

D/5/86

DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE
UNDER SECTION 5 OF THE TRADE UNION ACT 1984

Applicant: M J NOAKES

Trade Union: TRANSPORT AND GENERAL WORKERS' UNION

DATE OF DECISION

24 JUNE 1986

DECISION

Under section 5 of the Trade Union Act 1984 I am empowered to make, or refuse to make, a declaration applied for by any person who claims that their trade union has failed to comply with one or more of the provisions of Part I of the Act. For the reasons set out below I am unable to make the declaration requested in this case.

The application

1. This decision concerns an application from Mr M J Noakes, a member of the Transport and General Workers' Union ("the Union"). It relates to the last election of territorial representatives to the Union's General Executive Council. The essence of Mr Noakes' application was that his Union had failed to do all that was reasonably practicable to ensure that he as a person entitled to vote, was given a chance to vote in that election, as required by Part I of the Trade Union Act 1984.

The facts

2. After receiving Mr Noakes' application on 20 December 1985 my Office made enquiries about the matter by means of correspondence with Mr Noakes and the Union. In addition a hearing with Mr Noakes and Union representatives was held. As a result of these enquiries, the following facts were established.

3. Mr Noakes' application concerns an election for territorial representatives on the General Executive Council of the Union. The territorial representatives are elected from each Region, which in some cases are broken down into smaller constituencies. Mr Noakes was in the Central Division of Region No 5 (Midlands). The ballot was held during November-December 1985. Arrangements were made for the ballot to take place at Mr Noakes' place of work, which was the British Leyland Austin Rover factory at Longbridge, Birmingham. Instructions for the ballot were issued at Regional level to Branch secretaries and the Branch secretaries appointed scrutineers to conduct the ballot at the workplace.

4. Mr Noakes works in a part of the Austin Rover factory known as CAB2, and is a member of Branch 5/140 of the Union. In the course of my enquiries, I received a statement from a scrutineer in CAB2, Mr S Hollyoak, on behalf of the Union. This statement reads as follows:-

"I am employed by British Leyland, Longbridge and am a member of the 5/140 Branch. I act as a collector/agent for the Branch.

During the period of the General Executive Council Territorial Representative ballot, last year, I also acted, on behalf of the Branch, as a Scrutineer.

During the period November 18 to December 15 1985, I visited the CAB2 area every lunch hour. Posters were placed within the shop indicating - quite clearly-

the period of the ballot and how members would be able to vote. I appreciate that some of these notices had been defaced and, in some instances, were pulled down, but I firmly believe the Union took all possible steps to inform its members, within CAB2, of the ballot facilities.

In addition to the roving ballot box, a fixed ballot box was placed at the end of the shop and was available for members to vote during the hours of changeover in order to cover both shifts."

5. Mr Noakes agreed in the course of the hearing that Union posters were frequently ripped down and did not seek to deny the evidence offered by the Union about the arrangements made in CAB2 for voting. However, he said that he had been at work throughout the ballot period and that he had not left the area of CAB2 during his shifts. Nothing had come to his attention about the election while it was going on. The only poster he had seen was a notice about a vote at the Union's district office in Birmingham on 13 December 1985. The Union denied that this notice had anything to do with the General Executive Council elections. They suggested that it had probably referred to a Branch meeting and that Mr Noakes had misunderstood it. Mr Noakes accepted that this might have been the case.

6. Mr Noakes informed the hearing that he had been in CAB2 for two years, having transferred there from CAB1. It became clear that this transfer had not come to the attention of the Union. However, the Union asserted, and there is no evidence to the contrary, that this would not have affected Mr Noakes' ability to vote in CAB2. As already indicated they said that they had made every effort to publicise the ballot and to provide adequate voting arrangements in CAB2. They also said that had Mr Noakes approached any of those organising the ballot in CAB2 a voting paper would have been made available to him.

Reasons for refusing to make a declaration

7. In this election the Union had decided to arrange for a ballot at the workplace. They therefore had to comply with section 3(1) of the Act, which provides that:-

"So far as is reasonably practicable, every person who is entitled to vote at the election must

(a) have made available to him -

(i) immediately before, immediately after, or during his working hours; and

(ii) at his place of work or at a place which is more convenient for him;

or be supplied with, a voting paper which either lists the candidates at the election or is accompanied by a separate list of those candidates; and

(b) be given -

(i) a convenient opportunity to vote by post (but no other opportunity to vote);

(ii) an opportunity to vote immediately before, immediately after, or during his working hours and at his place of work or at a place which is more convenient for him (but no other opportunity); or

(iii) as alternatives, both of those opportunities (but no other opportunity)."

8. I am required to decide whether the Union did all that was reasonably practicable to enable Mr Noakes to vote at the workplace. On balance, I consider that they did so. I am satisfied that the Union did publicise the elections with notices and provided fixed and roving ballot boxes within CAB2 daily throughout the ballot period. Because Mr Noakes was at work throughout that period and, according to his own evidence,

remained in the workplace during breaks, I cannot see that more could reasonably have been expected of the Union as regards making a ballot paper available to Mr Noakes and providing him with an opportunity to vote in the manner required by section 3(1) of the Act.

Observations

9. This case shows that even "best efforts" will not necessarily ensure that every union member realises that opportunities are available for him to vote in a ballot. I have no reason to doubt that Mr Noakes was unaware of the opportunities available in his case; equally, I do not doubt that the Union had made considerable efforts to provide and publicise those opportunities. It was therefore on balance that I came to the conclusion that the declaration requested should not be made. However, notwithstanding my decision in this case, I think it appropriate to stress that in these matters the onus lies heavily on the Union rather than the individual member. Certainly it is not sufficient to rely solely on individual members enquiring, or approaching their local representative, to ensure that all members get the chance to vote to which they are entitled.