

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

**IN THE MATTER OF A COMPLAINT AGAINST  
THE PUBLIC AND COMMERCIAL SERVICES UNION**

**APPLICANT: MS L BROWN**

**Date of decision**  
**2000**

**16 March**

**DECISION**

- 1.1 Under section 55 of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) any person having sufficient interest who claims that a trade union has failed to comply with any of the requirements of sections 46 to 53 of Chapter IV of Part I of the 1992 Act concerning the need for, and conduct of, elections to certain positions may apply to me for a declaration to that effect.
- 1.2 Whether I make or refuse to make the declarations sought, I am required to give, in writing,

the reasons for my decision.

- 1.3 On 17 November 1999 I received a letter from Ms Lorraine Brown ('the applicant'), a member of the Public and Commercial Services Union (PCS), complaining that one of the Joint General Secretaries of the union, Mr John Sheldon had not been elected to that position in an election satisfying the requirements of the 1992 Act. The PCS had been formed in March 1998 as a result of a merger between the Civil and Public Services Association and the Public Services Tax and Commerce Union. Prior to the merger Mr Sheldon had been General Secretary of the Public Services Tax and Commerce Union.
- 1.4 Under Chapter IV of Part I of the 1992 Act elections to the post of General Secretary have to satisfy certain specific requirements. The applicant, in her letter, alleged that Mr Sheldon had never been elected to the post of General Secretary in his old union within the last five years and that she believed that it was well over five years since he had last stood for election. The allegation was treated as an application under section 55 of the Act that the requirements of section 46(1) had been breached.
- 1.5 I initially investigated the application by correspondence. In October 1999 the Employment Relations Act 1999 amended the 1992 Act with the result that, before reaching a decision on an application before me, I am required to give both the applicant and the union an opportunity of being heard. Neither the applicant nor the union took up the opportunity presented to them for a hearing and I proceeded to determine the application on the evidence before me.
- 1.6 For the reasons set out below I refuse to make the declaration sought.

**Requirements of the Legislation**

1.7 The relevant statutory requirements in respect of the application are as follows:

“46.-(1) A trade union shall secure -

- (a) that every person who holds a position in the union to which this Chapter applies does so by virtue of having been elected to it at an election satisfying the requirements of this Chapter, and
- (b) that no person continues to hold such a position for more than five years without being re-elected at such an election.

(2) .....

“57.-(1) .....

(2) Where a trade union is formed by amalgamation, the provisions of this Chapter do not apply in relation to a person who -

- (a) by virtue of an election held a position to which this Chapter applies in one of the amalgamating unions immediately before the amalgamation, and
- (b) becomes the holder of a position to which this Chapter applies in the

amalgamated union in accordance with the instrument of transfer, until after the end of the period for which he would have been entitled in accordance with this Chapter to continue to hold the first-mentioned position without being re-elected.”

“58.-(1) Section 46(1)(b) (requirement of re-election) does not apply to a person holding a position to which this Chapter applies if the following conditions are satisfied.

(2) The conditions are that -

- (a) he holds the position by virtue of having been elected at an election in relation to which the requirements of this Chapter were satisfied,
- (b) he is a full-time employee of the union by virtue of the position,
- (c) he will reach retirement age within five years,
- (d) he is entitled under the rules of the union to continue as the holder of the position until retirement age without standing for re-election,
- (e) he has been a full-time employee of the union for a period (which need not be continuous) of at least ten years, and
- (f) the period between the day on which the election referred to in paragraph (a) took place and the day immediately preceding that on which paragraph (c) is

first satisfied does not exceed five years.

(3) For the purposes of this section "retirement age", in relation to any person, means the earlier of -

(a) the age fixed by, or in accordance with, the rules of the union for him to retire from the position in question, or

(b) the age which is for the time being pensionable age for the purpose of Parts I to VI of the Social Security (Contributions and Benefits) Act 1992.”

1.8 That then is the background and relevant legislation. I now set out the arguments and explanations put by the parties on the application.

### **Fact**

2.1 On 1 January 1996 the Public Services Tax and Commerce Union (PTC) was formed as a result of the merger between the National Union of Civil and Public Servants (NUCPS) and the Inland Revenue Staff Federation. The PTC then merged with the Civil and Public Services Association in March 1998 to form the PCS. Mr Sheldon was formerly General Secretary of the NUCPS becoming Joint General Secretary of the PTC on its formation and latterly Joint General Secretary of the PCS on its formation in 1998.

### **The Applicant's Case**

2.2 The applicant's case was relatively straightforward, it was that John Sheldon had not been elected to the post of General Secretary for over five years and had not been elected to the post of General Secretary of the PTC. As he had not been elected to either the post of General Secretary of PTC or PCS the fact that he was nearing retirement made no difference. The applicant's concern was that Mr Sheldon had effectively avoided elections in two unions and was so circumventing the need to have an election at least every five years.

### **The Union's Response**

2.3 The union stated that John Sheldon was elected as General Secretary of the NUCPS in 1993, the ballot result being announced on 12 March 1993. Following that election Mr Sheldon became Joint General Secretary of the PTC on 1 January 1996 and Joint General Secretary of the PCS on 10 March 1998. At the time the PCS was created, Mr Sheldon was still serving the unexpired part of his five-year term as permitted under section 57(2) of the 1992 Act. The union further explained that Mr Sheldon was due to retire on 31 January 2001 on reaching normal retirement age. Thus, by the time his five-year term expired on 13 March 1998 he was within five years of his retirement date. Under the provisions of section 58 of the 1992 Act Mr Sheldon could therefore remain in post until his retirement in January 2001. The union confirmed that all the conditions set out in section 58, which provided exemption for the need for re-election, had been met in Mr Sheldon's case and, in respect of section 58(2)(d) drew my attention to the provisions of Rule PR11 of the PCS. This states:-

“A person so elected [as General Secretary] shall serve for a period of 5 years, subject to not having reached their normal retirement date (as specified under their contract of employment); where they are due to reach that date within 5 years of the end of

their term of office, they shall be entitled to continue in office without standing for re-election until reaching it.”

2.4 In light of this the union submitted that it was not in breach of the requirements of section 46(1) of the 1992 Act.

2.5 I sent a copy of the union’s response to the applicant, inviting her comments. Her comments did not dispute any of the factual statements made by the union.

### **Reasons for my Decision**

2.6 The union has clearly set out the facts in this case. Those facts have not been challenged by the applicant and indeed they are consistent with my knowledge and the records held in my Office. In the light of the facts it is clear that Mr Sheldon’s position is governed by the exceptions provided by the 1992 Act in the case of mergers and for certain office holders approaching retirement. There has therefore been no breach of the requirements of that Act.

2.7 I can understand Ms Brown’s concern at the fact that Mr Sheldon has not had to face an election in either the PTC or PCS. Her concern may stem partly from the fact that the particular circumstances relating to Mr Sheldon’s position would not be immediately obvious nor would the exemptions provided by section 57 or 58 be well known. This is not to imply criticism of either of the complainant or the union but merely reflects the position as it is.

2.8 Ms Brown seemed concerned that the exemption permitted under section 57(2) allowed Mr Sheldon to retain the unexpired part of his original five-year term of office through two

amalgamations. Whilst it is not unusual for this provision to apply in mergers it is unusual for it to apply in respect of more than one merger occurring during the period covered by an unexpired period of office arising from a previous election. I have considered the provisions of section 57 carefully and am satisfied that there is nothing in the legislation which would in any way limit the use of the exemption to just one merger in any unexpired period of office. In passing I note that Mr Sheldon's position in both PTC and PCS was endorsed by a ballot of all members which approved the relevant instruments of transfer.

2.9 Whilst Ms Brown may well have had real concerns about Mr Sheldon's position, there is no evidence that there has been any breach of the legislation. It is for this reason that I dismiss the complaint.

E G Whybrew

Certification Officer