

D/2/87

DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE  
UNDER SECTION 5 OF THE TRADE UNION ACT 1984

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Applicants: J FLAVIN and others

Trade Union: UNION OF CONSTRUCTION, ALLIED TRADES AND  
TECHNICIANS

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DATE OF DECISION

17 FEBRUARY 1987

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DECISION

Under section 5 of the Trade Union Act 1984 (the Act) I am empowered to make, or refuse to make, a declaration applied for by any person who claims that their trade union has failed to comply with one or more of the provisions of Part I of the Act. For the reasons set out below I am unable to make the declaration requested in this case.

The Application

1. On 18 September 1986, I received a letter from Mr O'Keefe, who stated that the members of his Branch of the Union of Construction, Allied Trades and Technicians (UCATT) wished to complain about a recent election to a position on UCATT's executive committee, known as the Executive Council. I established by correspondence with Mr O'Keefe that he was writing on behalf of himself and nine others, all members of

UCATT, and that Mr Flavin, one of their number, was to represent them in their complaint. The names of the complainants are listed in the appendix to this decision.

2. The complaint concerned an election which took place in December 1985 for a voting member of UCATT's Executive Council. It was alleged that in that election the Union had failed to comply with section 2(9) of the Act, which provides that no-one shall be unreasonably excluded from standing as a candidate.

### The Facts

3. The basic facts were agreed between the Union and the applicants. The Executive Council of UCATT is its principal executive committee and the election in December 1985 to which the complaint relates was for a voting position on that body. Mr Flavin was, at the time that nominations opened for that position, a full-time paid official of the Union - specifically, a Regional Organiser. As a Regional Organiser he was barred by the operation of certain of the Union's rules from standing as a candidate. The rules in question are Rules 22.1 and 3.14.

4. Rule 22.1 provides (so far as is material):-

"A member holding the office of .... Regional Organiser  
.... shall not be eligible to sit on the E.C."

Rule 3.14 provides (also so far as is material):-

"Any full-time official of the Union accepting nomination for an office that rule would debar him or her from filling if s/he were to be elected must forward with such acceptance his or her resignation from his or her present office. The foregoing provisions are not applicable in cases where a position becomes vacant as a consequence of death, resignation, dismissal or retirement."

5. Forty Branches indicated their wish to nominate Mr Flavin and Mr Flavin, after correspondence with the then General Secretary, decided to avoid the effect of the rules (which operated in this instance because there was a sitting member in the position in question) by resigning from his position as Regional Organiser. His nomination was therefore allowed to go forward, but in the event he was not elected.

#### Reasons for not making a declaration

6. There is no doubt that Part I of the Act applied in this case. Consequently, in dealing with nominations for candidates in the election, UCATT was obliged to comply with section 2(9), which says:-

"No member of the trade union in question shall be unreasonably excluded from standing as a candidate at the election."

7. UCATT's legal representative started by contending that since Mr Flavin did in the end stand in the election, he clearly was not excluded from standing in his capacity as a member of the Union; although he acknowledged that Mr Flavin was excluded in his capacity as a Regional Organiser. I do not think that this disposes of Mr Flavin's case. I find it highly improbable that there would ever be a situation in which members were excluded from standing simply and solely in their capacity as members. The likelihood is that a member will be excluded because he is a particular kind of member. The Union excludes members from standing for various reasons; if, for example, they have not been members for long enough, or their subscriptions are in arrears, or they do not live in the region where the election is taking place. As Mr Williams, UCATT's General Secretary, told me, all these exclusions appear in the Union's rules. It seems to me that Mr Flavin was a particular kind of member - he was also a Regional Organiser - and as such a member he was barred from standing in the Executive Council election. It is this exclusion which needs to be investigated.

8. In my view, therefore, the proper course is to look at the position as it was when Mr Flavin was first approached to accept nomination and to ask whether, at that point, the opportunity to stand was open to Mr Flavin or closed to him. It is clear that it was closed to him. The question is whether that exclusion was a breach of the Act. The fact that Mr Flavin, in order to accept nomination, altered his circumstances so as to avoid exclusion, is not relevant.

9. I heard arguments from both sides as to the reasonableness of the Union's relevant rules generally. Mr Albert Williams explained to me why rule 3.14 had been established. He provided me with a document prepared at the time when rule 3.14 was amended to include the words quoted in paragraph 4 above. The reason for the change given in that document is as follows:-

"The proposal attempts to provide the correct equality which ought to prevail when two full-time officials compete for an office where no vacancy exists. In each case, either official is liable to be deprived of his employment. Additionally, full-time officers have electoral advantages over the ordinary lay member which ought not to extend beyond the advantages when a vacancy occurs. The proposition also strengthens the correct co-operation and democratic principles which ought to apply in our Society."

Mr Williams elaborated on this, explaining that it had been thought that the rule might also deter frivolous candidatures by officials who were really only "testing the water" of their support, or seeking publicity. He told me that it was an expensive business running contested elections and that the Union should be able to protect itself from abuses of the process. Mr Flavin argued nonetheless that it was unfair to expect a member to give up his livelihood in order to accept nomination to stand in an election. He also questioned whether in fact the rule encouraged democracy within the Union.

10. In the end, however, it is not open to me to make a judgement on the basis of the arguments recorded in the preceding paragraph. The Union's legal representative maintained, and I agree, that section 2(9) of the Act has to be read together with section 2(11), which says:-

"A member of a trade union shall not be taken to have been unreasonably excluded from standing as a candidate at an election if he has been excluded on the ground that he belongs to a class all the members of which are excluded by the rules of the union."

11. The Union's legal representative submitted that Regional Organisers must be regarded as a class of the membership of UCATT, and accordingly that section 2(11) applies. Mr Flavin argued that, even if Regional Organisers were regarded as a class of the membership, they were not necessarily debarred from standing as candidates in elections for the Executive Council. It depended whether or not the position on the Executive Council was vacant. I have considered both arguments and it seems to me clear that, as a class, all Regional Organisers are excluded, by the combined effect of rule 3.14 and rule 22.1, from standing as candidates in elections for positions on the Executive Council in specified circumstances, i.e. where the elections are for positions on the Executive Council which have not been vacated.

12. My conclusion is that I cannot find the exclusion in this case to be unreasonable because it was permitted by the provisions of section 2(11) of the Act. Accordingly I am unable to make the declaration sought.

### Observations

13. I need to emphasise that my decision not to make a declaration in this case was determined by section 2(11) of the Act. That does not mean that I do not sympathise with Mr Flavin's position. It seems to me that the merits of the rules which required Mr Flavin to resign his Office of Regional

Organiser before being able to stand for election to the Union's Executive Council are debateable to say the least. From the explanations offered by the Union the general intention behind those rules can be perceived; nevertheless I can well understand the feelings of Mr Flavin and his colleagues about the way those rules can operate in practice.

Complainants

J Flavin

J Watson

J O'Keeffe

C O'Keeffe

F W Akhurst

B Beacham

F Sampson

P Ackerman

R Parish

P Grimmins