

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

Mrs SALLY L ALEXANDER

v

THE PROFESSIONAL ASSOCIATION OF TEACHERS

Date of Decisions:

30 November 2001

DECISIONS

1. The application made by the applicant for a declaration that the Professional Association of Teachers breached section 48(5) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”), is refused.
2. The application made by the applicant for a declaration that the Professional Association of Teachers breached section 51(3) of the 1992 Act is refused.

REASONS

3. By an application dated 14 June 2001, Mrs Alexander made various complaints against her union, the Professional Teachers Association (“the Association” or “PAT”). The two complaints that are being pursued are that:
 - (i) in breach of Section 48(5) of the 1992 Act, the Association issued a press release announcing the selection of its Preferred Candidate in the election for the position of General Secretary and posted a similar announcement on the Association’s website. The applicant complains that equivalent facilities were not made available to all candidates; and

- (ii) in breach of Section 51(3) of the 1992 Act, the Association issued a circular shortly before the date on which the ballot in the General Secretary election was to close. The Applicant complains that this circular infringed the right of members to be allowed to vote without interference from or constraint imposed by the union or any of its members, officials or employees.
4. I investigated these matters in correspondence. As required by section 55(2)(b) of the 1992 Act, the parties were offered the opportunity of a formal hearing but both parties were content for the matter to be dealt with without such a hearing. This decision has therefore been reached on the basis of the written representations made by the Applicant and the Association, together with such documents as were provided by them.

Findings of Fact

5. Having considered the representations made to me and the relevant documents I make the following findings of fact:-
- 5.1 The Association held an election for the position of General Secretary, nominations for which closed on 2 May 2001. The subsequent ballot closed on 13 June 2001. There were two candidates in the election, Richard Cribb and Jean Gemmell. Ms Gemmell was selected by a panel of elected Council members to be the Preferred Candidate of the Association.
 - 5.2 On 23 April 2001 the Association issued a press release which announced that Ms Gemmell had been selected as the Preferred Candidate. The contents of the press release were also posted on the Association's website.
 - 5.3 At the time of her selection as the Preferred Candidate, Ms Gemmell had already reached the age of 60, which was the subject of comment in Mr Cribb's election address. There were no rules of the Association relevant to this issue but the Association had an employment policy on retirement age. Following queries from a number of its members, the Association sought advice from its independent scrutineer, Electoral Reform Balloting

Services, as to whether it could issue a circular setting out the factual position regarding its retirement age policy and its application to Ms Gemmell's existing position as Deputy General Secretary. With the scrutineers approval, the circular dated May 2001 was issued. This circular provided as follows:-

"Dear Member

We have been asked for clarification of PAT's internal employment policy. The guidelines which are included within PAT's staff handbook state:

"The normal age for retirement is 60. Members of staff can continue to work beyond age 60 on request and provided that agreement can be reached between the member of staff and PAT on the terms and conditions of the continued employment and its duration. Any continued employment will not extend beyond age 65".

These are guidelines only and apply to all members of staff.

We are fortunate that Betty Windram, Marian Ward and Bob Collar have remained at PAT beyond 60 (and in Betty's case beyond 65, with the agreement of the Secretary for Scotland). Jean Gemmell was appointed on a fixed term contract which took her beyond the age of 60. Council agreed to continue this on her appointment as Deputy General Secretary.

The Association's Constitution contains no rules relating to PAT's employment policy.

Caroline Wigmore
National Chairman"

The Law

6. The provisions of the 1992 Act which are relevant for the purpose of these applications are as follows:-

In relation to a candidate's election address Section 48(5) provides:

"The trade union shall secure that the same method of producing copies is applied in the same way to every election address submitted and, so far as reasonably practicable, that no such facility or information as would enable a candidate to gain any benefit from -

- (a) the method by which copies of the election addresses are produced, or*
- (b) the modifications which are necessarily incidental to that method,*

is provided to any candidate without being provided equally to all the others".

In relation to voting, Section 51(3) provides:

“Every person who is entitled to vote at the election must -

- (a) be allowed to vote without interference from, or constraint imposed by, the union or any of its members, officials or employees, and*
- (b) so far as is reasonably practicable, be enabled to do so without incurring direct cost to himself”.*

7. Under section 55 of the 1992 Act, any person having sufficient interest who claims that a trade union has failed to comply with any of the requirements 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.
8. Section 55 of the Act empowers me to make such enquiries as I think fit and, after giving the applicant and the union an opportunity to be heard, to make or refuse to make the declarations asked for. I am required, whether I make or refuse the declaration sought, to give reasons for my decision in writing. Such decisions may be accompanied by written observations on any matter arising from, or connected with, the proceedings.

The Section 48(5) Complaint

The Applicant’s Submission

9. Mrs Alexander argued that section 48(5) of the 1992 Act was breached on 23 April 2001 by the Association issuing a press release announcing the selection of its Preferred Candidate and by the Association posting the same information on its website. She stated that such an announcement *“... is an accepted and acceptable means of giving one candidate the edge over another.”*, and that *“The “facility” of the website and the press release was provided to one candidate and not equally to both, unlike previous practice.”*

The Association's Response

10. The Association stated that Mr Cribb did not apply to be the Preferred Candidate and that the press release of 23 April 2001 was issued prior to Mr Cribb's nomination for the position of General Secretary being received. It was argued that it was therefore not possible to include any information regarding his candidature in the press release in question or for information about his nomination to be posted on the website at the same time that the announcement of the Preferred Candidate was made.

Conclusion

11. Section 48 of the 1992 Act concerns the election address of candidates in elections to which the Act applies.
12. Section 48(5) imposes two duties on trade unions. The first is an absolute duty to secure "that the same method of producing copies is applied in the same way to every election address submitted". The Applicant does not complain of a breach of this requirement.
13. The second duty imposed by section 48(5) requires that,

"... so far as reasonably practicable, no such facility or information as would enable a candidate to gain any benefit from -

- (a) the method by which copies of the election address are produced, or*
- (b) the modifications which are necessarily incidental to that method,*

is provided to any candidate without being provided equally to all the others."

This further requirement is therefore expressly restricted to the method by which copies of election addresses are produced or to modifications of such election addresses.

14. The Applicant does not complain about the fact that the Association has a Preferred

Candidate. Indeed she has described this practice as being accepted and acceptable and common within many trade unions. Her complaint is rather directed to the Association's Press Release of 23 April 2001 and the announcement of the selection of the Preferred Candidate on the Association's website. She contends that this is evidence that the candidates were treated unequally and looks to the concluding words of section 48(5) as providing a remedy for any such unequal treatment.

15. It is not argued by the Applicant, nor could it properly be argued by her, that the press release or the relevant page on the Association's website constituted an election address for the purposes of the 1992 Act. Without establishing this proposition, however, the application could not succeed. Section 48(5) is not a provision which provides a remedy for any alleged unequal treatment. It is a provision which is specifically targeted at the election address, its method of production and/or its modification, no aspect of which has been criticised by the Applicant. In cases decided by my predecessor, it was held that the 1992 Act does not prohibit a union from expressing its support for one of the candidates in an election to which the 1992 Act applies. (**Union of Shop, Distributive and Allied Workers (D/1-2/94)**, **Civil and Public Services Association (D/1/95)**, and **Association of Teachers and Lecturers (D/6/99)**). I am not persuaded that I should reach a contrary conclusion. I therefore refuse to make the declaration sought by the applicant.

The Section 51(3) Complaint

The Applicant's Submission

16. The ballot for the election of the General Secretary closed on Wednesday 13 June 2001. On Saturday, 9 June 2001, the Applicant received an internal communication from the Association, which included a copy of the circular set out above. The Applicant refers in particular to the following passage. "*Jean Gemmell was appointed on a fixed term contract which took her beyond the age of 60. Council agreed to continue this on her appointment as Deputy General Secretary.*"
17. The Applicant argued that the circular gave an advantage to Ms Gemmell in the General

Secretary election and, therefore, constituted interference in the election in breach of section 51(3) of the 1992 Act. The Applicant maintained that the circular was designed to influence the decision of the electorate and constituted interference within the meaning of the 1992 Act.

The Association's Response

18. The Association argued that the circular was issued following requests for clarification from the membership as a result of a reference to retirement age in one of the election addresses. Being aware of the sensitivity of circulating such information at that time, the Association consulted with the Electoral Reform Balloting Services and, with its approval, the circular was issued as a plain statement of the Association's existing policy, making no reference to the election, or to the candidates, in the election for the post of General Secretary. The Association maintained that the policy statement did not constitute interference in breach of section 51(3) of the Act.

Conclusion

19. The proper interpretation of what constitutes "interference" for the purposes of section 51(3)(a) of the 1992 Act (and its predecessor sections) has been the subject of many previous decisions by the Certification Officer. It has not only been considered by my immediate predecessor, but also by his predecessor. The view that has prevailed hitherto is most conveniently and succinctly set out in **Paul v NALGO** (D/14/86). In that case, the Certification Officer stated that the purpose of the prohibition on interference or constraint "*....is to ensure that members are not subject to any pressure which would have the effect of preventing them from freely exercising their right to vote.*" and that "*....the right to allow a person to vote without interference or constraint is intended to exclude such conduct as would intimidate or put a member in fear of voting, or amount to physical interference.*" I am not persuaded that I should dissent from that interpretation.
20. Accordingly, I find that the Association's circular giving information about its retirement policy did not amount to interference within the meaning of section 51(3) of the 1992 Act.

Far from being conduct which would intimidate or put an Association member in fear of voting, the circular did not even refer to the election, or to any named person as being a candidate in the election, and made no suggestion as to why, when, if, or how individual members should exercise their voting prerogative. I therefore refuse to make the declaration sought by the applicant.

D COCKBURN
Certification Officer