

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

IN THE MATTER OF A COMPLAINT AGAINST THE
ASSOCIATION OF CINEMATOGRAPH TELEVISION AND
ALLIED TECHNICIANS

Date of complaint: 8 November 1990

Date of Decision: 21 December 1990

DECISION

1. On 8 November 1990 I received a letter from two members of the Association of Cinematograph Television and Allied Technicians (ACTT) alleging that not every member of the Association was given a reasonable opportunity to vote in a ballot held by that union in August and September on a resolution to approve an instrument of amalgamation between the ACTT and the Broadcasting and Entertainment Trades Alliance (BETA). The instrument had been approved in ballots held by both unions and I had received an application to register the Instrument of Amalgamation on 28 September 1990. I treated the members' letter as a complaint under section 4(1)(a) of the Trade Union (Amalgamations, etc.) Act 1964 (the 1964 Act) that the vote had not been taken in a manner which satisfied section 1(2)(b) of that Act. For the reasons which follow I have decided to dismiss the complaint.

The Complaint

2. In their first letter the two members alleged that, due to poor record keeping, the Association did not have proper addresses for some 10% of the membership. Consequently many members were not sent ballot papers and were therefore denied an opportunity to vote on the resolution to approve the amalgamation. In later correspondence the complainants gave details of 11 members in their own shop, the ACTT TVS Maidstone Shop, who had not received

ballot papers. This amounted to approximately 10% of the Shop's membership of 123. Of these 11 members they alleged that there were five for whom the Association held addresses but who had not received ballot papers. Of the remainder they said that 2 members had notified the union of a change of address but this had not been acted upon; no address details were held by the union for a further 2 members; and in the other 2 cases incorrect addresses were held by the union (this was admitted to be the members' fault). The complainants also produced a letter from the General Secretary of the Association explaining that of the 123 members of the Shop, the Association did not have current addresses for 31. The complainants were not in a position to provide evidence from other branches, but they argued that if this pattern was repeated across the Association it could not be said that every member had, so far as was reasonably possible, been given a fair opportunity to vote.

The Ballot

3. I established in correspondence with the Association that in accordance with previous practice this postal ballot of the entire membership of ACTT was carried out by the Electoral Reform Society (ERS). The ERS were responsible for the despatch and receipt of voting papers. Ballot packs were sent out on 25 July 1990. The first date for voting was 6 August and the closing date for the receipt of voting papers was 21 September, giving a 7 week ballot period. Out of 27,086 ballot papers dispatched a total of 8,032 ACTT members voted in the ballot, of whom 5,685 voted in favour of the resolution approving the instrument of amalgamation and 2,335 against.

The requirements of the legislation

4. The conditions which must be met in a ballot to approve an instrument of amalgamation between trade unions are set out in section 1(2) of the 1964 Act. Paragraph (b) of the subsection provides - "every member of the union must be allowed to vote without interference or constraint and must, so far as is reasonably possible, be given a fair opportunity of voting".

Arrangements for the Ballot

5. The Association provided a detailed response to the complaint. They explained that the Association's membership and subscription records are fully computerised. In cases where members have their subscriptions deducted by

employers, shop stewards and local officials are provided at regular intervals with a list of members who are in arrears or for whom no current address is listed. Information is regularly sought on members joining and leaving the particular employer.

6. The Association said that in view of the significance of the proposed amalgamation with BETA extensive publicity had been given to the ballot, and the importance of members exercising their right to vote had been stressed. Successive issues of the Association's monthly journal, which is posted to individual members' addresses, carried many articles debating the proposed amalgamation. Several issues of the journal contained a note urging members to provide the Association with an accurate current address. The July issue emphasised that members for whom the union did not have an accurate address could not be sent ballot papers, and gave a contact telephone number. Leaflets and other publicity material on the amalgamation and ballot were also sent out to shop stewards and membership areas. On 27 June all shop stewards received a letter reminding them that the ballot on the resolution would be postal and that the union required up to date addresses for all members. A further letter on this point was sent on 11 July. Both letters provided a telephone number to be used to notify changes of address.

7. Turning to the circumstances of the complainants' shop itself, a meeting was held on 28 March at the ACTT TVS Maidstone Shop to discuss the proposed amalgamation. Both complainants, who are elected officials of the TVS Maidstone Shop, attended that meeting. Those present were advised that the ballot would be fully postal to members' addresses. The Association's Employment and Membership Officer wrote to the TVS Maidstone Shop on three occasions in May and June 1990 seeking information to update the membership register. The last letter sent on 11 June to one of the complainants enclosed a list of members who were either in arrears with their subscription or for whom the union had no address. The Association said that no reply was received to this letter.

8. The ballot was conducted by ERS who distributed 27,086 ballot papers to ACTT members. This figure includes 107 ballot papers sent out after the main mailing in response to requests by members who had not received a ballot paper. One of these was an ACTT member of the TVS Maidstone Shop. A total of 8,032

ballot papers were returned, a response rate of 29.7%. ERS noted that a similar number of ballot papers had been distributed in elections in April 1990 for which there had been a 9.8% response rate. No complaints were received concerning that ballot.

Reasons for dismissing the complaint

9. A trade union may make such arrangements for taking the vote on an amalgamation resolution as it thinks fit, provided the arrangements comply with the conditions set out in section 1(2) of the 1964 Act. The question I have to consider is whether the union failed to do what Section 1(2)(b) of the 1964 Act required, namely to arrange matters so that every member of the union, so far as reasonably possible, was given a fair opportunity of voting. This requirement is clearly fundamental to the purpose behind the 1964 Act.

10. However, it is necessary to observe that this requirement does not mean that the union has to guarantee the delivery of a ballot paper to every member who is entitled to vote. That would be unrealistic. The point was made clearly by Lord Donaldson MR in British Railways Board v NUR [1989] ICR 678 at p. 684. Lord Donaldson observed that in a large postal ballot it is inevitable that, for a variety of reasons beyond the reasonable control of a union, there will be some people who do not receive ballot papers. Whilst that case concerned an industrial action ballot, Lord Donaldson's observations are undoubtedly of general relevance to complaints about balloting procedures. The fact that some members do not receive ballot papers does not of itself prove that the union has failed to take all steps that could reasonably be expected of it.

11. The Association has much experience of postal balloting and it explained the action that is taken on a regular basis to ensure that it holds correct addresses for all its members. It is therefore reasonable to expect that members generally were aware of the importance of registering correct current addresses with the Association. Turning to the ballot in question, I was impressed by the steps taken by the Association both to make members aware that the ballot was taking place and to encourage them to exercise their right to vote. I have seen evidence that publicity was being given to the ballot some five months before voting commenced. Because of the nature of the industry in which their members worked the two unions involved in the proposed amalgamation

opted for a balloting period covering seven weeks. This was primarily to allow a reasonable voting opportunity for members who might be taking leave or on foreign location work during the summer months, but it also had the effect of providing those members who did not immediately receive a ballot paper with ample opportunity to apply for one. ERS have an established system to cover the issue of additional ballot material, and in this ballot 107 members who had not received ballot papers contacted ERS and were sent them.

12. Of the 11 members the complainants specifically identified as not receiving ballot papers the Association admitted that addresses were not held for 4. In fact it seems that up to date addresses were not held for about 31 members of the Maidstone Shop. This is not a trivial figure but it is less significant than it seems. It is the union's practice when journals or ballot packs are returned "not known at this address" to delete the address from its records in order to save wasted postage in future mailings. Therefore, many of those for whom an address is not recorded are likely to be members for whom the Association did have an address which was probably correct in the past but which has since clearly become out of date. I have some sympathy with a union in cases where addresses become out of date. It must inevitably be the chief responsibility of the individual member to notify a change of address. If he fails to do so, he can hardly blame the union if he no longer receives mail. At the same time I do not think that a union is entirely free of responsibility in the matter. It is right that, as in this case, there should be a system of review and follow-up, regular reminders in journals and so on. Such reminders and follow-up are especially prudent in the run-up to an important national ballot of this kind.

13. Of the remaining 7 members specifically named by the complainants the Association insisted that correct addresses were held for 5. They insisted that labels would have been run-off for those members, and this I accept as indicating that postal difficulties or some other problem must have accounted for non-delivery. In the remaining two cases the Association rightly commented that it can hardly be their fault if a member supplies an incorrect address.

14. In considering all the points put to me, I take particular note of the advance publicity given to the ballot, the action taken by the Association to

ensure that correct addresses were held for members, the lengthy period allowed for balloting, and the arrangements made by ERS for members who did not receive a ballot paper to be sent one subsequently. I must also have regard both to the relatively small numbers of people about whom evidence was given and the detailed explanations given by the Association in those cases. Finally, I note the apparent absence of other complaints to ERS or to the Association. My conclusion is that it has not been shown that the manner of voting failed to satisfy the requirement that so far as was reasonably possible, every member was given a fair opportunity of voting.

15. For these reasons I have decided to dismiss the complaint. I would only add that had I had any doubt I would have given some weight to the fact that in this ballot, on a 29.7% response rate, members voted over 2 to 1 in favour of the proposed amalgamation. Even in cases where I might find an infringement of the Act I am not bound to make an order; and I would not have been readily persuaded to order a fresh ballot in this case in the absence of clear evidence of an infringement so fundamental as to throw doubt on what was a very clear result.