary Circular 50/2000 would not be suspended. In response to Mr Cummings request for a reply to the subject matter in his letter of 24 August 2000, Mr Healy, on 17 October 2000, reiterated that the NEC had acted in the best interests of the membership and suggested that if Mr Cummings wished to pursue the matter further, he should take recourse via a motion at the 2001 Annual Conference.

The Applicant's Case

- 2.3 In correspondence with my Office, Mr Cummings made reference to Association custom and practice in that it had always been the case that an amnesty was called *subsequent* to a Conference as demonstrated by motion 103/99 which had allowed a three month amnesty from 28 May 1999. He also stated that although he agreed the NEC could interpret the rules of the Association outside Conference, he did not accept that the same

applied to areas of policy, in particular motion 104/99, which had been clearly set by Conference.

2.4 He argued that the NEC had gone against the democratic process of the Association in varying Conference policy without agreement from Conference and in contradiction of Rule 13.4.

2.5 Mr Cummings emphasised that it was not the issue of the amnesty that had given rise to his complaint, but the manner in which it was effected. He and Mr Mullins went on to state that if, as maintained by the Association, the number of individuals seeking potential membership was significant, then the subject of an amnesty should have been put to the full membership or a Special Delegate Conference in order to abide by the Rules of the Association.

2.6 Mr Cummings and Mr Mullins referred to paragraph 5 in the Minutes of the NEC Meeting of 10 August 2000. *“The amnesty or suspension in relation to members who wish to rejoin the P.O.A was debated. Private and Public prisons were phoning frequently regarding this issue. Conference motion currently restricts this. The issue was debated at great length. It was proposed and carried that there will be an amnesty until next Conference.”* The POA confirmed that this was an agreed and accurate account.

2.7 In response to the POA’s assertion that the issue of an amnesty had been brought before the NEC by the Association’s Finance Officer as a result of the POA “day of action”, on 2 August 2000, and that it was proper for the NEC to arrive at its minuted decision, which was fully in accordance with the provisions of Rule 29.4(b), Mr Cummings maintained that

the NEC had clearly acted beyond its authority, against Conference and in contravention of the Association's Rules.

2.8 In summary, Mr Cummings stated that as members of the POA, the NEC, and its elected Officials, were required to adhere to Conference decisions and the Association's Rules, and should, therefore, have sought a Special Delegates Conference on the issue of an amnesty. He further stated that nothing he had heard had changed his mind that by issuing Branch Secretary Circular 50/2000, the NEC had overruled Conference policy and had, therefore, breached the POA's Rules and, in so doing, had undermined the integrity of Conference itself.

The Union's Response

2.9 In correspondence the POA stated that it had launched a "day of action" on 2 August 2000 in respect of a matter of great concern to members but not of relevance to this case. Many non-members who had supported the action subsequently sought re-admission to the POA.

2.10 The proposal for an amnesty was placed before the NEC by the Association's Finance Officer (Mr Hancox). Mr Hancox stated that arising from the POA "day of action", on 2 August 2000, a considerable number of requests for membership under the terms of an amnesty had been received. He further stated that although previously he had, in accordance with Association custom and practice, exercised discretion in respect of such requests, he had sought to refer the issue to the NEC because of the increasing number of similar requests. Mr Healy advised me that he had also been lobbied on this subject

and considered it was proper for the issue to be brought before the NEC, and for the NEC to arrive at its minuted decision. The Association added that following the issue of Branch Secretary Circular 50/2000, the POA gained 185 members within a six week period. The figure had continued to increase and was now in excess of 400.

2.11 For the Association, Mr Caton acknowledged that areas relating to policy were often sensitive and accepted that Conference did indeed establish policy for the Association. He maintained, however, that the role of the NEC was to implement and progress policy with such flexibility as was warranted in the “real world” for the benefit and well being of the POA and its members. On the issue of the amnesty, he continued, any delay would have risked losing new members which could ultimately have been to the detriment of the POA itself. In correspondence, the Association had acknowledged that there was no clear rule on the subject of amnesties, but that in seeking to act in the best interests of the Association and its membership the NEC had enacted the provisions of Rule 29.4(b) in authorising an amnesty.

2.12 Mr Healy stated that the POA electorate would ultimately decide whether the NEC, either collectively, or as individuals, were acting in the best interests of the Association. In his opinion, it was a function of Conference to establish broad policies and needs, and for the NEC to effect and interpret those policies and needs on a day to day basis. He acknowledged that the realities of life meant that there were occasions when policy overlap or conflict could arise (e.g. market testing, anti-privatisation, union mergers). He stated his belief that it was for the NEC to determine the best way forward at such times, but that ultimately, the NEC was subject to censure by Conference if action undertaken by the NEC was deemed incorrect.

2.13 Mr Caton stated that at the forthcoming Special Delegate Conference on 27 February

2001 (called in respect of issues not connected with this case), the NEC would also seek ratification of its action under Branch Secretary Circular 50/2000.

2.14 In summary, Mr Caton stated that the NEC were not seeking to thwart Onley's (Mr Cummings' local Branch) right to challenge the NEC. The POA existed for and because of its members. The NEC sought only to undertake the day to day management of the POA as best as possible for the Association and its members.

Reasons for my Decision

2.15 There is no doubt, as a matter of fact, that the amnesty was in conflict with Conference motion 104/99. The essential question for me to answer is did the Association within its rules have the authority to issue the amnesty which it did on 18 August 2000? The complainant argued that the NEC did not have such an authority. The Association argued that it did. In a nutshell, the Association accepts that in allowing an amnesty it varied policy decided upon by Conference in motion but argued it was within rule under its authority to manage the Association when Conference was not in session. The complainant's case is that the rules provided no such authority. It is for me to decide whether the NEC had the discretion within the rules of the Association, expressly or by implication evidenced by custom and practice, to vary policy.

2.16 Rule 10.1 is a rule of the Association that refers to authority in the Association's management. It lists Conference; the National Executive Committee and the Officers in that order of priority. Unlike Rule 29.4 (which deals with the interpretation of the rules) it does not expressly limit that authority to the times when the Conference, or when the

NEC, is in session. Indeed, Rule 11.10 expressly states that the NEC must conduct the business of the Association in accordance with Conference policy unless the rules provide differently. It is clear that Conference is the Parliament of the Association and (subject in some cases to a vote of the entire membership), the ultimate decision making body of the Association.

2.17 It is also true that Conference passed a clear policy motion of instruction banning amnesties for two years from 1 September 1999.

2.18 Against this background, if one interpreted the rules of the Association as if they were a statute enacted by Parliament, it would almost certainly lead to the view that the NEC broke Rule 11.10 in issuing the amnesty circular on 18 August 2000. Union rule books though are not statutes and the courts have consistently refused to interpret them as such. [See *Heatons Transport (St Helens) Ltd v Transport and General Workers Union* (1972) I.C.R 308, and *Wise v USDAW* (1996) I.C.R. 691] In my view, union rule books set out the rules and principles governing the operation of a living, working organisation that has to respond to changing circumstances in the best way it can and in the interests of the members whose organisation it is. I have indicated in a previous decision (*D/17/00 Eager and others v Equity*), that a union could not operate if the General Secretary could not act without the express and prior approval of the Executive. Similarly, the Executive cannot be held to require express and prior approval of Conference for any and every action it takes.

2.19 None of this is to argue that members are not entitled to a degree of certainty in the way the rule book is interpreted, nor that the Executive can blatantly and without good reason,

ignore the instructions of Conference. Some instructions will be outwith the Executive's power to deliver (e.g. on pay claims). Others (e.g. on the management of the union), will be entirely within the Executive's say so. I was told in evidence that in progressing Conference decisions the Executive of the Association did not always abide by the detail or thrust of those decisions. No union wishing to retain the support of its members will ignore either type of instruction without good reason. Usually it will be for the members, through branches, newsletters and Conference motions to indicate if they think the reasons given are good enough. In this case, because the complainant, acting entirely within his rights, has put the case to me, I have to decide if the authorisation of the amnesty constituted a breach of rule when the rules are interpreted in the way I believe they should be.

2.20 For me, the relevant facts of this case are that Conference decided in May 1999, with the support of the National Executive, that there should be a three month amnesty for rejoining members, but that from September of that year, there should be no further amnesty until after 1 September 2001. On August 2nd 2000, the Association was involved in "a day of action" on a matter separate from any issue before me. Following that action, numerous branches approached the Association's Chairman and its Finance Officer stating that many ex-members (some of whom had supported the day of action), were seeking to rejoin and asking that a new amnesty be introduced to facilitate their recruitment into the Association. The POA is a union which faces competition from other unions for members in many prisons and special hospitals.

2.21 Faced with that situation the Association's NEC, after a long debate on 10 August 2000, considered the facts and the way circumstances had changed since the Conference

resolution was passed. The NEC calculated that to recall Conference to alter policy would be too expensive and too slow a response to the position in which it found itself. It therefore decided on a new amnesty to run until the time of the next normal Conference in May 2001. The action taken by the NEC did not result in any detriment to any of its members and in the six weeks following 18 August, 185 new members took advantage of the amnesty - a number which has more than doubled since then.

2.22 Given the evidence I heard on custom and practice in the Association and my knowledge of custom and practice in other unions, and given the circumstances of this case, I believe that the ordinary member of the Association would accept that the NEC had discretion to act as it did and that such action was covered by Rule 10.1. Had this been a case where Conference had passed a resolution against the advice of the NEC, and had the NEC produced half baked reasons for saying circumstances had changed, I would probably have decided differently. In this case, however, it is my view that in deciding on, and issuing notice of, an amnesty in August 2000, the Association broke no union rule. I therefore dismiss this complaint.

2.23 I should point out that I am aware that this matter is to be discussed at a Special Annual Delegate Conference on 27 February 2001. That will provide an opportunity for delegates to approve the NEC's action or to censure them for ignoring the Conference decision. Whatever the view taken by that Conference, I remain of the opinion that the Association did not break Rule 10.1 in this instance.

Postscript

2.24 On 14 February 2001, my office received a fax from Mr Cummings in which he claimed that at the Hearing the Association may have misled me on two matters. The first was that on the only “in house” matter where the Executive had acted against Conference policy, this action had not, contrary to the Association’s assertion, been endorsed by Conference. The second was that the decision to put the amnesty issue to the February Conference was a last minute panic action by the Association.

2.25 When I receive such comments from either party after the Hearing, it is not my normal practice to take them into account in reaching my decision unless I believe that the comments are relevant and might materially affect my decision. In this case, neither matter would have altered my thinking. Conference endorsement of the “in house” matter was irrelevant to the fact that in the case quoted the Executive had ignored Conference policy. Further, it matters not when, or why, it was decided to put the amnesty issue to the February Conference, the fact is that I was assured at the Hearing that it would be so put.

E G WHYBREW
Certification Officer