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ORDER OF THE CERTIFICATION OFFICER ON COMPLAINTS MADE  
UNDER SECTION 3 (2) OF THE TRADE UNION ACT 1913.

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B P McCARTHY  
AND  
ASSOCIATION OF PROFESSIONAL, EXECUTIVE, CLERICAL AND  
COMPUTER STAFF (APEX)

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Date of hearing: 21 May 1980  
Date of decision: 18 August 1980  
Date of Order: 28 October 1980

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1. I have received from the Association of Professional, Executive, Clerical and Computer Staff (APEX) the assessment that I asked for in paragraph 37 of my decision dated 18 August 1980.
2. It states that the amount spent by the Union from its general fund on distributing the Special General Election Edition of its journal and the General Election Edition of its Area and Branch Circular was \$1,022.10. Mr McCarthy has written to say that this sum appears to him to be unobjectionable.
3. In accordance with my intentions as expressed in paragraph 38 of the decision, I therefore order the Association of Professional, Executive, Clerical and Computer Staff (APEX) to transfer \$1,022.10 from its political fund to its general fund.

*J L Edwards*  
J L EDWARDS  
Certification Officer

DECISION OF THE CERTIFICATION OFFICER ON COMPLAINTS MADE UNDER SECTION 3(2) OF THE TRADE UNION ACT 1913

B P McGARTHY

AND

ASSOCIATION OF PROFESSIONAL, EXECUTIVE, CLERICAL AND COMPUTER STAFF (APEX)

Date of hearing: 21st May 1980
Date of decision: 18th August 1980

The complainant appeared in person.
The Union was represented by Mr J L Williams, solicitor.

1. Mr B P McCarthy, who is a member of the Association of Professional, Executive, Clerical and Computer Staff (APEX) ("the Union"), complains to me under section 3(2) of the Trade Union Act 1913 ("the 1913 Act") that the Union has acted in breach of its political fund rules.

The Grounds of Complaint

2. Mr McCarthy makes four complaints, all of which are based on his contention that the Union spent (or advised the spending of) money from its general fund on purposes falling within the political objects contained in rule 76 of the Union's rules when rule 77 requires that money spent on those objects must be paid from the Union's political fund.

3. Rules 76 and 77 are in the following terms:

"76. Political Objects

(a) The objects of the Association of Professional, Executive, Clerical & Computer Staff (APEX) shall include the furtherance of the political objects to which Section 3 of the Trade Union Act, 1913 applies, that is to say, the expenditure of money:

(i) On the payment of any expenses incurred either directly or indirectly by a candidate or prospective candidate for election to Parliament or to any public

office, before, during, or after the election, in connection with his candidature or election; or

- (ii) on the holding of any meeting or the distribution of any literature or document in support of any such candidate or prospective candidate; or
  - (iii) on the maintenance of any person who is a Member of Parliament or who holds a public office; or
  - (iv) in connection with the registration of electors or the selection of a candidate for Parliament or any public office; or
  - (v) on the holding of political meetings of any kind, or on the distribution of political literature or political document of any kind, unless the main purpose of the meetings or of the distribution of the literature or documents is the furtherance of statutory objects within the meaning of the Act, that is to say, the regulation of the relations between workmen and masters or between workmen and workmen, or between masters and masters, or the imposing of restrictive conditions on the conduct of any trade or business, and also the provision of benefits to members.
- (b) The expression "public office" in this Rule means the office of member of European Parliament and of any public body who have the power to raise money, either directly or indirectly, by means of a rate.

#### 77. Political Fund

- (a) Any payments in the furtherance of such political objects shall be made out of a separate fund (hereinafter called "the Political Fund of the Union")
- (b) The Central Political Fund of the Union shall be administered by the Executive Council, and the Branch Political Fund by the Branch concerned, in accordance with these Rules".

4. The details of the four complaints are as follows:

- (i) that the Special General Election Issue of the Union's journal, published in April 1979, (which I shall call "the Election Issue") was political literature or a political document which was not distributed for the main purpose of furthering the statutory objects

and the distribution of which therefore fell within rule 76(a)(v); further, that the Election Issue was distributed in support of candidates for election to Parliament within the meaning of rule 76(a)(ii);

(ii) that a feature headed "Stop the sale of our public assets" which appeared in the issue of the journal dated 20 June 1979 was political literature or a political document which was not distributed for the main purpose of furthering the statutory objects and the distribution of which therefore fell within rule 76(a)(v);

(iii) that for the reasons already given in relation to the Election Issue of the journal, the distribution of the General Election Edition of the Area and Branch Circular issued before the General Election of May 1979 (which I shall call "the Election Circular") fell within the objects contained in rules 76(a)(v) and (a)(ii);

(iv) that a statement in Area and Branch Circular No. 1, February 1979, telling branches that they could purchase "Labour Weekly", the Labour Party's newspaper, from their general funds was ill-founded advice because any expenditure in pursuance of the advice would be expenditure on the distribution of political literature or a political document not for the main purpose of furthering the statutory objects and would accordingly fall within the object contained in rule 76(a)(v).

In the case of the first three complaints Mr McCarthy claimed that since the Union spent money from its general fund on the distribution there was a breach of rule 77; the Union accepted that the money spent had come from its general fund.

5. The requirement in rule 77 that any payment in the furtherance of the political objects in rule 76 must be made out of the Union's political fund does not mean that payments in the furtherance of other political objects must also be made out of that fund. The Union is entitled, as Mr Williams submitted, to spend

money on such other political objects out of its general fund. Mr Williams argued that the payments to which the first three complaints related were not made in furtherance of the political objects in Rule 76 (which are the political objects to which section 3 of the Trade Union Act 1913 applies) and that there had therefore been no breaches of rule 77. I have to decide whether that contention is valid in regard to each of the three complaints.

6. These are the first complaints of this nature which have been considered by me or my predecessors since 1925 when the then Chief Registrar of Friendly Societies had to deal with a case entitled Forster and National Amalgamated Union of Shop Assistants, Warehousemen and Clerks (reported in Part 4 of the Chief Registrar's Annual Report for 1925). Accordingly unions and their members have had little guidance on the interpretation to be given to the political objects as set out in section 3(3) of the 1913 Act and embodied in substantially the same form in the rules of all unions with political funds. As will be evident from what follows, the words used to define the objects raise several difficult questions of interpretation.

#### The first complaint

7. The journal is the Union's monthly publication; it is issued free to members and can be bought by non-members for 10 pence. It is mainly concerned with giving up-to-date news to members on the progress of negotiations relating to their pay and terms and conditions of employment, though it also contains some articles on general industrial matters.

8. The Election Issue was published just before the last General Election and consists of four pages entirely devoted to election matters. Page 1 reports on the passing of a motion by the Union's annual conference calling on trade unionists to give support to the re-election of the then Labour Government; an insert sets out the Union's case for voting Labour and urges "practical support in the campaign". The two inside pages include two lists, one of the names of Labour candidates who were members of the Union and the other of the names of Labour candidates standing for marginal constituencies. In relation to the former the Issue says "Make sure they get the support they deserve"; the latter, under the heading "Where the election will be decided", covers both "Labour's most

marginal seats" and "the seats which Labour must win to achieve a working majority". The remainder of the Issue consists of articles and reports of speeches in support of the Labour cause. The front page of the Issue describes it as a "special broad-sheet" and omits the price and serial number which normally appear there; nor does the Issue include the usual material on industrial relations matters or regular features such as letters to the editor.

9. Since the objects in rules 76(a)(ii) and 76(a)(v) both refer to the distribution of literature or documents, the first question which arises for my decision is whether there was a distribution of the Election Issue within the proper meaning of that term. If there was not, the money cannot have been spent on either object. Mr Grantham, the Union's General Secretary, gave evidence that the APEX journal is written for members of APEX and for no one else, although it can be bought by non-members and a few copies of it are sent to libraries and the like. He suggested that there was no distribution of the Election Issue because "distribution" means distribution to persons outside the Union, for instance, to electors in general.

10. Even on the assumption that the Election Issue was circulated only to members of the Union - and this was not entirely clear from the evidence before me, although I accept that the Issue was written for members and no one else - I am unable to agree that there was no distribution. It seems to me that the word "distribution" naturally covers distribution to members of the Union as well as distribution to outsiders. There is nothing in the rule or in the Act which would justify any limitation being placed on the natural meaning of the word. I note also that Citrine's "Trade Union Law" (3rd Edition), which is the only legal text book of authority on the detail of the 1913 Act, expresses the opinion (page 440) that distribution means "distribution to the public or to the members of the union". Accordingly I find that there was a distribution of the Election Issue within the meaning of rule 76(a)(ii) and rule 76(a)(v).

11. Was the Election Issue literature or a document within the meaning of rules 76(a)(ii) and 76(a)(v)? I am in no doubt that it was. At page 440 and 441 Citrine discusses the meaning of these

terms and appears to raise a doubt as to whether a newspaper or periodical can be "literature". I find the significance of this proposition rather elusive; in particular, it is difficult to see what the significance of showing that a publication is not literature can be if it is nevertheless a document. It seems to me that, on the face of it, the expressions "literature" and "document" between them cover just about every sort of written material.

12. The next question arising for my decision is whether the distribution of the Election Issue was a distribution of literature or a document "in support of any such candidate or prospective candidate" within the meaning of rule 76(a)(ii). Mr Williams, for the Union, submitted that the words "any such candidate" relate back to the whole of rule 76(a)(i), with the result that rule 76(a)(ii) applies only where the support is for a candidate for Parliament in respect of whom there is a payment of expenses by the Union or an exhortation to make such a payment. I cannot accept this; to my mind the word "such" relates only to the words "for election to Parliament or to any public office" and was used by the draftsman simply to avoid repetition. In any case, the list of APEX members referred to in paragraph 8 contains six who are described as a "union-sponsored MP's". If the sponsorship arrangements included a contribution to election expenses, the six candidates would be covered by rule 76(a)(ii) even on Mr Williams' interpretation.

13. Accordingly, having regard to the clear support given both to the Labour candidates who were members of the Union and to those standing for marginal seats, I have no hesitation in finding the first complaint to be justified under rule 76(a)(ii).

14. I now turn to the question whether the distribution of the Election Issue also fell within rule 76(a)(v). The object in that rule has the effect of prohibiting expenditure otherwise than from the political fund on the distribution of "political literature or political documents of any kind" unless the main purpose of the distribution is the furtherance of the statutory objects. I have already found that distribution within the meaning of the rule took place and that the Election Issue was literature or a document. The next question which arises for decision is whether what was distributed was political literature or a political document.

15. I do not think there is any doubt that it was. In Citrine's "Trade Union Law" it is suggested (page 439) that the meaning of "political" is far from clear. I would respectfully agree, but it is difficult to think of anything more clearly "political" than a broadsheet which is devoted to promoting the election of candidates from one political party and which expressly asks for support for selected named candidates.

16. The remaining question is whether the main purpose of the distribution was the furtherance of the statutory objects. It is clear from the facts which I have outlined in paragraphs 7 and 8 above that the Election Issue was not a normal issue of the journal. In my view the purpose of distributing the Election Issue must therefore be looked at separately from the purpose of distributing the APEX journal as a whole, whether or not the purpose of distributing the whole journal would have been relevant in ascertaining the purpose of distributing a normal issue.

17. Mr Grantham pointed out that the Issue notified members of the decisions of the Union's annual conference about the General Election. The Union wanted to see a Labour Government returned because the Labour Party was offering legislation that the Union felt would assist it in its dealings with employers, whereas the then Opposition was offering legislation which the Union felt would impede it. Since the Issue had been distributed to assist the Union in carrying out its function of regulating the relations between workers and employers, the main purpose of the distribution was the furtherance of the statutory objects.

18. No doubt the Union genuinely believes that the election of a Labour Government is important for the working conditions of its members, and that because of this, material issued in support of the Labour Party is distributed for the main purpose of furthering the statutory objects. I cannot, however, accept that the latter belief is well founded. Although the words "the main purpose . . . . . of the distribution" imply a test which is primarily subjective, it is to my mind straining the rule to suggest that the main purpose was to further the statutory objects where that purpose could only be indirect and the direct and obviously apparent purpose was to bring about the election of a Labour Government.



19. I therefore consider that the distribution of the Election Issue falls within rule 76(a)(v) as well as rule 76(a)(ii) and accordingly that this complaint is well founded on that ground as well.

#### The second complaint

20. I have already discussed many of the considerations relevant to this complaint in considering the first. The feature in the June 1979 journal is headed "Stop the sale of our public assets" and consists of a report of the debate on a motion passed by the Executive Council which condemned the Government's proposals to de-nationalise parts of certain industries.

21. Mr McCarthy contends that this feature is political and that the main purpose of its distribution was not the furtherance of the statutory objects. However, the article was not distributed on its own but as part of an issue of the journal, and that whole issue was the literature or document on the distribution of which money was spent. It is therefore the purpose of the distribution of the issue which I have to decide and I am satisfied that, whether that purpose is to be ascertained from the contents of that issue alone or by taking into account the purpose for which the APEX journal is distributed, the main purpose of the distribution was the furtherance of the statutory objects. The major part of the issue which contained the article and of other issues of the journal clearly relates to terms and conditions of employment. I therefore find that whether or not the article itself was political, the main purpose of the distribution was the furtherance of the statutory objects and in particular "the regulation of the relations between workmen and masters"; and accordingly that this complaint is not justified.

#### The third complaint

22. The contents of the Election Circular are similar to those of the Election Issue and are entirely confined to election matters. The circular first reports the carrying of the motion at the Union's annual conference calling for the re-election of the Labour Government and sets out the text of the motion; then there is a plea for financial support for members of the Union standing as Labour candidates and their names are listed

on the back page; next there is a general request for assistance for Labour candidates and particular attention is drawn to marginal seats which are listed together with the names of the Labour candidates; at the end of the list is a statement which reads "any assistance which can be given by branches or individual members to any of these constituencies, particularly the marginals, will be of vital importance if the Labour Party is to win this election. To assist branches who wish to help, the names, addresses and telephone numbers (where known) of the agents is also listed". The circular concludes by urging all members to give their vote to the Labour Party.

23. The first point to consider is whether there was a distribution of the circular within the meaning of Rule 76. The circular was sent, as its title suggests, to areas and branches of the Union, that is to lay and other officials. It was not sent to members of the Union as the Election Issue was, although it is clear that a main purpose of issuing the circular was that its message should be given to members at branch meetings.

24. In my view there was a distribution of the circular within rule 76(a)(ii) and rule 76(a)(v) even though the circular was sent to officials of the Union and not to the public or to members in their capacity as members. I do not see any real distinction in this context between documents sent to members and documents sent to area and branch officials; in both cases there is a distribution of the documents. Citrine suggests (page 440) that the mere circulation of a document within the office of a union would not amount to distribution, and it is arguable that that is true of some such limited forms of circulation. However, this operation, involving circulation to a large number of officials spread all over the country, was on a quite different scale.

25. I have already discussed, in considering the first complaint, the interpretation of the words "literature or document" and "in support of any such candidate or prospective candidate" (see paragraphs 11-13). In my view those considerations apply with equal force to the third complaint. Accordingly, I find that the distribution of the Election Circular was a distribution of literature or a document in support of candidates for election to Parliament and that that complaint is justified under rule 76(a)(ii).

26. Did the distribution of the Election Circular also fall within rule 76(a)(v)? I have no doubt, for the reasons given in paragraph 15 in relation to the Election Issue, that the Election Circular was political literature or a political document.

27. As in the case of the first complaint, I also have to consider whether the main purpose of the distribution was the furtherance of the statutory objects. If the complaint had related to a normal issue of the circular I would have had to decide whether the purpose of its distribution was to be ascertained only from an examination of the contents of that issue or by taking account of the purpose of distributing the circular generally. However, while the matter is less clear cut than in the case of the Election Issue, I nevertheless take the view that the Election Circular must similarly be regarded separately from the general run of circulars; I base that conclusion on the facts that it was specifically called "General Election Edition" on the front page, was exclusively concerned with election matters and included none of the material which usually appears in the Area and Branch Circular, such as decisions of the Executive Council on matters of internal union organisation and information about educational courses.

28. I therefore consider that for the same reasons as I gave in paragraph 18 in relation to the Election Issue, the Election Circular was not distributed for the main purpose of furthering the statutory objects. Accordingly, the distribution of the circular falls within rule 76(a)(v) as well as rule 76(a)(ii) and the third complaint is well founded on both grounds.

#### The fourth complaint

29. Area and Branch Circular No 1, February 1979 included the following paragraphs:

##### 'LABOUR WEEKLY'

"The Labour Party are embarking on an intensive campaign to boost the sales of "Labour Weekly", the Party's own newspaper. The National Executive Committee of the Labour Party is putting considerable additional resources behind "Labour Weekly" and in this connection the editorial staff has been increased giving the opportunity for a better written, more attractive paper with greater industrial coverage.

As part of the publicity campaign a leaflet has been produced especially for trade unionists and a copy is enclosed. I would urge all Branches to ensure that as many members as possible read "Labour Weekly" and I would also remind Branches that they are entitled to purchase copies of "Labour Weekly" from their General Fund if they wish to do so".

30. The complaint is simply that the advice that "Labour Weekly" can be purchased by branches from their General Fund is ill-founded because if it were to be followed there would be some expenditure on the distribution of political literature or a political document falling within rule 76(a)(v) and consequently a breach of rule 77. However, whether that advice is ill-founded or not, no evidence was given that any branch had purchased "Labour Weekly", and Mr McCarthy has not alleged that there was in fact any expenditure which might have constituted a breach of rule 77. Since there is no allegation that there has been a breach of any rule, the complaint is not one with which I can deal under the 1913 Act.

What is covered by "expenditure on distribution"?

31. Since I have found the first and third complaints to be justified, it follows that the relevant expenditure should be met from the Union's political fund instead of from its general fund. Rules 76(a)(ii) and 76(a)(v) both refer to the expenditure of money on distribution and I therefore have to decide what is covered by that phrase.

32. In Forster's case referred to earlier (see paragraph 6), although the matter did not fall to be decided, the Chief Registrar commented that there was "nothing about writing or preparing or printing or publishing" and thus implied that the political object in the union rules he was considering, which was in substantially the same terms as those of APEX rule 76(a)(v), did not cover expenditure on these items. In commenting on this, Citrine remarks (page 440) "while it seems clear that the cost of preparing or printing literature or documents that are not in fact distributed is not within the paragraph, to construe it as relating solely to the cost of actual circulation is to deprive it of substantial effect".

33. Clearly it is a point of some importance whether the expen-

diture covered by the political objects of unions consists only of actual circulation costs or includes what may be described broadly as preparation costs. It is perhaps surprising that the point does not appear to have arisen in a direct form since the 1913 Act was passed.

34. It can be argued in support of Citrine's view that since distribution is impossible unless the matter distributed has first been written, prepared and printed, "distribution" should be taken to include those costs which are essential in order to distribute as well as the costs of actual circulation. Further, it may seem strange that Parliament should not have covered all the expenditure necessary to produce as well as to circulate literature or documents. However, the fact remains that the 1913 Act and the Union's rules refer simply to expenditure on distribution and if the intention had been to include preparation costs it would have been a simple matter to do so in specific terms. I therefore conclude that it is only expenditure on actual distribution (eg. postal and packaging costs) which is covered.

35. At the hearing Mr Williams submitted that "distribution" included the cost of sending something out (such as the Election Issue or the Election Circular); but that if that something would have been sent out anyway and the complaint related only to part of it, then only the pro rata costs of distributing that part were required to be paid from the political fund. There may or may not be something in that submission in cases to which it is capable of applying, but since the first complaint related to the whole of the Election Issue and the third complaint to the whole of the Election Circular, the submission cannot be relevant here.

#### Information needed for making an order

36. Section 3(2) of the 1913 Act provides that if I consider that a breach of the political fund rules has been committed I may make such order for remedying the breach as I think just under the circumstances. In view of my findings on the first and third complaints it seems to me right to make an order that the money which should have been paid from the Union's political fund - that is to say, the money spent on distributing the Election Issue and the Election Circular - be transferred from the political

fund to the general fund.

37. However, I do not know how much was in fact spent and no evidence about this was given at the hearing. I must therefore ask the Union to send me within the next two months a written assessment of the amount spent on distributing the two documents showing:

- (a) the number of members or officials to whom each document was distributed;
- (b) the amount of any postal costs incurred in sending each document to members or officials;
- (c) the amount of any costs incurred in packaging each document for distribution to members or officials;
- (d) the amount of any costs incurred in distributing each document to members or officials otherwise than by post, eg. by vehicles owned or hired by the Union.

38. I appreciate that (d) in particular may be difficult to calculate with any precision, especially if the vehicles were being used for other purposes besides distributing the documents. If the Union encounters problems of this kind under that or any of the other headings I will be prepared to discuss the best ways of overcoming them, if necessary at a further hearing. I will then make an order taking into account the Union's assessment.