

DECISION OF THE CERTIFICATION OFFICER ON COMPLAINTS MADE UNDER
SECTION 4 OF THE TRADE UNION (AMALGAMATIONS, ETC.) ACT 1964

G CLARE

AND

THE EAGLE STAR STAFF ASSOCIATION

Date of decision:

21 October 1981

1. Mr Geoff Clare, who is a member of the Eagle Star Staff Association ("the Union") and of its London Regional Area Committee, has complained to me under section 4(1)(a) of the Trade Union (Amalgamations, etc.) Act 1964 ("the Act") about a ballot held during March, April and May 1981 on a resolution to approve an instrument of transfer of the engagements of the Union to the Banking, Insurance and Finance Union.

2. His complaints are that the manner in which the vote on the resolution was taken did not satisfy the conditions in section 1 (2)(b) of the Act that every member of the union must be allowed to vote without interference or constraint because:-

1. First Complaint The February 1981 issue (No.6) of "Message", the newsletter of the Union carried the statement "To date there has been an overwhelming response from the areas visited in favour of the amalgamation of interests between ESSA and BIFU". Mr Clare says that this was misleading because "overwhelming" would indicate more than 51% but no ballot was taken.

2. Second Complaint The Union used posters (which appeared on Company notice boards), publicity leaflets and desk display units to campaign for a 'YES' vote.

3. Third Complaint Mr Clare was ordered by the Eagle Star Group ("the Company") to pay for the cost of printing a circular used to campaign for a 'NO' vote and to remove copies of the circular from notice boards. Further, he was not allowed to use Data Post to send copies of the circular to other regions and branches, so he paid nearly £10 postage to do so.
4. Fourth Complaint The 7th May 1981 issue (No.16) of "Mini-Message", the interim newsletter of the Union carried the statement:- "Failure to vote will effectively be a NO vote, and will therefore be contrary to the advice of the General Secretary, the Executive, the Council and every Area Committee in the United Kingdom". Mr Clare alleges that this was misleading because the London Region Area Committee did not advise its members to vote either way.
5. Fifth Complaint The same statement in Mini-Message No.16 was also misleading in saying "Failure to vote will effectively be a NO vote" because under the Union's rules failure to vote did not necessarily have the same effect as a "NO" vote.

3. Under section 4(3) of the Act I have the power to dismiss complaints without holding a hearing, but I may only find complaints to be justified after giving the complainant and the union an opportunity of being heard. I have decided to dismiss Mr Clare's complaints without holding a hearing because it seems to me that they are based on a misunderstanding of the condition in section 1(2)(b) of the Act in that the matters alleged in the

five complaints could not amount to a breach or breaches of the condition.

4. The condition is that "every member of the union must be allowed to vote without interference or constraint". It is aimed primarily at intimidation, physical interference and the like. It does not prevent unions from advising or seeking to persuade their members to vote one way rather than another; indeed, it is common practice for them to do so. Further, a statement made to persuade members to vote one way rather than another does not in my view amount to an "interference or constraint" merely because it is exaggerated, misleading or inaccurate. I do not rule out the possibility that in some circumstances a blatant untruth or a seriously misleading statement could amount to an "interference or constraint" under the Act, for instance if it affects members' freedom to vote or their freedom to vote as they please, but that is not the position on Mr Clare's complaints, which I shall now deal with in turn.

5. The First Complaint Having read in full and in context the statement in Message No.6 about the response from areas visited, I am not persuaded that it was misleading. Moreover I do not consider that this sort of statement, even if it is misleading or inaccurate, is capable of amounting to an "interference or constraint".

6. The Second Complaint There is nothing in the Act to prevent a union campaigning for a "Yes" vote. According to Mr Clare, the Union's campaign was conducted through leaflets, desk display units and posters on Company notice boards. A campaign conducted in this way does not amount to an "interference or constraint".

7. The Third Complaint There is no requirement in the Act that equal facilities should be afforded to those arguing for and against a proposed transfer. Whether or not the Company acted even-handedly in respect of the ballot - and that appears to be a matter of contention between Mr Clare and the Union - the refusal to allow Mr Clare to use Company facilities without charge

and the order to remove copies of his circular from notice boards could not have amounted to an "interference or constraint" on voting.

8. The Fourth Complaint The statement "Failure to vote will effectively be a "NO" vote, and will therefore be contrary to the advice of every Area Committee in the United Kingdom" was, I think, ambiguous in that it is not clear whether every Area Committee was being reported as having advised its members to vote or as having advised its members to vote YES. I agree, however, that if the London Region Committee did not advise its members to vote either way the statement could on one interpretation have been misleading. But in my view, even if that was so, the statement did not amount to an "interference or constraint".

9. The Fifth Complaint The Union has explained that the statement "Failure to vote will effectively be a NO vote" was made to encourage members to vote because of the provision in the Union's Rule 19 that a resolution can only be passed if more than 50% of the total membership of the Union votes in favour. However, another effect of Rule 19 is that even if more than 50% of the total membership votes in favour there must also be a majority of not less than 10% of the total membership in favour. Consequently, if more than 50% of the total membership voted in favour the majority could only be reduced below 10% by voting against and not by failing to vote. I therefore agree with Mr Clare that as it turned out the statement was, to an extent, misleading.

10. It is perhaps possible that the statement could have influenced some members inclined to vote against the resolution not to vote in the belief that failing to cast a vote would necessarily have the same effect as voting against the resolution. I am by no means persuaded that members reacted in this way, but even if they did, I do not consider, in the light of the reasoning set out in paragraph 4 above, that the making of the statement constituted a failure to allow these or other members of the Union to vote without interference or constraint.

11. I therefore dismiss all five complaints.