

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

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**IN THE MATTER OF COMPLAINTS AGAINST  
THE NATIONAL UNION OF PUBLIC EMPLOYEES**

Date of Hearing: 24 June 1992

Date of decision: 6 August 1992

**The Complaint**

1. Two members of the National Union of Public Employees (NUPE) - to whom I shall refer in this decision as complainant A and complainant B - complained to me under section 3(2) of the Trade Union Act 1913 (the 1913 Act) that their Union had acted in breach of its political fund rules, specifically NUPE rule 37(7).

2. Section 3(2) of the 1913 Act and NUPE rule 37(10) provide that any member who alleges that he is aggrieved by a breach of any political fund rule made pursuant to section 3 of the Act may complain to me.

3. At the hearing on 24 June 1992 the Union was represented by Mr Allan Taylor, Assistant General Secretary (Administration) and Mr A C Martin (Divisional Officer); and by Mr E Solomons of Brian Thompson and Partners, Solicitors. Complainant A appeared in person, and as representative of complainant B who did not attend.

**The background**

4. The complainants are members of NUPE and are both employed by Burnley Borough Council. Their subscriptions to the Union are collected by deduction at source. This is the system commonly known as "the check-off", whereby the

employer deducts a sum representing the employee's union subscription from his wages and pays it over to the union. Both complainants are exempt from contributing to the Union's political fund.

5. So far as it is material NUPE rule 37(7) provides that:-

"the Executive Council shall give effect to the exemption of members to contribute to the political fund by relieving any members who are exempt from payment of part of any periodical contributions required from members towards expenses of the Union as hereinafter provided and such relief shall be given as far as possible to all members who are exempt on the occasion of the same periodical payment.

For the purpose of enabling each member to know as respects any such periodical contribution what portion, if any, of the sum payable by him/her is a contribution to the political fund, it is hereby provided that the whole of the last weekly contribution in each quarter is a contribution to the political fund of the Union, and that any such member who is exempt as aforesaid shall be relieved from the payment of the last weekly contribution in each quarter".

6. The two complainants (together with another colleague) first wrote to me in March 1991 saying that they had received no refund from the Union in respect of relief from contributions to the political fund for two or three years. In April 1991, following enquiries by my staff, complainants A and B were each sent cheques by the branch secretary in the amount of £8.36. In September 1991, after certain difficulties over misdirected mail, they confirmed to my Office that they had received these refund cheques, and the matter was therefore treated as being resolved.

7. During the course of correspondence the Union drew the attention of the complainants to section 18 of the Trade Union Act 1984 (the 1984 Act) which provides that:-

"Where any person who is a member of a trade union which has a political fund has certified in writing to his employer that, or to the effect that, he

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- (a) is exempt from the obligation to contribute to that fund; or
- (b) has, in accordance with the 1913 Act, notified the union in writing of his objection to contributing to it;

the employer to whom the certificate was given shall ensure that no amount representing a contribution to the political fund of the union is deducted by him from emoluments payable to the member".

The Union indicated that if the complainants were not satisfied with the operation of the system whereby their branch secretary provided refunds, they could invoke section 18 of the 1984 Act which gives them a right to proceed in the county court against their employer if he continues to deduct political fund contributions from their wages after a certificate has been given.

8. Complainant A wrote to me again in February 1992 complaining that political fund contributions had continued to be deducted from his wages, and no further refunds had been made since March 1991. In due course complainant B made a similar complaint. Further refund cheques were despatched by the branch secretary in March 1992. After more correspondence between this Office, the Union and the complainants I decided that it was necessary to hold a formal hearing into their complaints.

#### Complainant B

9. At this point I should say that, in the event, complainant B was unable to attend the hearing. He was content that complainant A should speak for him, but it soon appeared that there were certain differences in circumstances between the two cases. In the absence of complainant B it was not possible to resolve certain material questions affecting his case, and I am therefore unable to uphold his

complaint. What follows henceforth refers specifically to the case of complainant A.

### **The Union's principal submission**

10. The Union's principal submission at the hearing was that they had not acted in breach of their political fund rules. Mr Solomons explained that three methods of paying their union subscriptions were open to members. They could pay direct to their branch secretary. They could pay by direct debit. Or they could pay by deduction from wages (the check-off system). I would interpose here that, as I understand it, a majority of NUPE members opt to pay by the check-off system, for what I think are self-evident reasons. In most cases that method will be the simplest and most convenient so far as the individual member is concerned. Check-off arrangements are, of course, traditionally made as between the union and the employer. In these cases both complainants had opted for the check-off method of paying their union subscriptions.

11. Mr Solomons went on to argue that by virtue of section 18 of the 1984 Act the complainants were entitled to require their employer to ensure that no amount representing a contribution to the political fund of the union was deducted from their pay. Had they done so, their employer would have been legally required to act accordingly. Therefore, Mr Solomons argued, a proper construction of the inter-relationship between section 18 of the 1984 Act and the rules of the union was that a member paying his subscriptions by check-off, and having a statutory right to require his employer not to deduct contributions to the union's political fund, was in effect afforded the relief required by the union's political fund rules.

12. This submission was ingenious and well argued but I was not persuaded by it. The provisions of the 1913 Act concerning a member's exemption from contributing to a union's political fund were not amended by section 18 of the 1984 Act. Nor, in my view, does the existence of section 18 discharge any duty under the contract of membership owed by the union to a member under its rules. It simply makes available to a union member whose union subscriptions are collected

by the check-off method legal recourse against his employer in certain circumstances. No individual can be required to invoke the section 18 procedure (culminating in enforcement by proceedings against his employer in the county court) if he is not minded to do so. Many would doubtless find it an unattractive option.

And indeed, if the employer is willing to make appropriate check-off arrangements at the request of the union the question of a member needing to consider invoking section 18 of the 1984 Act against his employer does not arise.

13. In this case there was no evidence to show that the Union had ever approached the employer to make, on a voluntary basis, appropriate check-off arrangements for members who were exempt from contributing to the political fund. On the contrary, the Union's attitude before and during the hearing was that, in the case of exempt members paying subscriptions through the check-off, the onus lay entirely on the exempt member to make his own arrangements with the employer. I cannot accept this. Under NUPE rule 37(7) the onus lies on the Union to give effect to the exemption of members who choose not to contribute to the union's political fund. It is only where an employer refuses to co-operate with the Union on this that any question of an individual member's use of section 18 of the 1984 Act need arise. No evidence was offered to suggest that such was the position here. The Union simply left it to the complainant to do whatever was necessary. Mr Solomons was in effect arguing that in check-off cases, section 18 of the 1984 Act transferred the onus of giving effect to NUPE rule 37(7) from the Union to the member in his capacity as an employee. I cannot believe that those who framed section 18 intended any such thing.

14. Associated with this submission was the argument that a member cannot insist on paying his union subscriptions by a particular method if another option no less materially convenient to him is available. It was argued that if complainant A was unhappy with the way the check-off and refund arrangements worked he could have opted to pay his subscriptions by direct debit. I do not think I need dwell on this at any length. The fact is that many people, rightly or wrongly, have reservations about direct debit arrangements and dislike them.

There is no doubt in my mind that the check-off system preferred by the complainant and by the majority of his colleagues in the Union is generally accepted to be the simplest and most convenient method of paying union subscriptions. The fact that a member chooses not to contribute to the political fund seems to me no reason to expect him to change to a payment system which is less convenient to him, which he dislikes, and which is widely available to other members.

#### **The Union's alternative submission**

15. The Union submitted, alternatively, that they had made reasonable arrangements for prompt refund of contributions to the political fund in these cases. This proposition has to be considered by reference to the principles clearly established by the Employment Appeal Tribunal in the leading case in this area of Reeves v the Transport and General Workers' Union [1980] IRLR 307.

16. Mr Solomons argued that the effect of section 18 of the 1984 Act was to overtake and supersede the EAT's decision in the Reeves case. It will be clear from what I have said earlier that I cannot accept this.

17. The principles established by the EAT in the Reeves appeal can be summarised as follows:

Where a union member is exempt from paying contributions to a union's political fund, and the political fund is not maintained by a separate levy of contributions, relief from the political fund element of periodical union subscriptions should be given so far as possible at the time of such periodical payments. Where that is not possible, relief should be given by appropriate refunds made in advance. There may be rare cases in which because of some special circumstance advance refunds are not possible. In such cases the union should make the refund as soon as possible and - very importantly - automatically, that is without the member having to apply for them. In the event of a complaint it would be for the Union to satisfy the Certification Officer that such a special circumstance existed.

18. It is clear that in the case of complainant A NUPE fell down on each element of the Reeves test. Under the system they operated, relief from political fund contributions was not given at the time that periodical Union subscriptions were collected (through the check-off). Nor were refunds made in advance. Nor were they made promptly. Nor were they made automatically. In fact over the three years to March 1992, refunds to Complainant A seem to have been made on only two occasions viz in April 1991 and in March 1992, and then only after persistent representations had been made by the complainant. These cannot by any stretch of the imagination be described as prompt and automatic refunds.

### Conclusion

19. For the reasons set out above I have no hesitation in upholding the complaint by complainant A. There is no doubt that what the Union did - and did not do - in his case made them in breach of NUPE rule 37(7), and caused him to have to spend considerable time and trouble in seeking to resolve the matter.

20. I do not however, think it necessary to make any Order. As it happens, it emerged during the hearing (though not before) that, through errors in the basis of calculation, the refunds made to complainant A in March 1991 and April 1992 inadvertently included an element of over-payment of which both the complainant and the Union were unaware. This is typical of the muddle which seems to have surrounded the case. It was not possible to establish with any certainty the precise figures, but in any event it would appear that by the time of the hearing, albeit quite fortuitously, no refunds were due to the complainant. In the circumstances, no Order seems to be called for.

21. Having said that, it seems obvious that complaints of this nature are likely to recur in the future unless the Union puts more effort into ensuring that exempt members are given no cause to complain about breaches of political fund rules. In the light of various statements made during the hearing it seems unnecessary for me to suggest precisely what should be done in the case of complainant A. There seems no reason why, for example, NUPE should not adopt a system of making refunds to him in advance if they are reluctant to ask the employer to

modify the check-off arrangements to cater for exempt members. The Union assured me that they had no intention of being obstructive towards members who are exempt from contributing to the political fund. I accept their assurances, and I can see no reason why they cannot make satisfactory arrangements for the future.