

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

B P McCARTHY
and
ASSOCIATION OF PROFESSIONAL, EXECUTIVE
CLERICAL AND COMPUTER STAFF (APEX)

1. Mr. B P McCarthy, who is a member of the Association of Professional, Executive, Clerical and Computer Staff (APEX) ("the Union"), complains to me under section 3(2) of the Trade Union Act 1913 ("the Act") that the Union has acted in breach of its political fund rules.

The complaint

2. Mr. McCarthy's complaint is based on a number of grounds which can conveniently be summarised under three headings.

a) Procedural matters

It is alleged that the Union acted in breach of the rules in respect of the following matters:-

- (i) having given notice that he objected to contributing to the political fund in accordance with rule 79, Mr. McCarthy was not sent an acknowledgement of receipt as required by that rule;
- (ii) he was not provided with a copy of the political fund rules on his admission to the Union as required by rule 86(a);

(iii) a copy of the certificate of approval issued in respect of the political fund rules is not printed in the rules as required by rule 86(a).

b) Method of paying union contributions

It is alleged that the system under which Mr. McCarthy pays his contributions involves him in having to pay 5p of the political contribution to the Union and subsequently to obtain a refund of that amount; the system is accordingly in breach of rule 81 which provides for exempt members to be relieved from contributing to the political fund.

c) Separation of the Union's political and general funds

It is alleged that according to the accounts for the year ending 31 December 1977 certain income from investments was transferred from the Union's general fund to its political fund and that this was in breach of rule 77(a) which requires payments for furtherance of the political objects of the Union to be made out of a separate fund.

Procedural matters

3. I can deal with these matters fairly briefly. As regards (i) the Union, which was represented at the hearing by its General Secretary, Mr. Grantham, admitted that Mr. McCarthy was not sent a separate acknowledgement of receipt in respect of his notice, although he had been sent his membership card in the normal way and this recorded that he was an exempt member. While Mr. McCarthy's complaint may appear somewhat pedantic, it is, to my mind, clear that rule 79 requires a contracting-out member to be given a separate acknowledgement over and above the membership card which is, of course, given to every member. Mr. Grantham agreed, but said it was intended to change the rule because it no longer reflected the Union's actual practice. I therefore hold this part of the complaint to be justified.

4. As regards (ii) the Union admitted that Mr. McCarthy had not been supplied with a copy of the political fund rules on admission to the Union. Mr. Grantham indicated that the rule was to be changed so as to bring it into line with current practice and this has now been done. Clearly, however,

there was a breach of rule of 86(a) as it stood at the material time. I therefore hold that this part of the complaint also is justified.

5. As regards (iii) it is true that rule 86(a) requires a copy of the certificate of approval of the political fund rules to appear at the end of the rules and that it does not so appear in the current version. However, section 3(2) of the Act limits my jurisdiction to complaints about breaches of rules made in pursuance of section 3. In my opinion, the expression "in pursuance of" gives me authority to deal with complaints about breaches of rules which directly reflect the provisions of the Act and also with breaches of rules which represent extensions of or procedural additions to the provisions of the Act which the particular union has seen fit to make, provided that these extensions or additions are ancillary to the provisions of the Act. There is, however, no provision in the Act that a copy of the certificate must be printed in the rules, nor do I consider that the relevant part of rule 86(a) can properly be regarded as ancillary to its provisions; I therefore hold that I have no jurisdiction to entertain this part of Mr. McCarthy's complaint. I ought, however, to record Mr. Grantham's statement that the omission would be rectified next time the rule book is reprinted.

6. It became apparent at the hearing that Mr. McCarthy's concern in relation to these parts of his complaint was not so much with the way he himself had been treated as with the fact that other members, perhaps less knowledgeable about the political fund rules than he, might be unaware that they were contributing to the political fund or unaware of their right to contract out of contributing. I understand his point of view, but section 3(2) of the Act provides that "if any member alleges that he is aggrieved by a breach" of the political fund rules he may complain to me. In my view this means that I have jurisdiction only to deal with complaints that the member complaining is adversely affected by a breach of the rules and not with complaints that a breach has affected other members.

7. I do not consider that any useful purpose would be served by making an order to remedy the admitted breaches of rule under (i) and (ii). In the case of the former, Mr. McCarthy is clearly aware that the Union has received and acted upon his notice; in the case of the latter, he has since asked for and obtained a copy of the rules. For practical purposes, therefore, the breaches have already been remedied.

Method of paying union contributions - the background to the complaint

8. The allegation that the system under which Mr. McCarthy pays his contributions requires him to pay 5p of the political contribution and to obtain a refund and that this in breach of rule 81 raises more difficult problems. At the material time rule 81 was in the following terms:

"Contributions to Political Fund

The Executive Council shall give effect to the exemption of members to contribute to the Political Fund of the Union by relieving any members who are exempt from the payment of part of any periodical contributions required from the members of the Union towards the 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 of the Union to know as respects any such periodical contribution what portion, if any, of the sum payable by him is a contribution to the Political Fund of the Union, it is hereby provided that 18p from the contributions paid in each full quarter is a contribution to the Political Fund of the Union and that any member who is exempt as aforesaid shall be relieved from such payment, and shall pay the remainder of such contribution only."

9. Mr. McCarthy joined the Automotive Products Ltd., Banbury branch of the Union in March 1978; it appears that he had until then been employed by Automotive Products Ltd. ("the Company") as an hourly-paid employee and as such was a member of the Amalgamated Union of Engineering Workers (Engineering Section). In March 1978 he was transferred to the weekly paid staff and this meant that he had to resign from the AUEW and join APEX which is the recognised union for that grade of staff. The Company has what is known as a "check-off" agreement with the

Union under which it agrees to deduct union contributions from the wages of those of its employees who are members and to send the contributions to the Union. This is not, of course, an automatic process; since a deduction from the employee's wages is involved he is asked to sign a form of authority which requests the Company to take the necessary steps. Such agreements are now common in industry and this is hardly surprising since in the normal way the check-off represents a highly convenient and reliable way for unions to collect contributions and an equally convenient way for members to pay them.

10. When Mr. McCarthy's transfer was about to take place he made it clear to Mrs. Bennett, then Senior Representative of the Union for the weekly-paid staff, that he wished to contract out of paying the political contribution and to pay his union contributions at branch meetings. He was surprised to learn from her that he could not pay at branch meetings and would have to pay through the check-off. There followed a meeting between Mr. McCarthy, Mrs. Bennett and Mr. Rodda, the Company's Industrial Relations Officer, at which Mrs. Bennett indicated that Mr. McCarthy would not be able to join the weekly-paid staff unless he paid his contributions through the check-off. For his part, Mr. McCarthy made it clear that he would not pay the political contribution. Mrs. Bennett then said that the political contribution was 1p per week and that this amount could be deducted from the amount he paid through the check-off. On the basis of this assurance Mr. McCarthy signed the check-off form but wrote under the title "Authority to Deduct Trade Union Contributions" the words "less political levy".

11. If the political contribution had indeed been 1p per week, as Mrs. Bennett said, that might have been the end of the matter, but unfortunately it was not. That had been the rate until May 1977 but it was then raised to its present amount of 18p per quarter. Shortly afterwards Mr. McCarthy discovered this and realised, to his displeasure, that he was being relieved from paying 13p per quarter through the check-off and could recover the remainder only by obtaining a refund at the end of the quarter. Mr. McCarthy's complaint is therefore simply that as an exempt member he has to pay 5p of the political contribution and obtain a refund, whereas rule 81 provides that effect shall be given to the exemption by relieving exempt members from payment.

12. There was some dispute about whether Mr. McCarthy was subsequently offered the alternative of paying his contribution at branch meetings. The Union suggested in correspondence that that was the case, but Mr. Grantham admitted at the hearing that this was a misunderstanding and that no such offer had in fact been made.

The Union's reply

13. In presenting the Union's case Mr. Grantham first explained the administrative difficulties involved in collecting contributions and seeing that exempt members are properly treated. It is, of course, employers who determine the intervals at which their employees are paid and in practice they will normally agree to introduce the check-off system only if the amount of contributions to the Union remains constant each month. The Union's contribution rates are expressed in weekly terms and its political contribution rate in quarterly terms, but its members are variously paid weekly, fortnightly, four weekly and monthly; the result is that if members are paying by check-off it is in some cases impossible to divide the normal contribution rate or the political contribution rate into equal amounts in respect of the appropriate payment period without leaving a fraction.

14. This problem arises with exempt members who pay weekly; as the political contribution is 18p per quarter the relief from payment which they should be given is $1\frac{5}{13}$ p per week. Mr. Grantham said that in general employers were prepared to reduce the amount paid by exempt members by whole pennies, indeed it was the policy of the Union not to accept check-off arrangements if the employer would not agree to this. However, with very few exceptions, employers were unwilling to programme their computers so as to vary the amount of the reduction and enable exempt members to be fully and exactly relieved from paying the political contribution. The size of the problem is significant since about 90 per cent of the Union's members pay by check-off and about half the exempt members are paid weekly.

15. Mr. Grantham also explained the Union's financial procedure for dealing with political contributions. Its practice is not to pay any money into the political fund during the first two months of each quarter but to wait until the third month, calculate the number of exempt members in each branch and pay 18p in respect

of each remaining non-exempt member into the political fund.

16. In response to Mr. McCarthy's allegations, the Union's first contention was that Mr. McCarthy did not pay 5p of the political contribution because the Union was careful to ensure that extra money paid by exempt members always went into the general fund and not the political fund. While I think the Union deserves some credit for seeing that money paid in this way does not go to the political fund, the point made is inconsistent with rule 81 which says "it is hereby provided that 18p from the contributions paid in each full quarter is (my emphasis) a contribution to the Political Fund of the union and that any member who is exempt as aforesaid shall be relieved of such payment and shall pay the remainder of such contribution only". To my mind this makes it quite clear that exempt members must be required to pay only the "remainder" of the overall contribution after deduction of the political contribution and that there is a breach of the rule if they have to pay more. Further, since rule 81 says that 18p is the political contribution, it is irrelevant whether any extra money paid by exempt members is put in the political fund or not; under the rule, the extra is still the political contribution.

17. The Union's second point, as I understood it, was that as the political contribution is 18p "from the contributions paid in each full quarter" and it is not stated precisely when that amount is to be paid, the rule permits adjustments in relation to amounts overpaid by exempt members provided the adjustments are made within the quarter and that at the end of it the exempt member has been relieved from paying 18p. This is a plausible argument but I cannot accept it. In my opinion the rule must be interpreted having regard to the time when political contributions are actually made. In the case of the Union it is clear that each normal contribution includes an element of political contribution; in these circumstances I consider that exempt members must be relieved of payment at the time when they pay their normal contributions and must not be required to pay an amount in respect of political contribution and be refunded later. Apart from my view on this matter, I would in any event hold that as the present system obliges Mr. McCarthy to make a temporary extra contribution to the general fund of the Union there is a breach of rule 83 which provides that an exempt member shall not be "placed in any

respect either directly or indirectly under any disability or disadvantage as compared with other members of the Union by reason of his being exempt".

18. The Union also maintained that having regard to the administrative difficulties described earlier it did all it could, consistent with the need to run the Union in a reasonably efficient manner, to ensure that the interests of exempt members were safeguarded. I certainly accept that the Union acts in good faith and deserves credit for its policy of not entering into check-off agreements with employers who refuse to make any adjustments to allow for exempt members. But I cannot wholly agree that it has done all it can. In the case of weekly paying exempt members it would, for example, be equally possible to reduce their weekly payment by 2p and for the Union to collect 8p from them at the end of the quarter. It is simply a matter of convenience; the present system means that exempt members have the inconvenience of being refunded or having to claim a refund, whereas the system I have described would involve the Union in the inconvenience of collecting 8p per quarter from its exempt members. I understand the importance of running the Union efficiently, but that goal must not take precedence over the requirements of the rules.

Previous decision of the Chief Registrar of Friendly Societies

19. This part of the complaint has similarities to one heard by the Chief Registrar of Friendly Societies in 1966. In *Robinson v National Association of Colliery Overmen, Deputies and Shotfirers* (reported in Part 4 of the Chief Registrar's Report for that year) the complainant had signed a form authorising deduction through the check-off of his union contributions, following pressure from his union including the threat that he would lose his job; this led the Chief Registrar to conclude that he had in no way voluntarily agreed to pay the political contribution or accepted the breach of his union's political fund rules. In Mr. McCarthy's case it is abundantly clear that he never agreed to pay the political contributions at all and there can therefore be no possible inference that he

accepted the Union's breach of rule. In the end, therefore, there is no significant difference between the two complaints; in both cases an exempt member ended up paying the whole or part of the political contribution through the check-off when no alternative means of paying union contributions had been offered or was available.

20. In paragraph 14 of his decision the Chief Registrar made the following observations:

"If the Association wish to collect union contributions only by deductions from wages this must not involve possible breaches of the political fund rules. At the hearing I suggested that 1s. 5d. might be deducted in the case of contracted-out members and the extra half-penny paid periodically. Although the amount involved is small I have to look at this matter as a lawyer and as a matter of principle. As Mr. Robinson pointed out, it is wrong that he should be compelled to pay the levy and then go through the somewhat invidious task of collecting it back when Parliament had affirmatively relieved him from the obligation to pay it. Certainly the demands of the computer must not be allowed to defeat the statutory right of members of trade unions in relation to exemption from liability to contribute to political funds."

Findings on this part of the complaint

21. I adopt the Chief Registrar's remarks just quoted and I therefore hold that this part of Mr. McCarthy's complaint is justified. The question then arises as to what order, if any, I should make to remedy the Union's breach of rule.

22. Although, as mentioned earlier, Mr. Grantham agreed that the Union had not previously offered Mr. McCarthy the choice of paying his contributions at branch meetings, such an offer was made at the hearing. Mr. McCarthy, on the other hand, now maintains that

23. The position is therefore that Mr. McCarthy, as an exempt member, is presented with a choice between two methods of paying his contributions, one enabling him to be fully relieved from paying the political contribution and the other not so enabling him. It seems to me that two of the Union's rules are relevant; first, the part of rule 81 which provides that "any member who is exempt as aforesaid shall be relieved from the political contribution" and second, the part of rule 83 which says that an exempt member "shall not be placed directly or indirectly under any disability or disadvantage as compared with other members of the union by reason of his being so exempt".

24. Taken by itself rule 81 does not, in my view, mean that every method under which the Union collects contributions must necessarily allow for exempt members to be relieved from payment but rather that at least one of the methods must so allow. However, rule 83 imposes an important qualification because if the alternative offered to the exempt member is materially less convenient for him than the method which does not allow him to be properly relieved from payment, then obviously the member will be placed at a disadvantage or disability as compared with other members by reason of his exemption.

25. I therefore consider that if the Union presents an exempt member with a choice of methods by which he can pay his contributions, one of which does not allow him to be properly relieved from paying the political contribution, the alternative must not be materially less convenient for him than the method through which he cannot obtain proper relief from payment. Conversely, an exempt member cannot insist on paying his contributions by a particular method and on being fully relieved from paying the political contribution through it if he has the choice of paying his contributions and obtaining relief by another method which is not materially less convenient for him.

26. I have considered whether the alternative which the Union has now offered to Mr. McCarthy of paying his contributions at branch meetings can be regarded as acceptable from that point of view. I very much doubt whether it should be so regarded

27. Accordingly I think it right to make an order in terms which confirm the offer made at the hearing, i.e. that the Union must make arrangements to enable Mr. McCarthy, if he so wishes, to pay his union contributions, less the political contribution, at meetings of his branch.

28. I should mention that following separate correspondence with the Certification Office during 1978 about possible amendments to its political fund rules, the Union recently decided to alter the second paragraph of rule 81 to read as follows:-

"For the purpose of enabling each member of the Union to know as respects any such periodical contribution what portion, if any, of the sum payable by him is a contribution to the Political Fund of the Union, it is hereby provided that the contribution to the Political Fund of the Union is 18p per quarter for those who pay their subscriptions quarterly and 6p per calendar month payable in the final week of each calendar month for all other members, and that any member who is exempt as aforesaid shall be relieved from the payment of the said sum of 6p."

29. Notification of this amendment was received by the Office shortly after the hearing and subject to formal approval being given it will come into force on 1st July. It may be that the change will make it easier for the Union to reconcile its practice of collecting contributions through the check-off with the requirements of its rules as to the treatment of exempt members. No doubt this will become clear in the light of experience.

Separation of the Union's political and general funds

30. Finally, I turn to the part of Mr. McCarthy's complaint relating to transfers of investment income from the general fund to the political fund. In response to this Mr. Grantham made two points; first, that I have no jurisdiction to deal with the complaint and second, that Mr. McCarthy had raised the matter for the first time only two weeks before the hearing when he submitted his statement of case, and it was unreasonable to expect the Union to reply at such short notice. The proper course was for Mr. McCarthy to put his points to the Union and he would then receive a reply.

31. Rule 77 provides that "any payments in furtherance of the political objects shall be made out of a separate fund". In my view this gives me jurisdiction to hear complaints which relate to whether the political fund is properly separate from the other funds of the Union and I consider this to be such a complaint. However, Mr. McCarthy accepted the suggestion that he should pursue his points directly with the Union and it was agreed that this was the best course. He is, of course, free to come back to me should he remain dissatisfied with the result.