

**DECISIONS OF THE CERTIFICATION OFFICER ON APPLICATIONS
MADE UNDER SECTION 55 OF THE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992**

**IN THE MATTER OF COMPLAINTS AGAINST
THE NATIONAL UNION OF JOURNALISTS**

Date of decisions

23 September 1999

DECISIONS

- 1.1 Under section 55 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") any person having sufficient interest who claims that a trade union has failed to comply with any of the requirements of sections 46 to 53 of Chapter IV of Part I of the 1992 Act concerning the need for, and conduct of, elections to certain positions may apply to me for a declaration to that effect.
- 1.2 Whether I make or refuse to make the declarations sought, I am required to give, in writing, the reasons for my decisions.

- 1.3 On 30 April 1999 I received a letter from a member of the National Union of Journalists (NUJ) complaining about the election process in the union's elections for its executive committee. Under Chapter IV of Part I of the 1992 Act elections to the union's principal executive committee have to satisfy certain specific requirements. The letter alleged that irregularities had occurred in respect of the ballot for two seats on the National Executive Council (NEC) for the North West Constituency and in respect of the ballot for the North West seat on the NUJ Freelance Industrial Council(FIC).
- 1.4 In respect of National Executive Council ballot the complainant alleged that not every member entitled to vote in the ballot in the North West Constituency was issued with a ballot paper thus failing to satisfy the requirements of sections 50(1) and 51 (4) of the 1992 Act. It was also alleged that the election had been carried out under the exhaustive transferable vote system rather than under the single transferable vote system thus failing to satisfy the requirements of section 51 (6) (when read with section 51 (7) of the 1992 Act). I shall call these complaints "Complaint 1".
- 1.5 In respect of the election for the Freelance Industrial Council - North West seat the complainant alleged that, despite being a candidate in this ballot, he did not receive a ballot paper thus breaching the requirements of section 50(1) and section 51(4) of the 1992 Act. Chapter IV of Part I of that Act only deals with elections to certain positions within a trade union. In order to deal with this complaint I had to be satisfied that the election was for a position that fell within section 46(2) of the Act. I shall call this "Complaint 2".

1.6 For the reasons set out below I refuse to make the declarations sought. I investigated the complaints in correspondence and gave both the complainant and the union the opportunity to make representations (which they did). I also made enquiries of the Electoral Reform Ballot Services who were the scrutineers in the National Executive Council ballot. I decided it was not necessary in this instance to hold a formal hearing before making my decision.

Requirements of the Legislation

1.7 The relevant statutory requirements in respect of the complaints are as follows:

46. -(1) *A trade union shall secure -*

(a) *that every person who holds a position in the union to which this Chapter applies does so by virtue of having been elected to it at an election satisfying the requirements of this Chapter, and*

(b) *that no person continues to hold such a position for more than five years without being re-elected at such an election.*

(2) *The positions to which this Chapter applies (subject as mentioned below) are -*

(a) *member of the executive,*

(b) *any position by virtue of which a person is a member of the executive,*

- (c) *president, and*
- (d) *general secretary;*

and the requirements referred to above are those set out in sections 47 to 52 below.

50.-(1) *Subject to the provisions of this section, entitlement to vote shall be accorded equally to all members of the trade union.*

(2) *The rules of the union may exclude entitlement to vote in the case of all members belonging to one of the following classes, or to a class falling within one of the following -*

- (a) *members who are not in employment;*
- (b) *members who are in arrears in respect of any subscription or contribution due to the union;*
- (c) *members who are apprentices, trainees or students or new members of the union.*

51.-(4) *So far as is reasonably practicable, every person who is entitled to vote at the election must -*

- (a) *have sent to him by post, at his home address or another address which he has requested the trade union in writing to treat as his postal address, 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 a convenient opportunity to vote by post.

(5)

(6) The ballot shall be so conducted as to secure that the result of the election is determined solely by counting the number of votes cast directly for each candidate.

(7) Nothing in subsection (6) shall be taken to prevent the system of voting used for the election being the single transferable vote, that is, a vote capable of being given so as to indicate the voter's order of preference for the candidates and of being transferred to the next choice -

(a) when it is not required to give a prior choice the necessary quota of votes, or

(b) when, owing to the deficiency in the number of votes given for a prior choice, that choice is eliminated from the list of candidates.

1.8 That then is the background and relevant legislation. I now set out the arguments put by the parties on each of the complaints and the reasons for my decisions.

Complaint 1 (that the union failed to ensure that entitlement to vote was accorded to all members and that the election had been conducted using the exhaustive transferable vote system rather than the single transferable vote system.)

Facts

- 2.1 The rules of the NUJ provide for there to "be a central administrative body called the National Executive Council (NEC), which shall consist of members elected to represent industrial sectors and geographical sectors." There are seats for one representative each drawn from seven industrial sectors and one or more representatives drawn from twelve geographical sectors. The number of representatives for each geographical sector is determined by the number of members entitled to vote in that sector. It is accepted that the NEC is the "executive" for the purposes of the 1992 Act and that the North West Constituency was entitled to elect two representatives.
- 2.2 Members of the NEC are elected annually and the ballot for 1999-2000 NEC closed on 12 February 1999. There were four candidates for the two seats available in the North West Constituency. The scrutineers for the election were the Electoral Reform Ballot Services Ltd (ERBS) and, according to their report, a total of 1453 ballot papers were issued with 405 valid ballot papers being returned for counting. The ballot paper for this constituency contained an introduction, in bold, as follows: -

"THE ELECTION IS ON THE PRINCIPLE OF THE EXHAUSTIVE TRANSFERRABLE VOTE IN ACCORDANCE WITH RULE 8. THEREFORE CROSSES SHOULD NOT BE USED IN VOTING."

In addition the ballot paper contained the following instruction for voting: -

"2. These elections will be conducted by the use of the Exhaustive Transferable Vote. Vote by placing the figure 1 against the candidate you most strongly support, the figure 2 against your next favoured candidate and so on, until you are unable to express a preference for any of the remaining candidates. You may mark as many or as few preferences as you wish."

- 2.3 Once the ballot papers had been counted by the scrutineers it was realized that, following a union rule change, the ballot should have been conducted under the "single transferable vote" system. After taking advice, including guidance from the ERBS, the union decided that the scrutineers should recount the ballot papers using the "single transferable vote" system. The candidates and NEC members were advised accordingly by a letter from the General Secretary dated 25 February 1999. This decision was later endorsed at a meeting of the NEC held on 5 March 1999 and before the results of the ballot were declared at that meeting. Under both counting systems the same two candidates, Mr David Toomer and Mr Chris Frost, were elected to the NEC seats for the North West Constituency.

The Complainant's Case

- 2.4 There were two aspects to the complainant's case. In the first it was alleged that the union's IT manager had stated in correspondence that there were 1543 "registered members in the north west eligible to vote by virtue of membership status (discounting paid up position and un-notified changes of address)". Despite this only 1453 ballot papers

had been issued. A disparity of this number of ballot papers was sufficient to affect the outcome of the ballot where less than 90 votes separated the second placed successful candidate and the third placed unsuccessful candidate.

- 2.5 In support of the second aspect of his complaint concerning the NEC ballot, the complainant drew attention to the letter from the General Secretary of 25 February 1999 "admitting that the "NEC Elections has been incorrectly carried out under the exhaustive transferable vote system rather than under the single transferable vote system as required under Rule 20(b) of the NUJ Rules. " " There was concern that the breach of union rule was being minimised as a "clerical error" and it was argued that this was a serious breach of rule which threw a whole cloud of suspicion over the entire election. It was believed that at least one candidate in the election, who had been declared unelected under the exhaustive transferable vote system, had been elected under the single transferable vote system.

The Union's Response

- 2.6 The union explained that membership information was produced for different purposes. The figure of 1543 was the number of members in the North West Constituency who were potential voters in any ballot. This figure was produced solely for the purposes of allocating the number of NEC seats for that NEC constituency. A different criterion was used in the production of the membership list for ERBS of those eligible to vote. Excluded from this list were those who were not eligible to vote because of the operation of NUJ

Rule 4(k) which provides that " Any member whose contributions are three calendar months or more in arrears, or who has failed to pay the whole of a general levy within a period of six months, shall be disqualified from voting in union elections....." The union indicated that, at the time of the ballot, some 48 members were more than three months in arrears and thus disqualified from voting. In addition, at the time the list was produced for ERBS, there were some 42 members for whom the union did not hold valid addresses.

- 2.7 The union stated that with regard to the allegation that the NEC election had been incorrectly carried out, there had, indeed, been an unfortunate clerical error that was dealt with as soon as possible. When it was realized that the count for the election should have been carried out under the single transferable vote system the union took immediate action to correct the error. The advice from the scrutineers was that the actual voting procedure and wording on how to vote was exactly the same in both methods. It was therefore decided that a re-count of the votes already cast using the single transferable system would be the most practical way of remedying the situation. There were various pressures on the union to produce a result quickly and there were requests from a number of candidates in the election that a re-count should be proceeded with. In the event the outcome in respect of the North West Constituency remained the same.

Reasons for my Decision

- 2.8 I have two issues to decide:

(a) was entitlement to vote granted to all members in the North West Constituency?

(b) was the result of this ballot determined in accordance with the requirements of Chapter IV of Part I of the 1992 Act?

2.9 The complainant alleges that 90 members in the North West Constituency were denied a vote in the NEC ballot. Section 50(2)(b) of the 1992 Act provides that the rules of the union may exclude entitlement to vote in the case of all members who are in arrears in respect of any subscription or contribution due to the union. Rule 4 (k) so provides and I am satisfied that 48 members, who at the time of the ballot were in arrears with their subscriptions, were properly excluded from entitlement to vote in the ballot. For the remaining 42 members, at the time of the ballot the union did not hold a valid address and were thus unable to provide the scrutineer with an address to which to send a ballot paper. Since the ballot valid addresses have been provided for 25 of those members. I accept that with a dynamic membership list there will always be, at any particular point in time, a small number of members for whom no current valid address is held. I am satisfied that the union have, so far as reasonably practicable, ensured that every person who is entitled to vote had sent to him or her by post, at his or her valid address, a voting paper thus meeting the requirements of section 51(4). No other evidence to suggest the union had excluded members from entitlement to vote has been presented to me and I am satisfied that, subject to exclusions permitted under section 50, entitlement to vote has been accorded equally to all members of the union.

2.10 Section 51(7) permits the use of the single transferable vote system in election ballots. Was that though the system used in this ballot? Members when voting would have done

so in the belief that the outcome would be determined by the exhaustive transferable vote system. But in fact the votes were eventually counted under a different system namely the single transferable vote system. In theory this discrepancy between the description of how the ballot was being conducted and how the votes were actually counted could have had an impact on the way individuals decided to vote and thus on the outcome of the election. The systems could give different outcomes if there was a substantial degree of tactical block voting. To investigate this possibility I sought evidence from the scrutineer ERBS. On the basis of this evidence I am satisfied that in this ballot there was no substantial unfairness caused by the incorrect description on the ballot paper of the way the votes would be counted.

- 2.11 Given that this ballot apparently involved two different voting systems the question for me becomes which one determined the outcome of the ballot? On that I find as a matter of fact that it was clearly the single transferable vote. As the legislation expressly permits such a system I dismiss complaint 1.

Complaint 2 (that the union failed to ensure that entitlement to vote was accorded to the complainant)

Jurisdiction

- 3.1 Before I could deal with this application it was necessary for me to determine whether a seat on the Freelance Industrial Council was one which fell within section 46(2) of the

1992 Act. This arises because my jurisdiction under section 55 of the Act is limited to positions to which Chapter IV of Part I of the 1992 Act apply. Those positions are set out in section 46 (2) of the Act (see paragraph 1.7). It is clear that in respect of the ballot in question the position is neither that of the president (s46(2)(c)) nor of the general secretary (s46(2)(d)) of the union. Consequently I have to decide whether a seat on the Freelance Industrial Council is a seat on the union's executive (s46(2)(a)) or a position by virtue of which a person is a member of the executive (s46(2)(b)). It has been accepted that the National Executive Council is the "executive" for the purposes of the 1992 Act (para. 2.1. above) and therefore the question is whether a seat on the Freelance Industrial Council leads to membership of the union's NEC.

3.2 The applicant stated that, like the NUJ's other Industrial Councils which serve particular industrial sectors of the union, the Freelance Industrial Council acted on the behalf of more than 5,000 Freelance members across the UK and Ireland. Like other Industrial Councils, the FIC met at the NUJ headquarters and, because its minutes were presented to the NEC for scrutiny and endorsement or rejection, there was a direct input by the FIC to the NEC. In addition there were three NEC Freelance members who were ex-officio members of the FIC, thus providing even stronger links with the NEC. Because of this the applicant sought to argue that the provisions of the 1992 Act also applied to the FIC ballot.

3.3 The union confirmed that, as provided by Rule 8, there was "a central administrative body called the National Executive Council, which shall consist of members elected to represent industrial sectors and geographical sectors." Included in the industrial sectors was the

freelance sector and the NEC member for the freelance section was elected to represent all freelances throughout the country and was not bound by geographical boundaries. The election for the NEC member for freelances was completely separate from the election to the Freelance Industrial Council.

3.4 In further support of their position the union quoted NUJ Rule 13 which dealt with Industrial Councils, branches and sections: -

(a) There shall be an industrial council for industrial sectors of the membership in England, Wales, Northern Ireland and Western Europe as follows: Newspapers and Agencies, Magazines and Books, Freelance, Public Relations and Information, Broadcasting.....These councils shall promote and supervise negotiations and agreements with individuals or groups of employers on wages and conditions of employment and allied problems.....They shall be available as advisory committees to the NEC and have the right to make representations to the NEC.

(b).....They shall report all their decisions to the NEC.

(c) The NEC may overrule any council if it believes that council is acting against the interests of any section of the membership.

3.5 It was argued that whilst there was close liaison between the industrial councils and the NEC, the election of a member to a position on an industrial council did not lead to

membership of the NEC. The NUJ Industrial Councils were advisory committees to the NEC and have the right to make representations to the NEC. The industrial councils were part of the structure of the NUJ but dealt only with specific industrial matters whereas the NEC was the ruling body of the union.

Reasons for Decision

3.6 In my view it is clear that the NEC is the "executive" of the NUJ. The various industrial councils act as advisory councils to the NEC in respect of specific matters. Whilst these councils are part of the structure of the NUJ they are not an integral part of the NEC, neither does membership of an industrial council lead to membership of the NEC. I therefore find that a seat on the Freelance Industrial Council is not a position covered by section 46 of the 1992 Act and consequently I do not have jurisdiction to deal with the application.

3.7 For this reason I find that I have no powers to determine this complaint.

Observations

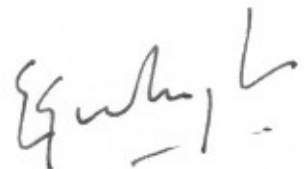
3.8 Under section 55(5) of the Act in giving my reasons I am permitted to make observations on any matter arising from, or connected with, the proceedings. Whilst I have found that I do not have jurisdiction to deal with complaint 2, concerning an application in respect of an election to the Freelance Industrial Council, because it is not to a position covered by Chapter IV of Part I of the 1992 Act, the position will change under the Employment

Relations Act 1999. Paragraph 19 of Schedule 6 to the 1999 Act will extend my powers so that I will be able to deal with a complaint that a trade union, or one of its sections or branches, has broken or is threatening to break, its rules in relation to: -

- (i) the appointment, election or dismissal from any office in the union;
- (ii) disciplinary proceedings within the union;
- (iii) balloting of its members (except in the case of industrial action and political fund ballots);
- (iv) the constitution or proceedings of its executive committee or certain other bodies (there are restrictions relating to the size of body concerned).

It is not yet known when this will come into force.

- 3.9 I will not have to accept such a complaint unless I am satisfied that the complainant has taken all reasonable steps to resolve the matter through the internal complaint procedures of the union. I will also not be permitted to consider a complaint where the complainant has already applied to the Courts about the same matter. Similarly once a complaint has been made to me, the complainant will not be able to put same matter to the Court.



E G WHYBREW

Certification Officer