

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

**IN THE MATTER OF A COMPLAINT AGAINST
THE FIRE BRIGADES UNION**

Date of decision

6 May 1999

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 declaration sought I am required to give, in writing, the reasons for my decision.
- 1.3 On 29 October 1998 I received a letter containing an anonymous complaint about the election process allegedly adopted by the Fire Brigades Union in the election for one of the two Region 11 (London Region) seats on the Executive Council. Under Chapter IV of Part I of the 1992 Act, elections to the union's principle executive committee have to satisfy certain specific requirements. The complaint alleged that, in conducting the ballot

in accordance with the union's rule book, the union had failed to provide for a fully postal ballot. The complaint was treated as an application under section 55 of the Act, in that section 51(4) of the Act requiring a full postal ballot had been breached.

- 1.4 The letter stated: "I now am formally complaining about the present election being carried out for the London Executive Officer within the Fire Brigades Union. I am complaining that Rule 19(l)(e)(iv) and (v) do not allow for a postal ballot for the position."

Rule 19(l)(e)(iv) & (v) of the Fire Brigades Union provides as follows:-

- "(iv) The General Secretary shall supply ballot papers to the Brigade Secretary for the electoral territory concerned who shall distribute or cause to be distributed the "ballot papers to the Branches whose members are entitled to vote. If the Brigade Secretary is involved in the election, another Official appointed by the Brigade Committee shall fulfil this function.*
- (v) Each member shall record his/her vote by marking an "X" in the box opposite the name of the candidate he/she desires to be elected and shall then return the completed voting paper in the envelope provided for this purpose to the Branch Official conducting the ballot by the date and time of close of voting."*

- 1.5 Having satisfied myself that I had a proper complaint my Office wrote to the union to the effect that I had received a complaint that the union had failed to comply with the statutory requirements governing trade union elections. Namely in conducting the ballot in accordance with the union rules section 51(4) of the 1992 Act had been breached.

Section 51(4) provides:-

" So far as is reasonably practicable, every person who is entitled to vote at the election must -

- (a) *have sent to him by post, at his home address or another address which he has requested the trade union in writing to treat as his postal address, a voting paper which either lists the candidates at the election or is accompanied by a separate list of those candidates; and*
- (b) *be given a convenient opportunity to vote by post.”*

1.6 In a response dated 14 December 1998 the union stated that although there was an intention to hold the election, this had yet to take place. It argued that, as no ballot papers had been issued in relation to the election, there was no ground for complaint as there could be no suggestion that a breach of sections 51(4) had occurred. The union also indicated that an independent scrutineer had yet to be appointed for the election.

1.7 In addition the union also challenged the Certification Officer’s view that the complainant was a member. The union argued that this was a question of fact, and that it should be given the opportunity to investigate the membership status of the complainant. It argued it was not good enough for the Certification Officer to be satisfied that the complainant was a member, because if he was wrong, there would be no jurisdiction to hear the complaint. The union also stated:

“... I am satisfied.....

- *That the Certification Officer is under a duty to reveal the identity of the complainant;”*

1.8 In reply to the latter point my Office wrote on 17 December 1998 to the union pointing out my duty under section 256(2) of the Act to make such provision as seems appropriate for restricting the circumstances in which the identity of an individual who has made, or

proposes to make an application to me is disclosed to any person. The union's letter of 8 January 1999 in reply contained this response. It said:

"I am of course, aware of the provisions of Section 256[2] of the 1992 Act. These provisions are general and do not detract from the requirements of section 54[2] that the applicant is a member of the Union. Certainly, there can be no question of the Certification Officer undertaking a partial or incomplete investigation of this issue, relying on section 256[2] to do so. The matter can only be investigated properly by the Certification Officer receiving evidence from the union as to the membership status of the applicant."

1.9 The complainant, in a response (to the union's position) dated 13 January 1999 alleged in respect of the election in question that votes were first cast on 11 January 1999 with a closing date of 1 February 1999 with the scrutineer being Hard Dowdy (Chartered Accountants) of Battle, Sussex. It was also alleged that ballot papers were ...

"sent from head office to regional offices and then to branches to branch rep to distribute. At branches the papers are given out to all those present, who hand them back to the branch rep in sealed envelope. Those on annual leave or sick leave or on detachment, no guarantee of receiving ballot form.

The branch rep has clear control over the ballot forms, who gets them, and who doesn't, they then return them to our scrutineer's (see attached)."

1.10 In support the complainant produced a Fire Brigade Union circular ref: 99HOCO 11KC headed "Election of Executive Council Member: No 11 Region" being a "Return by Branch Secretaries showing the Record of Ballot Papers." This circular confirmed the closing date for the ballot as 1 February 1999 and Hard Dowdy as scrutineers.

1.11 On 22 January 1999 my Office wrote again to the union enclosing the text of the applicant's letter of 13 January 1999 and inviting comment on the allegations and

specifically to indicate why the union believed that the system for distribution and return of ballot papers as implied in the circular satisfied the requirements for a fully postal ballot as set out in section 51(4) of the Act. My Office also wrote in similar terms to Hard Dowdy the scrutineers for this ballot.

- 1.12 On the 10 February 1999 the union replied to my enquiries regarding the alleged breach as follows:-

“With regard to the other points raised, it seems that the investigation now being conducted goes beyond that provided for in Section 55[1].

The first [undated] letter of complaint was a general complaint about election procedures and referred to a prospective ballot in London. No details were given of any specific breach of the legislation having been committed.

The letter of 22nd October 1998 referred more specifically to the election in London. However, again, the complaint referred to the Rules and not to any breach having been committed.

I am at a loss to understand on what basis the Certification Officer considers it appropriate to investigate matters which do not fall within the provision of Section 55 [1]. Unless there is a specific response dealing with this point, I do not consider it would be appropriate for us to take part in an investigation which itself appears to be outwith the provisions of the legislation.”

No reference was made to the complainant’s letter of 13 January 1999 nor were the allegations set out in the letter dealt with.

With regard to the question of the complainant’s identity and membership it stated:

“I note what you say on the issue of the Applicant’s identity but I feel the enclosures strengthen our position on this point. The Applicant has asserted that divulgence of his name would lead to his expulsion. No evidence is produced in support of that suggestion, and in assessing the request that the Applicant remains anonymous, the Certification Officer

should take into account the rigorous provisions of Section 62[2][c] of the 1992 Act.

With regard to the question of membership, I do not believe it is sufficient simply to accept the evidence of the Applicant without the union having the opportunity to investigate the matter. At the very least, I would expect the Certification Officer to provide us with some details of precisely what evidence has been produced with copies of the relevant documents, covering up the names and other details which might identify the Applicant if the Certification Officer considered that appropriate.

I cannot imagine there could be any objection to that limited request although our position remains that the Applicant's details should be revealed in full in order that the proper enquiries may be undertaken."

1.13 Hard Dowdy also replied on 10 February 1999 stating that they did not believe that the Certification Officer had powers other than to "investigate specific breaches of the 1992 Act as identified by the complainant as having been committed." The scrutineer declined to respond in detail to the points raised by my Office and invited me to proceed to determine the complaint without their co-operation.

1.14 On 12 March 1999 I received a letter from the applicant effectively withdrawing his complaint against the Fire Brigades Union.

Decision

1.15 The application for a declaration that the Fire Brigades Union had not complied with Chapter IV Part I of the Trade Union and Labour Relations (Consolidation) Act 1992 in respect of the election for one of the two Region 11 (London Region) seats on the Executive Council is dismissed on withdrawal of the application by the complainant.

1.16 In dismissing this complaint in the form and terms used in such cases by me I intend to use my powers to make observations on two matters of principle which have arisen from the proceedings in this case.

Observations

2.1 I am empowered by section 55(5) of the Act to make observations on any matter arising from or connected with the proceedings. I do so in this case in relation to two matters, in the hope that they will prove useful in the future.

Anonymity

2.2 It is not my normal practise to accept anonymous complaints in respect of union elections or in respect of most other areas falling within my jurisdiction. However, in this case the complainant made contact with my Office by telephone on several occasions both before and after making the written complaint which I received on 29 October 1998. During the detailed telephone discussion my staff and my legal adviser were persuaded that the complainant was a member of the Fire Brigades Union and that he sincerely believed that he had well founded reasons for not wanting his /her identity to be revealed.

2.3 The letter received on 29 October 1998 clearly constituted a complaint and, under section 55 of the 1992 Act, providing the application is made by “a person having sufficient interest”, I am required to make such enquiries as I think fit, where appropriate give the applicant and the trade union an opportunity to be heard, and make or refuse the declaration asked for. Section 54(2) of the Act defines “a person having sufficient interest” as a person who is a member of the trade union or who is or was a candidate at

the election. I was satisfied that the complainant was a member of the Fire Brigades Union and, having before me a complaint, I took the view that I was under a statutory duty to deal with the application.

2.4 In reaching this decision I was influenced by two considerations. The first was the provisions of section 256(1) & (2) of the 1992 Act. These provide that:-

- “(1) Except in relation to matters as to which express provision is made by or under an enactment, the Certification Officer may regulate the procedure to be followed*
- (a) on any application or complaint made to him, or*
(b) where his approval is sought with respect to any matter.
- (2) He shall, in particular, make such provision as he thinks appropriate for restricting the circumstances in which the identity of an individual who has made, or is proposing to make, any such application or complaint is disclosed to any person.”*

Since this provision was introduced by the 1988 Employment Act it has been the Certification Officer’s practise not to disclose the identity of any complainant without the consent of that person. This has not previously been a problem. The second consideration was that the identity of the complainant had no bearing on the substance of the complaint which was about the balloting process not the complainant’s part in it. The union would therefore in no way be disadvantaged in mounting its case on the substantive issue by not knowing the complainant’s identity. It was on this basis that I proceeded with the application.

2.5 The union argued in correspondence that it should be given the opportunity to investigate the membership status of the complainant in order to properly make submission on the

question of jurisdiction. It went so far as to state the “the Certification Officer is under a duty to reveal the complainant.” The union further suggested that “the matter could only be investigated properly by the Certification Officer receiving evidence from the union as to the membership status of the applicant.”

- 2.6 In my view, the union’s approach ignores the provisions of section 256(2). This specifically empowers the Certification Officer to restrict the circumstances in which the identify of a complainant is disclosed to any person (my emphasis). I have no doubt that this provision was drafted to deal with situations such as this case in question where the applicant had serious reservations about the effect that the disclosure of their identity might have. In passing I note that since this provision was introduced in the Employment Act 1988 a significant number of complaints have been determined without the identity of the complainant ever being revealed. This is the first occasion in which my decision not to reveal the applicant’s identity has been seriously challenged.

Approach of union and scrutineer

- 2.7 When I receive a compliant, my duty is to investigate it. To this end I have been given the power to request information in connection with my enquiries. As a general rule, unions, scrutineers and complainants are very cooperative with this process. It assists in the speedy and informal conclusion of my investigations. In this case however, no response I received, from either the union or the scrutineer contained any assurance that the election (which appeared to be taking place) was being conducted in accordance with the Act.

2.8 To the best of my knowledge this is also the only case in 14 years where a scrutineer has failed to cooperate with the Certification Officer in an investigation of an alleged breach of statutory requirements covering union elections. The scrutineer in the case of an election covered by statute has a duty to report as to whether he is satisfied that there are no reasonable grounds to believing that there was any contravention of the provision governing that election.

2.9 It is of course open to those of whom I make enquires not to cooperate, and in such circumstances, I shall determine the complaint in the absence of a reply.

E G WHYBREW
Certification Officer