

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION
MADE UNDER SECTION 108A(1) OF THE TRADE UNION AND LABOUR
RELATIONS (CONSOLIDATION) ACT 1992**

MR R W EADIE

v

AMICUS

Date of Decision:

17 March 2005

DECISION

Upon application by the Claimant under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”).

- (i) I declare that Amicus breached rule 35(3) of its rules at the Annual Regional Political Conference in Glasgow on 8 May 2004 by failing to elect delegates to its Regional Political Committee in accordance with that rule.
- (ii) I do not consider it appropriate to make an enforcement order.

REASONS

1. By an application dated 8 July 2004 the Claimant made a complaint against his union, Amicus (“the Union”). The application alleged a breach of the Union’s rules relating to an election for a position or office to be held under the rules of the Union. This is a matter within the jurisdiction of the Certification Officer by virtue of section 108A(2)(a) of the 1992 Act. The alleged breach was that:-

‘In breach of rule 35(3) of the rules of the union at a meeting of the Annual Regional Political Conference in Glasgow on or about 8 May 2004 the Conference failed to elect, from among its members, the delegates to attend the various Conferences and Committees described by this rule.’

2. I investigated this alleged breach in correspondence. As required by section 108B(2)(b) of the 1992 Act, the parties were offered the opportunity of a formal hearing and such a hearing took place on 24 February 2005. The Union was represented by Ms G Hirsch, its Director of Legal Services. The witnesses for the Union were Mr H Scullion, a Regional Political Officer and Mr J Quigley, its

Scottish Regional Secretary. Mr G Leonard was also in attendance. The Claimant acted in person and gave evidence on his own behalf. Mr S Daniel gave evidence for the Claimant. A bundle of documents was prepared for the hearing by my office which contained relevant exchanges of correspondence. The rules of the Union were also in evidence. The Claimant and the Union each presented a skeleton argument.

Findings of Fact

3. Having considered the oral and documentary evidence and the representations of the parties, I make the following findings of fact:-
4. Mr. Eadie became a member of one of the predecessor unions to Amicus in 1959 and was a full-time union Officer between 1967 and 1995, ending his employment as the Area Secretary for the Dundee area. Between 1984 and 1986 he was the Regional Political Officer for the Northern Region of his then union.
5. Amicus was formed on 1 January 2002 by the amalgamation of the AEEU and MSF. The rules relevant to this application came into effect on 1 January 2004. By rule 35(2) each region shall hold an annual Regional Political Conference. By rule 35(3) the Regional Political Conference shall elect "*from amongst its members*" delegates to a number of different committees and conferences.
6. In 2004 the Regional Political Conference in Scotland was held on Saturday 8 May at the Central Station Hotel, Glasgow. There were about 98 members in attendance, being those qualified to attend under rule 35(2). This was the first such Conference to be held under the new rules. By convention, similar meetings had usually ended about lunchtime. On this occasion some members may have had an additional incentive for the meeting to be concluded promptly as a football match between Glasgow Rangers and Glasgow Celtic was due to kick off at 12.30pm that day. The rules provide that the number of delegates to be elected at the Regional Political Conference is to be specified by the National Executive Council (NEC) and the NEC had specified that in the Scottish region there should be twenty delegates, to include a minimum of 4 women.
7. The Regional Political Conference commenced at about 10.30am. Its agenda was in evidence. Following an introduction by Mr Scullion, the Regional Political Officer, there was an election for the position of chairperson. Mr Gerry Leonard was elected unopposed. There was then a series of four addresses made to the Conference; by the Scottish Regional Secretary, an Assistant General Secretary, an MEP and an MSP. The agenda item of "elections" was not reached until some time shortly before 12 noon.
8. There was a conflict of evidence about what was said during the course of this agenda item. I have reached the following findings of fact on the balance of probabilities. I accept the evidence of Mr Eadie and Mr Daniel that when this

matter was first raised, a number of members shouted out the names of the persons they wished to nominate. The chairperson of the Conference brought matters to order by saying words to the effect "*Hold it. I have a list of twenty names of people who have broad support.*" He was referring to a list or "slate" of twenty candidates that had been prepared on an unofficial basis and which had been put on some seats in the hall. Not all members present at the Conference had seen the list by the time this item was reached on the agenda. I was informed that the list had been constructed so as to ensure that there was a proper balance of delegates between geographical areas, gender and industrial sectors. The chairperson, Mr Leonard, went on to say that he would not hear other nominations until that list had been put. At that stage there were a number of points of order with some members shouting out that they had not seen the list and others protesting that they did not know anything about the people on the list. The chairperson called upon two or three members to speak from the floor, including Mr Eadie. He objected to the voting being restricted to those on the list, stating that this did not represent an election and was a violation of a person's right to stand. Mr Eadie did not nominate, or attempt to nominate, anyone as a candidate in the election. The chairperson, Mr Leonard, ordered Mr Eadie to sit down, which he did. Mr. Leonard went on to say words to the effect "*What's your problem? Is it that you're not on the list?*" Mr. Eadie denied that this was the case and continued to protest that the process was undemocratic as nominations were not being taken from the floor. Responding to the cries of concern from other members, the chairperson agreed that the list of names should be read out and that each person on the list would stand at the appropriate time and give a few details of themselves. Amongst those on the list was Mr Leonard, the chairperson. Accordingly, he vacated the chair at this point and it was taken by the Scottish Regional Secretary, Mr Quigley.

9. Having assumed the chair, Mr Quigley asked the members if they wanted the list put to a vote. This was agreed by common acclaim. Mr Eadie estimated that about 10 members, including himself, disagreed. When being cross-examined Mr Scullion gave evidence for the first time that Mr Quigley had also asked the members whether there was a need for any other nominations and that, again by acclaim, members indicated their wish to proceed. Mr Eadie and Mr Daniel strongly dispute that this question was ever put to the members and Mr Quigley has no recollection whether or not he put such a question. I find, on the balance of probabilities, that such a question was not put, that the understanding of the members present was that the list of candidates would be put to the vote and that, if accepted, there would be no more nominations. Mr Quigley asked for and got a mover and a seconder for the list of names. The subsequent vote was by show of hands and the list was accepted overwhelmingly, with about 9 or 10 members voting against.
10. Mr Eadie felt that there was nothing more that could be done at that stage. However, during an adjournment, he ascertained that Mr Daniel and at least one

other would have been prepared to stand if there had been an opportunity to nominate members at the Conference.

11. There were then a further three elections. Each of these elections followed a process of nomination from the floor. However, only those who had been elected to the Regional Political Conference were nominated and none of the three subsequent elections were contested.
12. The members elected to the Regional Political Conference are to hold office until the next annual meeting of the Scottish Regional Political Conference, which is due to take place in May 2005.

The Relevant Statutory Provisions

13. The provisions of the 1992 Act which are relevant for the purpose of this application 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) the appointment or election of a person to, or the removal of a person from, any office;*
- (b)- (e) ...*

108B-(3) 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 both of the following requirements –

- (a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;*
- (b) 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".*

The Union Rules

14. The rules of the Union which are relevant for the purposes of this application are as follows:

35 Political Organisation and Representation

Regional Political Conferences

- 35(2) There shall be an annual Regional Political Conference of branch delegates to Constituency Labour Parties and a delegate elected by and from the Labour Party members present at each Regional Sector Conference in each region of the Labour Party. The Conference shall be chaired by a delegate elected by and from the Conference. The National Executive Council shall nominate a full time officer to act as the Regional Political Officer to perform such political duties as the National Executive Council may decide and to act as Secretary to the Conference.

35(3) The Regional Political Conference shall elect from among its members delegates to; the Union's National Political Committee; the Labour Party Women's Conference; the Labour Party National Conference; and the Labour Party Regional Conference to be held in the next calendar year. Former employees of the Union or of any of its predecessors may only be a delegate from the Regional Political Conference with the approval of the National Executive Council. The National Executive Council shall specify the total number of delegates and the minimum number of female delegates to be elected and may, when necessary, make special arrangements to facilitate the election of the requisite number of female delegates to comply with the Labour Party constitution and/or the requirements of these rules.

Regional Political Committees

35(5) The delegates to the Labour Party Regional Conferences shall form the Regional Political Committee which shall meet as decided by the National Executive Council. The Committee shall be chaired by a delegate elected by and from the Committee. The Regional Political Officer shall act as Secretary to the Committee.

Summary of Submissions

15. Mr Eadie submitted that his application turned upon a simple point; namely, that under rule 35(3) the Union had an obligation to convene an open and democratic election to which any qualified member was entitled to stand. He argued that for the chairperson to refuse to take nominations and to proceed to a vote on a pre-prepared list of twenty names for the twenty positions was a clear breach of rule.
16. For the Union, Ms Hirsch submitted that the election was conducted in accordance with rule 35(3) on the basis that the successful candidates secured their position by means of a voting procedure. It was argued that this procedure satisfied the requirement of the rule that the Conference "... shall elect from among its members." Ms Hirsch submitted that, in the absence of a prescribed election procedure, the holding of a valid election required only that those eligible to vote should be able to accept or reject the candidates who are put forward for election. It was further argued that the rules could have expressly provided for the making of nominations but, as they do not do so, the process of nomination was a matter which fell to be decided by the Conference itself. Ms Hirsch pointed out that rule 35(3) does not require that individual nominations should be taken at the Conference. In the alternative, Ms Hirsch submitted that no nominations were in fact made by the delegates attending the Conference and that the members on the list were the only candidates that had been put forward. It was argued that the decision of the Conference to proceed to a vote on the list was a democratic decision reached by the majority of members and had the effect that no further nominations would be sought if the list was approved in a vote.

Conclusions

17. This case concerns the elections held at the annual Regional Political Conference held in Glasgow on 8 May 2004 for places on the Regional Political Committee. By rule 35(5), the Regional Political Committee is to be composed of the same persons who are elected under rule 35(3) to the Labour Party Regional

Conferences. I find that the intention and effect of the disputed election was to elect members to both the Regional Political Committee and as delegates to the Labour Party Regional Conference. It was therefore, in my judgment, an election provided for by rule 35(3) of the rules of the Union.

18. I have found as a fact that nominations to the Regional Political Committee were not sought from the members present at the annual Regional Political Conference in question. A pre-prepared list or slate of candidates, a list of unknown origins, was put to the members on the basis that if the list was accepted in a vote, no further nominations would be allowed. Mr Eadie objected to this process, but his objections did not find favour with the chairperson, Mr Leonard, whose name was one of those on the pre-prepared list.
19. The issue to be determined is whether an election which was conducted in the above manner satisfies rule 35(3). The relevant part of rule 35(3) is as follows:

"The Regional Political Conference shall elect from amongst its members delegates to; the Union's National Political Committee; the Labour Party Women's Conference; the Labour Party National Conference; and the Labour Party Regional Conference to be held in the next calendar year... "

20. It has been held by the courts on a number of occasions that trade union rule books are not to be construed as if they were drafted by parliamentary draftsmen. The generally approved approach to the interpretation of union rule books was expressed by Warner J. in *Jacques v. Amalgamated Union of Engineering Workers (Engineering Section)* [1986] ICR 683. He said:

"The effect of the authorities may I think be summarised by saying that the rules of the trade union are not to be construed literally or like a statute, but so as to give them a reasonable interpretation which accords with what in the court's view they must have been intended to mean, bearing in mind their authorship, their purpose and the readership to which they are addressed."

21. Applying that approach to the facts of this case, I find that the author and intended readership of rule 35(3) would have understood that rule to mean that all those entitled to be present at the annual Regional Political Conference were also entitled to be nominated for and stand in the rule 35(3) elections. In my judgment this is implicit in the words "*elect from amongst its members*", when read in context. To find that the candidates could be restricted to those whose names appeared on a list of obscure origin would undermine the clear purpose of rule 35(3), which is that Conference shall elect the successful candidates "*from amongst its members*". The acceptance by Conference of the proposal to proceed by way of an exclusive list of candidates is of no consequence. Conference cannot agree to a procedure which is in itself a breach of rule and which would deprive those members in the minority from standing in the election. The clear implication in the rules that any relevant member may seek nomination could only be removed by an express rule to that effect. There is no such express rule.

22. It was submitted on behalf of the Union that, as there were no alternative nominations from the delegates attending Conference, the election was conducted within the rules. However, this argument ignores the ruling of the chairperson that no further nominations would be accepted if the list or slate was approved by a majority. It is therefore impossible to know whether any further nominations would have been made if they had been invited, as I find they should have been but were not.
23. For the reasons set out above, I find that the Union breached rule 35(3) of its rules at the annual Regional Political Conference in Glasgow on 8 May 2004 by failing to elect the delegates to its Regional Political Committee in accordance with that rule.
24. Mr Eadie does not seek an enforcement order. He stated that, if successful, he would be content with a declaration, so that any future elections held under rule 35(3) would be conducted lawfully. In any event, the next annual Regional Political Conference in Scotland is due to be held in May 2005 and little purpose would be served, on the facts of this case, in ordering the present incumbents to stand down and a further election to be held prior to that Conference. Accordingly, I do not consider that it would be appropriate to make an enforcement order in this matter.

Observations

25. Much has been said in this case about the use of a list or slate of nominees or candidates in trade union elections, a practice which is not unusual. Depending upon the facts of any particular case and the relevant rules, there is no fundamental legal objection to the use of such lists if they do not purport to be exclusive lists, restricting the right of otherwise qualified members to stand.

**David Cockburn
The Certification Officer**