

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

**IN THE MATTER OF A COMPLAINT ABOUT THE PROFESSIONAL
SALES ASSOCIATION SECTION OF THE MANUFACTURING,
SCIENCE AND FINANCE UNION PRELIMINARY DETERMINATION
OF JURISDICTION TO HEAR COMPLAINT**

Date of decision:

16 January, 1997

Decision

Under section 55 of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) I am empowered to make, or refuse to make, a declaration on the application of any person who claims that his or her trade union has failed to comply with one or more of the provisions of Chapter IV of Part I of the 1992 Act concerning the need for, and the conduct of, elections to certain positions. In making a declaration I am required to specify the provisions with which the trade union has failed to comply.

As a preliminary issue in this application, I have concluded that the Professional Sales Association Section (“PSA section”), a section of the Manufacturing, Science and Finance Union (“MSF” or “the union”) is not a trade union. I therefore lack the jurisdiction to determine this complaint concerning the conduct of the election of the Executive Committee of the PSA Section.

The application

1. On 18 June 1996 I received a formal application from a member of the PSA section of MSF seeking a declaration from me that:
 - (i) that the PSA section of MSF is itself a trade union; and
 - (ii) the ballot arrangements for the 1996 election of the PSA section Executive Committee did not comply with the requirements of the 1992 Act.

Jurisdiction

2. Before I could hear the complaint at (ii) above it was necessary for me to establish whether the PSA section was itself a trade union. This arises because my jurisdiction under section 55 of the 1992 Act is limited to complaints that a trade union has failed to comply with any of the requirements of the Chapter. Moreover the duty imposed on trade unions to hold elections is limited by section 46(2) of the 1992 Act to a duty to hold elections for members of the executive; any position by virtue of which a person is a member of the executive; the president; and general secretary of the union. It does not extend to elections for the officers and executives of branches and sections of unions unless they themselves are trade unions in their own right.
3. The applicant sought to persuade me that the PSA section was a union. MSF (which also spoke on behalf of the PSA section) sought to dissuade me from this view.
4. I decided to hold a formal hearing to give the parties an opportunity to address me on the question of whether the PSA section was a trade union as well as being a section of MSF. This was held on the 31 October 1996. At the hearing the union was represented by

Vivienne Gay of Counsel. The complainant represented himself and was accompanied by a colleague who gave evidence.

Reasons for decision

5. It might help if I explain briefly the factual background. MSF is a large union comprising workers from many different classes of employment. Its structure is to a large extent decentralised. Members from these classes are arranged into sections. Historically, these classes in most instances (including the present one) were originally made up of the membership of former trade unions who transferred their engagements into MSF. The structure of these sections is not uniform. The philosophy behind this structure, I was told, is to provide industrial and professional autonomy whilst at the same time providing the opportunity for individual members to participate in the general activities of MSF.
6. The history of the PSA section of MSF is as follows. The United Commercial Travellers Association of Great Britain and Ireland (UCTA) transferred its engagements to the Association of Scientific Technical and Managerial Staffs (ASTMS) in 1976. Subsequently ASTMS became MSF and the UCTA Section was renamed the PSA section.
7. The present structure of the PSA section is set out in the MSF rules as follows:

“MSF Rule 62.15.

- (a) *The National Executive Council shall establish a Professional Sales Association Section to which persons who would have been eligible for membership of the former United Commercial Travellers' Association of Great Britain and Ireland (UCTA)*

Incorporated shall belong. Applicants qualified under this Rule shall apply directly to the Section.

- (b) *The prime responsibility for the conduct of the affairs of the PSA Section shall be vested in an elected committee of an agreed number of members from within the PSA Section by elections confined to its membership. The PSA Section shall have the primary responsibility for the formulation of policy in regard to negotiations on behalf of members of the Section and for all matters of professional concern to members of the Section, subject only to the Rules of the Union.....*
- (c) *Arrangements shall be made for an Annual Conference of the PSA Section to be held for the purpose of deciding the industrial and professional policy of the Section. The Annual Conference of the Section shall be responsible for the election of an Executive Committee of not more than 15 members. Representation at the Conference shall be on a basis as operated under PSA rules at the date of transfer, and subject to change only after agreement between the Executive Committee of the PSA Section and the National Executive Council.....*
- (e) *Where there are bargaining units, the PSA Section shall, together with the full-time official(s) appointed by the National Executive Council, determine the composition of the appropriate negotiating committees. These committees will normally be confined to members employed by the company(ies) with whom negotiations are being conducted, together with full-time official(s) appointed by the National Executive Council.....”*

8. The PSA section also has a set of rules. These include the following principal objective:

“To seek to improve the status and qualifications of sales persons and to regulate relations between sales persons and their employers or principals.”

9. The final piece of background is contained in Section 1 of the 1992 Act which defines the meaning of “trade union”. The relevant part for our purposes reads:

“In this Act a “trade union” means an organisation (whether temporary or permanent) -

- (a) *which consists wholly or mainly of workers of one or more descriptions and whose principal purposes include the regulation*

of relations between workers of that description or those descriptions and employers or employers' associations; or.....”

10. Is the PSA section then a union in its own right as well as a section of MSF? This is not a simple matter and is one which I recognise has potentially wide ranging implications for virtually every union. It has long been established that a branch or section of a trade union may be a union in its own right. Indeed the 1992 Act makes this clear in a number of places. For example section 44(4) starts “Any duty falling upon a branch or **section** by reason of its being a trade union....” (emphasis added). On the other hand such phrases would be unnecessary if every section or branch was a trade union. The questions at issue are what are the characteristics of a section (or branch) which determine whether or not it is a trade union and how does PSA match up to those characteristics?
11. The definition of a trade union relates to two different types of body. First there are bodies which are self contained organisations. Secondly there are bodies which are essentially federations of trade unions. From the point of view of this case there is no suggestion that PSA section is a federation of trade unions.
12. To decide that it was a union I would have to be convinced that it was “an organisation consisting wholly or mainly of workers whose principal purposes included the regulation of relations between those workers and employers”.
13. Most branches and sections of trade unions are made up of “workers” and have as their principal purpose the “regulation of relations”. There is no dispute that PSA has these two

primary characteristics of a trade union. The dispute is over whether it is an “organisation”.

14. What then is an organisation? The statute is clear that the organisation may be temporary or permanent. But it is silent on the question of in what circumstances a branch or section within a union should also be treated as an organisation.
15. In my view few branches or sections of trade unions are properly treated as organisations in their own right. Essentially branches and sections are ways in which an organisation (the union) structures itself to achieve its ends. They are part of the constitutional and institutional structure of the union set out in its rule book. All sorts of powers may be delegated to, or retained in, sections. But they have no real separate identity or existence apart from being an integral part of the union. They should not in my opinion automatically or readily be treated as “organisations”, for the purpose of section 1 of the 1992 Act, unless they are a distinct entity in their own right.
16. In the case of PSA section, it is clear from the MSF rule book that the PSA section retains (from pre merger days) a responsibility for conducting its own affairs, and in particular for the formulation of policy in regard to negotiations on behalf of members of the Section. It is also clear that their affairs are primarily conducted by a Section committee elected by their members. That is the way that, at the time of the transfer of undertakings from UCTA to ASTMS, the union (ASTMS) agreed with UCTA members that business involving them would be conducted. That though does not mean that PSA section has the relevant characteristics of a discrete organisation.

17. Even those powers which are retained in PSA section are subject to the rules of MSF and, for example, PSA section could not sanction or, without MSF approval, organise industrial action.
18. Of more direct significance is that fact that PSA section does not, and has no power to, hold property or funds. It therefore has no power to apply its own funds to further any goal which is distinctly its own.
19. It is these factors that lead me to the view that PSA section is not an organisation within the meaning of section 1 of the 1992 Act, but an integral part of another.
20. I am reinforced in my view that the PSA section of MSF is not a union in its own right by two other factors; the expressed intention of the predecessors of MSF and PSA section [the parties] and the union rule book.
21. PSA section has its origins in members of UCTA voting to “transfer their engagements” to ASTMS. At the time it was explained in the official documents - approved by one of my predecessors- that if they merged they would become members of ASTMS. The members voted for the transfer. Secondly, the PSA Section rules are headed “Rules of the Professional Sales Association Section of Manufacturing Science Finance” and the definition of “the union” in those rules is given as “Manufacturing, Science, Finance”. These factors would not be conclusive on their own, singly or in combination if the facts of the case clearly conflicted with the legislation. But in the absence of such a conflict I

have also relied on both the intention of the parties and the wording of the rule book to reinforce my conclusion.

Conclusion

22. For the reasons given above it has not been established that PSA section is a trade union and therefore I have no jurisdiction to determine any complaint about its election procedures.

E G Whybrew
Certification Officer