

STATEMENT OF THE REASONS FOR A DECISION OF THE
CERTIFICATION OFFICER ON A COMPLAINT MADE UNDER
SECTION 4 OF THE TRADE UNION (AMALGAMATIONS, ETC.)
ACT 1964

D YOUNG
AND
THE NATIONAL UNION OF
AGRICULTURAL AND ALLIED WORKERS

Date of hearing	28 April 1982
Date of decision	30 April 1982

The complainant appeared in person, assisted by the Rev B L Druce.

The Union was represented by Mr J Burke, Counsel, instructed by
Messrs Lawford and Co.

1. Mr David Young was at the time of the hearing the Secretary of the Pershore branch of the National Union of Agricultural and Allied Workers ("the Union"). He complained to me under section 4(1) of the Trade Union (Amalgamations, etc.) Act 1964 ("the Act") about a ballot of members of the Union held between 13 and 25 January 1982 to approve an instrument of transfer of the engagements of the Union to the Transport and General Workers' Union.

2. His complaint fell into two parts:-

(a) that ballot papers were not sent to some members who were entitled to vote; and

(b) that ballot papers were sent to some people who were not entitled to vote.

3. Mr Young was concerned that the ballot was based on outdated membership lists and that the voting procedure was inefficient and unsatisfactory. He gave examples from his Pershore branch in Worcestershire. Mr Oswald Sinnick and Mr Robert Young, the complainant's son were two members who, he said, had not received ballot papers. He suggested that there were others in Pershore who had not received papers, but he did not name them apart from some who were more than six months in arrears with their union contributions. However, and somewhat contradictorily, he contended that members more than six months in arrears were not entitled to a vote under the Union's rules. He drew my attention to the Union's rules 100(b) and 101(c). These are as follows:-

"Rule 100(b). Only members with not less than 6 consecutive monthly contributions fully paid up to date at the time of the election shall be eligible to vote on any issue affecting the Union.

Rule 101(c). Any member more than six months in arrears shall have his name removed from the Union books and forfeit all his contributions to the funds of the Union".

With one exception, the people who he said received ballot papers but should not have done were more than six months in arrears with their union contributions. The exception was Mr George Griffiths,

deceased, who before his death was chairman of the Pershore branch of the Union.

The Union's response

A. The Union's normal procedure

4. Mr Jack Boddy, the General Secretary of the Union, gave evidence that the Union had about 63,500 members at the end of 1981. Of these, some 15,000 to 20,000, mostly working in factories, were in check-off branches so their union contributions were with their consent deducted from their wages by their employers. The remainder were organised into just over 2,300 branches, mainly small, which were scattered over a wide geographical area. In these branches the Union relied on the branch secretaries, like Mr Young, for the collection of contributions. A branch secretary is not paid any salary, but he receives 10% of the contributions he collects as commission. Mr Boddy described him as a voluntary worker who performs his duties out of the kindness of his heart and for the welfare of his members. When asked whether a great deal of the success of the Union depends on the voluntary work of the branch secretary, Mr Boddy went further and said that everything depends on him.

5. One of the branch secretary's duties is to compile and return to the head office documents containing details of the membership of the branch and of the contributions paid. A register of members has to be completed and returned to head office every two years, with the branch secretary keeping a copy for himself. During the two year period, names of new members can be added to the register at head office and to the copy kept by the branch secretary. Similarly, the names of persons who are no longer members can be deleted. In addition, a form showing what contributions have been paid by each member in each month during a six month period is to be returned every six months in the month after the period covered on the forms, that is in January and July each year. There is also a monthly return of the money itself, but it is the two-yearly branch register sheet and the six-monthly contribution return form which together constitute the Union's record of membership and contributions.

Unfortunately, the documents do not all arrive promptly and it usually takes some time for them all to be received from the branch secretaries.

6. A person who wishes to join the Union must pay an entrance fee and complete an application form which has to be acknowledged by the branch secretary and sent to head office for record purposes. If the application form is not sent in, head office does not know the name of the new member who is already paying contributions unless it is otherwise informed of it by the branch secretary or, perhaps, as Mr Young pointed out, by the district organiser.

7. Mr Boddy also explained how the Union carries into effect Rule 101(c) under which the name of a member more than six months in arrears with contributions is removed from the Union books. If it has not otherwise been alerted, head office discovers that a member is more than six months in arrears when its audit department audits the six-monthly contribution returns of branches. The branch audit is spread out over the six months after the return is received, and it is during that period that the arrears will be discovered. The Union's practice is not automatically to remove the name but rather to institute inquiries through the branch secretary in case there is some explanation for the lapse. There is a circular letter to branch secretaries for this purpose, although Mr Young said, and I accept, that he himself had never received one. Subsequently, if no satisfactory reply is received, a letter is sent to the member himself and it is only if this produces no satisfactory reply that the Union treats the membership of that member as terminated. This is a lengthy process which can take more than a year. Mr Boddy said that the head office of the Union would be unable to say at any fixed time in a year how many people are six months in arrears.

B. The ballot

8. Turning to the organisation of the ballot itself, Mr Boddy explained that the Executive Committee had started to make preparations for the voting soon after receiving instructions to do so from a special conference of the Union held in November 1980. After taking

legal advice and consulting the Electoral Reform Society, the Executive Committee was aware that the law required that every member of the Union must be entitled to vote and must be given a fair opportunity of voting. It therefore decided to take special steps to compile a list of members which was as complete and as up-to-date as possible, and to ensure that a ballot paper was sent to every member on the list. In January 1981, a circular was sent to each branch secretary requiring him to complete and return a list of all the members of his branch as at 1 January 1981, with their addresses. Throughout 1981 the Union chased branch secretaries who had not sent in their lists. Reminder letters were sent, a reminder article was published in the Union's monthly newspaper, and full-time district organisers were asked both formally in a circular sent on 1 May 1981 and informally thereafter to ensure that outstanding branch lists were submitted. By the time that the ballot papers were sent out in the first week of January 1982, all but about 100 of the 2,300 branches had sent in lists of members and special lists were compiled from the last available contribution returns in respect of those remaining branches. The names of all members joining the Union after 1 January 1981 whose application forms were received at head office were added to the list of those entitled to vote. In addition, amendments and corrections to the list were sent in by branch secretaries during the course of the year. In cases where the lists were shown to be incomplete head office made arrangements for ballot papers to be sent to those omitted from the lists. In the check-off branches where the turnover of members was higher but where lists of members could often be obtained from the employers concerned, the Union claimed that the lists were up to date in all cases to within four weeks prior to the date on which ballot papers were sent out.

9. To ensure that a ballot paper was sent to every member, the Union prepared a label, to be stuck on to a postal envelope, containing a name and address in respect of every name and address on the list. The labels were then passed to the Electoral Reform Society who were responsible for the conduct of the ballot and who sent the ballot papers to members. The preparation of the labels started in August 1981 and involved not only typing but also checks to ensure that the information and the labels were accurate. It was a considerable task

for which the Union employed four additional staff. It was substantially complete by the end of November. The Union estimated that the true cost of the administration of the ballot was more than £35,000. The result of the ballot was that 56% of the total membership voted and of those about 86% voted in favour of the transfer.

The evidence about the Pershore branch

10. Mr Young had responded promptly and efficiently to the request for a special list of members of the Pershore branch. His list was received at head office on 23 February 1981. Mr Boddy produced photocopies of the list and of the labels based on it to show that a label had been prepared for every name on the list. He said that the labels had then been given to the Electoral Reform Society.

11. Very shortly before the hearing Mr Oswald Sinnick had assured Mr Young that he had not received a ballot paper and that he would attend the hearing to tell me about this, although in the event he did not do so. His name was, however, on the list submitted by Mr Young in February 1981 and a label had been prepared for him. On being notified of Mr Young's complaint that Mr Sinnick had not received a ballot form, the Union had made inquiries of the Electoral Reform Society and had been informed that the envelope posted by the Society to Mr Sinnick at the address on the label - which was the same as the address on Mr Young's list - had been returned to the Society marked "not known". Mr Young confirmed at the hearing that the address on his list was the correct address.

12. The name of Mr George Griffiths also appeared on the list and it was for that reason that a ballot paper was sent to him. Mr Young pointed out that the Union had known of his death because funeral benefit had been paid. Mr Boddy regretted that the Union had not related the application for funeral benefit to the list of members entitled to vote in the ballot. He said that a great deal of additional work would have been entailed in trying to relate all relevant information received from application for different benefits to the list of members entitled to vote.

13. The name of Mr Robert Young, the complainant's son, was not on the list submitted in February 1981 because he only joined the Union in September 1981. Mr Young senior said that he had posted his son's application form to head office himself. Mr Boddy said that a label had not been prepared for Mr Young junior under the procedure that had been set up to ensure that ballot papers were sent to members joining after the lists were compiled, because no application form had been processed. An extensive search of head office had been made but no application form had been found.

14. Finally, Mr Boddy said that head office had no means of knowing about any members of the Pershore branch who appeared on Mr Young's list of February 1981 and who had thereafter left the Union or whose contributions were more than six months in arrears until it received Mr Young's six-monthly contribution returns. Although Mr Young had submitted his returns for the first half of 1980 promptly in July 1980 and for the second half of 1980 in February 1981, the two-yearly branch register sheet showing the membership as at 1 January 1980 and the two six-monthly contribution returns for 1981 were not received until 5 January 1982. It would therefore not have been possible to remove from the list of members to whom ballot papers were to be sent the names of those shown in the returns as being more than six months in arrears with their subscriptions. This was because the ballot papers were sent out in the first week of January 1982. In any case under its normal procedures it would have taken the audit department some time to process the returns and to institute inquiries about members who appeared to be more than six months in arrears.

The Decision

A. Members not sent ballot papers

15. The first part of the complaint is the allegation that ballot papers were not sent to some members who were entitled to vote. Mr Young had assumed that under the Act this would amount to a complaint of a breach of the condition in section 1(2)(a) that every member of the union must be entitled to vote on the resolution. In fact that condition is concerned with entitlement to vote and is not appropriate to Mr Young's complaint which is not that the Union

did not permit certain of its members to vote but that it did not give them the chance to do so. The appropriate condition is in section 1(2)(b) and technically therefore this is a complaint under section 4(1)(a) of the Act that the manner in which the vote on the resolution was taken did not satisfy the condition specified in section 1(2)(b) of the Act, that every member of the union must, so far as is reasonably possible, be given a fair opportunity of voting.

16. My decision on this point therefore turns on whether every member was given a fair opportunity of voting so far as was reasonably possible. It seems to me that in considering this question, I must consider the overall arrangements adopted by the Union for the conduct of the ballot as well as the cases of the two named individuals, Mr Sinnick and Mr Robert Young. I have not considered any other individual cases in Pershore because the only others whom Mr Young named as not receiving ballot papers were also people who he said were not entitled to vote because they were more than six months in arrears with their union contributions.

17. Mr Burke, who appeared for the Union, submitted that the Union did everything they could possibly be expected to do to make sure that members got ballot papers. He said that the head office of a union with a widely scattered membership and a very large number of small branches must necessarily rely on branch secretaries for a great deal of its information and records. He argued that it was a perfectly reasonable system for the union to rely on its branch secretaries for the list of members on which the ballot was based. However, in this case, the Union had not relied on the ordinary two-yearly branch register sheets which, as in the case of Mr Young's 1980 sheet, were not always returned punctually, but required specially updated lists of members for the purposes of the ballot. On top of this, Mr Burke added, it was quite clear on the evidence that the Union went to every effort possible to chivy the branch secretaries to ensure that the special lists were sent in. Further, the Union instituted a system designed to ensure that every new member who joined after the list had been sent in was sent a ballot paper.

18. As for the two named individuals, Mr Burke said that the Union was able to show that Mr Sinnick's name was on the list, that a label had been made out for him with the right address, that a ballot paper was sent to him at that address and that the envelope was returned to the Electoral Reform Society marked "not known". The Union was not able to show why the ballot paper had not been received by him, but had done everything that was reasonably possible to give Mr Sinnick a fair opportunity of voting. Mr Burke said that the Union had not found any application form for Mr Robert Young and that usually when an application form is received, the new member's name is added to the existing branch register sheet. In this case there was no entry on the sheet. Additionally, because of the special procedure in 1981, once an application form was received a further document came into existence: the label for the ballot paper. No such label existed. Accordingly, Mr Burke submitted that the reality was that the application form did not arrive, either because Mr Young did not send it or for some other reason.

19. The duty which the Act places upon a union to ensure that each of its members is given a fair opportunity of voting is not absolute. It must do so as far as is reasonably possible, which means that all the circumstances must be taken into account, including the structure of the union and its resources. Having heard Mr Boddy's evidence about the normal practices of the Union, about the special system introduced by the Union for the ballot, and about the lengths to which the Union went to ensure that every member received a ballot paper, I have no hesitation in finding that the system was such that, so far as was reasonably possible, every member of the Union was given a fair opportunity of voting. I note that despite financial constraints the Union spent well over £30,000 on the arrangements to ensure that every member had the chance to vote and to enable the ballot to be conducted by the independent Electoral Reform Society. It was rewarded when over 56% of its members voted, which for a merger ballot was not a low turnout.

20. As regards the two named individuals, it is unfortunate that Mr Sinnick was not at the hearing to give his evidence, but it is clear from the evidence that was given that although his ballot

paper was returned marked "not known" it had been sent to his correct address and therefore the Union had done everything that it was reasonably possible for it to do to give him a fair opportunity of voting. The facts do not show why a ballot paper was not sent to Mr Robert Young. The complainant sincerely believed that he posted his son's application form to head office and that the Union was at fault; the Union sincerely doubted whether an application form was ever received although understandably it could not prove this. However the Union had taken steps generally to introduce a special system to seek to ensure that new members were given votes as well as those on the list. Mr Burke explained the procedure within the Union which should also record the person's name if an application form is actually received by the Union. There was no record of Mr Robert Young's application form. Because of this doubt concerning the application form I am in no position to find that there was in Mr Robert Young's case a breach of the condition that every member of the union must so far as is reasonably possible be given a fair opportunity of voting. But I do consider that the procedure of the Union in its treatment of new members, as described to me, was a system which ensured so far as reasonably possible that new members were given a fair opportunity of voting.

B. Ballot papers that should not have been sent

21. The second part of the complaint is the allegation that ballot papers were sent to some people who were not entitled to vote. Mr Young's original letter of complaint to me had enclosed a list of members of the Pershore branch who were over six months in arrears with their union contributions. He said that those on the list were not entitled to vote, although he did not explain clearly at the hearing how many of them had received ballot papers. Nevertheless, the Pershore branch contribution records for 1981 which the Union produced at the hearing do show that several members were more than six months in arrears with their contributions and the Union accepted that ballot papers were sent to those in this category whose names were on the list returned by Mr Young

for the purposes of the ballot in February 1981. In addition, a ballot paper was sent to Mr George Griffiths even though the Union had paid funeral benefit after his death.

22. The first point for my consideration on this part of the complaint is whether this allegation falls within any of the grounds on which a member can complain to me about a merger ballot. These grounds are laid down in Section 4(1) of the Act, which reads as follows:-

"4(1) A member of a trade union which passes or purports to pass a resolution approving an instrument of amalgamation or transfer may complain to the Certification Officer on one or more of the following grounds, that is -

- (a) that the manner in which the vote on the resolution was taken did not satisfy the conditions specified in section 1(2) of this Act; or
- (b) where that vote was taken under arrangements made under section 2(2) of this Act, that the manner in which it was taken was not in accordance with the arrangements; or
- (c) where that vote was taken under provisions in the rules of the union, that the manner in which it was taken was not in accordance with those rules; or
- (d) that the votes recorded did not have the effect of passing the resolution".

23. For the Union, Mr Burke submitted that a complaint that a number of persons who were not members did get an opportunity to vote does not form one of the grounds of complaint under the Act. I cannot accept - and I do not think that Mr Burke intended his submission to go this far - that an allegation that non-members had a chance to vote could never form the basis for a complaint on any of the grounds of Section 4(1). It seems to me that there are circumstances where an allegation of this sort could give rise to a justifiable complaint on one of the grounds laid down in the Act. For instance, where the non-members are balloted because the vote is taken in a manner which is not in accordance with the arrangements or the rules under which it is held, there will be a complaint under Section 4(1)(b) or Section 4(1)(c); where the number of non-members voting has affected the result of the ballot,

there will be a complaint under Section 4(1)(d). The facts of the particular case will decide whether any specific allegation that non-members were given the opportunity to vote does amount to a complaint on one of the grounds in the Act.

24. I am, however, satisfied that there is no evidence in relation to Mr Young's allegation which could justify a complaint on any of the grounds laid down in the Act. The ground in Section 4(1)(d) is not appropriate because 86% of those voting voted in favour of the transfer and it is therefore not conceivable that the result of the ballot could have been affected by the votes of those six months in arrears. The ground in Section 4(1)(c) is not appropriate because it only applies where the vote is taken under provisions in the rules of the union concerned, and the ballot was not held under the Union's rules because there were no rules under which a merger ballot could be held. The ground in Section 4(1)(b) is also not appropriate because as it turned out there was no suggestion that the manner in which the vote was taken was not in accordance with the arrangements. Section 2(2) of the Act gives the governing body of a union power to arrange for a vote to be taken in any manner which that body think fit, and Section 4(1)(b) covers complaints that the manner in which the vote was taken was not in accordance with the arrangements. In this case, however, there was no departure from the arrangements. It was the arrangements themselves which caused the ballot papers to be sent to some people more than six months in arrears with their union contributions. The lists on which the ballot was based took, and were always likely to take, several months to compile and it was therefore inevitable that the names of some members more than six months in arrears at the time of the ballot would be included. Nevertheless, in spite of this unfortunate side-effect, the arrangements for voting made by the Union were in my view reasonable in the circumstances.

25. Since I have decided that this part of the complaint could not be justified on any of the grounds in section 4(1), there is strictly no need for me to consider the matter further. However, I think that it would be right for me to comment briefly on the other arguments that were raised at the hearing.

26. On behalf of Mr Young, the Reverend Druce made the general point that the ballot held in January 1982 was based on outdated lists showing membership as at 1 January 1981 and that those lists would contain names of members who had already failed to contribute for some months. However, the official membership record that was updated every two years could be two years out of date. Mr Druce's contention was that some of the people who received ballot forms could have been out of membership for about two years. If the ballot had been delayed for another month, the branch contribution returns for the second six months of 1981, due in the normal course in January 1982, would have brought the membership list a further six months up to date. The Reverend Druce thought that would have been fair.

27. Mr Burke said that there was no way the Union could have known of those in Pershore who had fallen into arrears in 1981 and were therefore eligible to have their membership discontinued until the contribution record sheet arrived on 5 January 1982, which was too late because the ballot papers were sent out by the Electoral Reform Society in the first week of January. However, even if the returns had been received earlier, it would have been quite wrong, and it was not the Union's practice, to strike members' names off the list without investigation. In any event, the audit department, which worked on a six month cycle, would have taken some time to pick up the arrears. Mr Burke said that it followed that the persons who got into arrears in 1981 were still members of the Union at the time of the ballot and were therefore entitled to vote.

28. It is not necessary for me to resolve the issue as to whether or not those in Pershore who received ballot papers but were more than six months in arrears were at the time of the ballot members of the Union under the Union's rules, and therefore entitled to vote. On the facts; however, it is quite clear that the Union could not have been aware of the arrears until, at the earliest, 5 January 1982. At that stage, the Union could not have stopped those in arrears from voting even if there had been an automatic procedure for the expulsion of members in arrears.

29. Finally, I cannot accept the Reverend Druce's argument that it would have been fair to delay the ballot for another month to await the updated contribution returns. The Union's experience shows, and this is by no means surprising in view of the competing pressures that there must be upon the time of busy branch secretaries, that the normal returns required from them cannot all, or even mostly, be expected to arrive promptly as soon as they are due. Indeed, the Union was chasing branches for the special ballot lists which it asked for in January 1981 for the rest of that year. Accordingly, even if the Union had awaited another month or two months, it would not have received, let alone have had time to process, all the updated lists.

30. For these reasons, I dismissed the complaint.