

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE
UNDER SECTION 55(1) OF THE TRADE UNION AND LABOUR RELATIONS
(CONSOLIDATION) ACT 1992**

Ms L. SIMMS

v.

AMICUS

Date of Decision

9 April 2004

DECISION

Upon application by the Applicant under section 55(1) of the Trade Union and Labour Relations Consolidation Act 1992 (“the 1992 Act”):

- (i) I declare that Amicus breached section 48(4) of the 1992 Act by failing to secure that no modification was made to the election address submitted by the Applicant during the course of the elections to the National Executive Council of the Union held in 2003.**
- (ii) I do not consider it appropriate to make an enforcement order.**

REASONS

1. By an application received in the Certification Office on 3 December 2003, the Applicant made a complaint against Amicus (“the Union”) the complaint was put to the Union in the following terms:

"On a date between 27 October and 17 November 2003 the election address of L. Simms was modified by the Union, and such modification was not with her consent and was not necessary to the method adopted for producing the election address, in breach of section 48(4)(a) and (b) of the Trade Union and Labour Relations (Consolidation) Act 1992 (as amended)."

2. This matter was investigated in correspondence. As required by section 55(2) of the 1992 Act, the parties were given the opportunity of a formal hearing and such a hearing took place on 2 April 2004. The Union was represented by Ms G. Hirsch, Senior Legal Adviser of the Union. Mr J. Gibbins, Conference Manager of the Union, and Mr N. Goodman, a manager at Electoral Reform Ballot Services

(“ERBS”) gave evidence on behalf of the Union. The Applicant acted in person and gave evidence on her own behalf. A bundle of documents was prepared for the hearing by my office. This bundle consists of the exchanges of correspondence between the parties, together with their enclosures. The Applicant submitted a brief closing submission in writing.

Findings of Fact

3. Having considered the oral evidence, the contents of the bundle of documents and the representations made to me, I reach the following findings of fact:
4. The Applicant was born on 5 May 1974 and at the time of the election in question was 29 years of age. The Applicant joined the Union at the age of 16 and is a member of the Leeds MSF Craft Branch. She has held a number of lay positions in the Union at local, regional, national and international level. She began her working life as a welder, subsequently obtaining a degree at Leeds University and a Post Graduate Certificate in Education. She is currently employed as an Educational Coordinator.
5. Amicus was formed out of the merger of the AEEU and MSF on 1 January 2002. A new rule book for the merged Union was adopted on 24 June 2003. Under this rule book it was necessary to elect the members of a new National Executive Council (“NEC”) to take office on 1 January 2004. Being the first such election, a number of difficult issues had to be resolved in the organisation of the ballot. I accept the evidence of Mr Gibbins and Mr Goodman that this was a complex and difficult ballot to administer and that it was conducted under a very tight timetable. Nominations had to be received by 20 October 2003 and election addresses by 27 October. The balloting period was to be between 17 November and 5 December, with the result to be declared on 11 December. There were 119 candidates nominated in the election.
6. The Applicant was nominated as a candidate for the Yorkshire & Humberside Regional Seat. She submitted an election address which was on two sides of A4 paper. The Union scanned the contents of this document into electronic form and e-mailed it in Word format to the independent scrutineers appointed by the Union, ERBS. In the “pre-press” department of ERBS a typesetter inserted the Applicant’s election address in the election statement booklet and prepared a matching ballot paper. Another two ERBS employees proof read the results of this process. Mr Goodman accepted that this proof reading was cursory and was not carried out with reference to the Applicant’s original document. Mr Goodman believed that the error about which the Applicant complains occurred at this proof reading stage.
7. In proof reading the election statements, the staff at ERBS were looking for obvious textural errors caused by the scanning process, including sentences which did not make sense. For example, the scanning process had caused the word “AMICUS” to read “AIVIICUS”. It also caused the expression “BA Honours” to become “BA Hbnours”. The passage about which the Applicant complained appeared in her election address in the following terms:

"In my early twenties I was elected as a shop steward representing engineering and electrical workers from three different Trade Unions."

In the electronic version which was received at ERBS this appeared as:

"hi my early twenties I was elected as a shop steward representing ..."

Recognising that this made no sense, a member of staff at ERBS amended these words to read:

"I'm in my early twenties I was elected as a shop steward representing ..."

I find that this was a genuine error on the part of ERBS staff and was not done under instruction or with a view to prejudicing the Applicant's chances in the election.

8. ERBS made further modifications to the Applicant's election address so as to ensure that all election addresses had a common format. To achieve this end, the election address was headed 'Lisa Simms' and not 'L. Simms', as in the original. Further, the name of the Applicant's branch was included and various spacings were removed in order that the address might fit on a single sheet of A4 paper.
9. The administration of the ballot by the Union was the joint responsibility of Mr Gibbins and Mr McKenna. They attended the offices of ERBS for a period of 3 or 4 days, over the period the election statement booklet was being produced, in order to further proof read the election addresses. They performed this task by reading the final version of the election statement booklet as prepared by ERBS, without comparing each election address with the original. They only looked at the original if the final version election address read strangely. Mr Gibbins had no recollection whether he or Mr McKenna had performed the final proof read of the Applicant's election address.
10. The election statement booklet was sent out to members with the ballot paper. Each ballot paper showed the candidate's name, branch and length of membership. The ballot paper for the Yorkshire & Humberside Regional Seat showed the Applicant as having 13 years membership. By a letter dated 25 November 2003, the Applicant complained to Mr Derek Simpson, the Union's Joint General Secretary, in his capacity as Returning Officer for the election. She raised two complaints, the relevant one of which stated:

"My election address has been changed to state that I am in my early twenties. I feel this is a direct and deliberate attempt to undermine me as a credible candidate."

Mr Simpson responded by a letter dated 3 December in which he explained the scanning error which he said had not been picked up at the proof reading stage. Mr Simpson apologised and stated that the mistake had required three separate errors; part technology, part human.

11. The result of the election was declared on the 11 December 2003. There were three candidates in the Yorkshire & Humberside Regional Election. Mr S. Davison received 7,509 votes, the Applicant received 3,931 votes and Mr G. Bloom received 3,555 votes. Mr Davison went on to be elected Chairman of the NEC at its first meeting in January 2004.
12. By a letter dated 12 December, the Applicant complained to the Union's Election Commissioner, Professor William Brown, who had been appointed under the rules to hear election complaints. Professor Brown concluded that the announced outcome of the election should stand. He was satisfied "*that the alterations in the election address arose as a consequence of minor and unintended errors*" and "*that any conceivable damage to the candidate's reputation arising could not have been sufficient to have "swung" the vote against the candidate on the scale necessary to overcome the 3,678 votes (24% of valid votes) by which she lost the election to Mr. Davison*".

The Relevant Statutory Provisions

13. The provisions of the 1992 Act which are relevant for the purpose of this application are as follows:-

48(4) "The trade union shall secure that no modification of an election address submitted to it is made by any person in any copy of the address to be distributed except –

- (a) at the request or with the consent of the candidate, or*
- (b) where such modification is necessarily incidental to the method adopted for producing that copy.*

55(1) A person having sufficient interest ... who claims that a trade union has failed to comply with any of the requirements of this Chapter may apply to the Certification Officer for a declaration to that effect.

(2) On an application being made to him, the Certification Officer shall-

- (a) make such enquiries as he thinks fit, and*
- (b) ...give the applicant and the trade union an opportunity to be heard,*

and may make or refuse the declaration asked for.

(3) If he makes a declaration he shall specify in it the provisions with which the trade union has failed to comply.

(4) Where he makes a declaration and is satisfied that steps have been taken by the union with a view to remedying the declared failure, or securing that a failure of the same or any similar kind does not occur in future, or that the union has agreed to take such steps, he shall specify those steps in the declaration.

(5) Whether he makes or refuses a declaration, he shall give reasons for his decision in writing; and the reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.

(5A) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements–

- (a) *to secure the holding of an election in accordance with the order;*
- (b) *to take such other steps to remedy the declared failure as may be specified in the order;*
- (c) *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.*

The Applicant's Submissions

14. The Applicant made short and succinct submissions. She argued that her election address had been modified and that this modification was not at her request, not with her consent and was not necessarily incidental to the method adopted for producing the copy of the address distributed to members. The Applicant argued that the Union was accordingly in breach of section 48(4) of the 1992 Act. The Applicant only complained of the modification which described her as being in her early twenties. She submitted that this prejudiced her chances in the election, having regard to the predominantly male and middle-aged profile of the Union's membership. She stated that no one would ever know if, absent this modification, she would have won the election. The Applicant had originally sought an enforcement order requiring the Union to re-run the election. The Applicant resiled from this position at the hearing. The remedy she sought at the hearing was a declaration and an enforcement order instructing the Union to introduce a system that assured that future election addresses could not be modified without the consent of the candidate.

The Union's Submission

15. Ms Hirsch, for the Union, accepted that the Union had made a modification to the Applicant's election address and that this was not at the Applicant's request nor with her consent. Ms Hirsch argued that the expression "necessarily incidental" in section 48(4)(b) of the 1992 Act could and should be given a broad interpretation so as to bring the actions of the Union within the scope of this defence. After discussion, however, Ms Hirsch properly conceded that this submission could not be maintained on the facts of this case and that the Union had breached section 48(4) of the 1992 Act. Ms Hirsch nevertheless asserted that no case had been made out that the Union had deliberately or maliciously modified the Applicant's election address, as the Applicant had contended, and that the scanning error had not affected the result of the election. Ms Hirsch also observed that voters were unlikely to have been misled by the Applicant's election address as they would have seen from the ballot paper that the Applicant had been a member of the Union for 13 years and may have been aware that membership is only possible from the age of 16. She further observed that the Applicant had been well known as an active trade union member in her Region for many years.

Conclusion

16. The Union conceded at the hearing that it had breached the statute as alleged and I therefore declare that the Union breached section 48(4) of the 1992 Act by failing to secure that no modification was made to the election address submitted by the Applicant during the course of the elections to the National Executive Council of the Union held in 2003.

17. Whilst the scanning error in question could properly be described as an error “incidental to the method adopted for producing that copy”, I find that it could not be maintained sensibly that the modification was necessarily incidental to that method or process. The Union was aware that the scanning process produced inaccuracies and it was incumbent upon the Union to adopt a proof reading system that was more appropriate to eliminating those inaccuracies. The proof reading of neither ERBS nor the Union involved a comparison of the Applicant’s original election address with the final version.
18. During the course of the hearing Ms Hirsch explained that the Union had learned a number of lessons from this election and that the Joint General Secretary’s report to the Executive Council had noted the need to ensure an appropriate timetable which would, amongst other things, allow for a full and adequate proof reading of election addresses. I am satisfied that the Union will act upon that report and that, by doing so, it will have taken steps to secure that a breach of the same or any similar kind does not occur in the future.
19. On a balance of probabilities, I find that the Union’s breach of section 48(4) of the 1992 Act in this case did not affect the outcome of the election. Having regard to this finding and to the steps the Union proposes to take in future statutory elections, I do not consider it appropriate to make an enforcement order.

DAVID COCKBURN
The Certification Officer