

DECISION OF THE CERTIFICATION OFFICER ON A
 COMPLAINT MADE UNDER SECTION 4 OF
 THE TRADE UNION (AMALGAMATIONS, ETC.) ACT 1964
 I LATIMER
 AND
 THE ASSOCIATION OF CINEMATOGRAPH TELEVISION
 AND ALLIED TECHNICIANS

1. Mr. Ian Latimer, who is a member of the Association of Cinematograph Television and Allied Technicians ("the Union") and vice-chairman of the Film Production Branch of the Union, has made a complaint to me under section 4(1)(b) of the Trade Union (Amalgamations, etc.) Act 1964 ("the Act") about a ballot held during July and August 1978 on a resolution to approve an instrument of amalgamation between the Union and the Association of Broadcasting and Allied Staffs.

2. His complaint is that arrangements made for the conduct of the ballot by the General Council of the Union were not complied with. He complains on three separate grounds; first, that the Union, having by its General Council arranged that three statements should be given to the members, one containing the views of supporters of the amalgamation, one the views of those opposed to it and one certain financial details relating to the amalgamation, failed to make those statements available to members within the time required by the General Council; secondly, that the financial statement prepared by the Union did not satisfy the requirements of the

General Council because it contained inadequate or unsatisfactory information; and lastly that the inclusion with the ballot papers of a statement strongly supporting amalgamation made on behalf of the joint committee established by the Union and the Association of Broadcasting and Allied Staffs to organise the proposed amalgamation was in breach of the Act.

3. A considerable amount of evidence was given showing that a substantial number of members of the Union, particularly within the Film Production Branch, is opposed to the amalgamation and that a significant number of the members of the General Council is also opposed. I am, of course, in no way concerned with the merits of the proposed amalgamation but I record that there are strong and sincerely held views on both sides of the debate within the Union and that the events giving rise to this complaint resulted from that division of opinion. In presenting his complaint Mr. Latimer emphasised that he was acting not in a personal capacity but as the representative of the Film Production Branch which accounted for about one-third of the Union's membership. He therefore took some exception to the other party being described as "the Union". I understand his point of view, but the fact remains that in the terms of the Act he complains to me as an individual member and it is the Union which is defending itself against his complaint.

4. Section 4(1) of the Act reads in part:-

"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;....."

Section 2(2) reads:

"For the purposes of the passing of a resolution to approve an instrument of amalgamation or transfer, the committee of management or other governing body of a trade union shall, unless the rules of that union expressly provide that this sub-section shall not apply in relation to that union, have power, notwithstanding anything in the rules of the union, to arrange for a vote of the members of that union to be taken in any manner which that body think fit."

Accordingly, the first matter I have to establish is what were the arrangements which Mr. Latimer says were not complied with.

5. On 7 May 1978 there was a meeting of the General Council, which is the governing body of the Union between Annual Conference. At this meeting the Council passed a resolution about the amalgamation, an addendum to that resolution and three further resolutions bearing on the original resolution and the addendum. These resolutions, to which it is convenient to refer respectively as Resolution A, the Addendum, and Resolutions B, C and D, were in the following terms:

Resolution A

"That the proposed AFBU Rule Book be sent to the membership for ratification and the ballot on amalgamation be proceeded with." ("AFBU" stands for Amalgamated Film and Broadcasting Union, which is the name proposed for the new amalgamated body.)

The Addendum

"But in view of the doubts that have been expressed, particularly about the present Rule Book for AFBU, it should only take place on condition that each member is given with, or before receiving, their ballot paper, the following documents:-

1. A statement in favour of amalgamation prepared by a committee under the Chairmanship of Alan Sapper; the committee to consist of members who believe that amalgamation should take place and are drawn from all branches;
2. A statement putting forward the disadvantages of amalgamation under the present Rule Book prepared by a committee under the Chairmanship of Wolf Rilla; the committee to consist of members who have doubts about amalgamation and are drawn from all branches;
3. A statement by the F. & G.P. Committee giving details of the cost to ACTT of amalgamation up to and including the ballot; the annual cost of housing and administrating AFBU; and a prediction of the total annual expenditure and income for AFBU."

Resolution B

"That in the next Journal there is a two-page centre spread giving arguments for and against amalgamation and another page with a financial statement, in this way complying with the demands of the Addendum and proceeding with arrangements for the ballot."

Resolution C

"That the General Secretary be instructed to delegate his Chairmanship of one of the two drafting committees; that the Chairman of the two drafting committees appoint the members of those committees from as broad a cross-section of members as possible and that these two drafting committees meet within 5 days and give documents to the Journal Editor within 8 days; and that this process be deemed to meet the requirements of the General Council decision to take cognisance of opinion from all branches."

Resolution D

"That General Council affirms that publication of the pro and anti cases and the financial statement in the Journal shall be taken as full implementation of the General Council's previous decision."

6. It would be misleading to give the impression that the contents of the resolutions from Resolution B onwards were the result of careful drafting prepared in advance of the meeting.

I accept the evidence of both sides that the atmosphere of the meeting was sometimes heated and that the resolutions referred to were tabled, as is often the case, in an effort to reach a satisfactory compromise in a difficult situation and without close regard to the niceties of their meaning. It is only by interpreting the meaning of the resolutions as a whole that I can establish what the arrangements made by the General Council were; I consider, however, that it would be unrealistic to treat them as if they were part of an Act of Parliament or a legal document and I have therefore given weight to evidence showing what the general sense of the meeting was and what it thought it was deciding at the time.

8. It is clear from their evidence that the understanding of the Union officials as to the meaning of the resolutions was that the June Journal with the three statements in it should be sent out so as to reach members by the date on which voting was to start, which was then thought to be 1 June. Normally the Journal for a particular month is only printed on the first day of that month or the last day of the preceding month; accordingly great efforts were made by the officials concerned to see that on this occasion printing took place early so that the Journal could be despatched in time to reach members by 1 June. However, on 17 May the Certification Office told the Union by telephone that it needed more time to consider the proposed rule book of the amalgamated union and that it would therefore be impossible to start the ballot on 1 June. This information was passed by Mr. Sapper, the General Secretary, to the chairpersons of the two committees appointed by the General Council pursuant to the Addendum, who decided that the three statements should be withdrawn from the June issue and not published until the General Council had agreed a new date for the start of the ballot.

8. The General Council held a special meeting on 18 June to discuss when the ballot should take place. Again, the different factions had strongly held views on this subject but eventually a resolution was passed fixing the revised date for the start of the ballot as 1 July. Until 18 June the Union officials did not know what date would be chosen and accordingly no advance preparations were made for including the statements in the July Journal. The officials were therefore faced with an even tighter timetable than they had been a month earlier in order to get the Journals printed and distributed in time to reach the members by 1 July.

9. The Journal is distributed in two ways; some copies are sent by post to individual members, but others are sent by a bulk delivery system to Union shops, using van or rail as appropriate, where they are made available to members by the shop officials. It is the Union shops who decide how many copies are required and in some shops the number is less than the membership in the shop; in this situation not all members receive their own copy but copies are available for members to see at their places of work if they wish.

10. The evidence shows that the bulk deliveries of the July Journal from the printers began on 22 June but that for a number of reasons, including the absence on sick leave of the member of staff responsible for the address labels, the printers did not mail the postal copies until 26 June. The result was that notwithstanding the considerable efforts made by the Union officials a number of members who were sent their Journals by post did not receive them until after the ballot had started on 1 July. The correspondence put in evidence by

the complainant includes ten letters in which writers complain about having received their postal copies of the Journal after 1 July and some of the letters also state that other members within the writer's knowledge did not receive their copies until after that date. Evidence was also given which tended to show that some of the Journals delivered by the bulk delivery system may not have been available to members until after 1 July; however, I consider the evidence on this matter to be inconclusive.

11. The Union did not dispute that some members who were sent their copies by post did not receive them until after 1 July; they say in their statement of case "It is a matter of deep regret that some members did not receive it (the Journal) by the date the ballot had started."

12. Before discussing the arguments advanced by Mr. Latimer I must refer to one other matter. Section 1(2)(d) of the Act requires that the union concerned must take all reasonable steps to secure that, not less than seven days before voting on the resolution begins, every member is supplied with a notice in writing approved for the purpose by me. While there is no requirement that the voting papers must accompany the notice, it is the invariable practice where a postal ballot is held to send out the voting papers with it in order, presumably, to save additional administrative and postal costs, and that is what the Union did. On the suggestion of the Certification Office the voting papers contained a provision that any votes cast before 1 July would be treated as having been received on that date, with the result that in practice the period for voting started not on 1 July but when members received their ballot papers.

13. Mr. Latimer's contentions as to the effect of the resolutions passed on 7 May were as follows:

(a) As the members were able to vote as soon as they had received their ballot papers at least a week before 1 July, the words "it should only take place on condition that each member is given with, or before receiving, their ballot paper, the following documents" in the Addendum meant that the statements should have been sent in time to reach members by 23 June. This the Union had not done, nor indeed had it attempted to do it.

(b) The Addendum required each member to be given the documents; nothing in any of the subsequent resolutions had altered that, and since the bulk delivery system for the Journal did not ensure that each member received a copy the Union had not complied with the arrangement.

(c) Even if it was accepted that the resolutions only required the Journals to be sent in time to reach members by 1 July the Union had, on its own admission, failed to comply with that arrangement and the complaint was therefore justified.

14. The Union's response was as follows:

(a) It had always operated on the view that the requirement was to despatch the Journals in time to reach members by 1 June (subsequently 1 July) and not any earlier date.

(b) Resolutions B and D had altered the arrangements contained in the Addendum so that distribution of the Journal through the normal channels was to be regarded as meeting the General Council's requirements.

(c) Admittedly not all members had received the Journal by 1 July, but the substantial majority of members had done so and the Union had done everything that was reasonably possible to carry out the requirements of the General Council.

(d) In any case the General Council's resolutions, considered as a whole, did not impose an absolute obligation to get the Journal into the hands of every member by the first day of the ballot period.

Accordingly such failure as had occurred did not involve any breach of the statutory provisions, and the result of the ballot should therefore stand.

15. As regards Mr. Latimer's first point, it became apparent at the hearing that at the time of the meeting on 7 May, the General Council was not, as a body, aware that the ballot papers would be sent out to reach members a week before voting began. Taken literally the Addendum bears the meaning Mr. Latimer contended for; however, I consider that I should have regard to the state of knowledge of the General Council on 7 May when it was generally thought that the ballot papers would only be received just before 1 June.

16. I therefore hold that the resolutions required the Union to send out the statements in time to reach the members by 1 June (later changed to 1 July). I am confirmed in my view by the minutes of the General Council meeting held on 18 June,

in which the following statement occurs:

"As it had been agreed that the publication of the above material (that is the statements) should appear in the Journal to coincide with the commencement of the ballot period, many members considered....."

Mr. Latimer acknowledged that this record of what had been said had not been challenged at any subsequent meeting of the General Council.

17. As regards Mr. Latimer's second point, in my opinion Resolutions B and D did alter the effect of the Addendum so that it was no longer a part of the arrangements that each member should individually receive copies of the statements. Mr. Latimer said that he had not realised at the time of the meeting on 7 May that the Journals distributed by the bulk delivery system did not go to each member working in the Union shops; I accept what he said, but I consider that the General Council must, as a body, be taken to know what the normal system for distributing the Journal is. In my opinion Resolution D can only mean that publication of the statements in the Journal would satisfy the requirements of Resolution A and the Addendum; as the General Council made no special arrangements for distributing the Journal in a manner which would have ensured that every member received his own copy, I think the Council can only have intended that distribution through the normal channels would satisfy those requirements.

18. The crucial question, it seems to me, is what effect Resolutions B and D had on those requirements of the Addendum which dealt with the sending of the statements to members. Was the whole nature of those requirements altered so that the holding of the ballot was no longer conditional upon the sending of the statements by a certain date, or did the resolution simply alter the means by which the statements were to be sent?

19. The significant words are, in Resolution B, "in this way complying with the demands of the Addendum and proceeding with the arrangements for the ballot", and in Resolution D, "publication of (the statements) in the Journal shall be taken as full implementation of the General Council's decision". In my opinion the position following the passing of the two Resolutions is open to either of the two interpretations mentioned above; indeed, the evidence suggests that members of the General Council finally left the meeting with differing views as to what had been decided.

20. However, I have come to the conclusion that the effect of the resolutions was only to alter the means by which the statements were to be sent. In reaching that conclusion I have given weight to the following factors which seem to me to be significant:

(a) The Addendum was not overturned by any of the subsequent resolutions; the effect of some of its provisions was certainly varied, but it remained in existence and formed the basis upon which the subsequent resolutions were passed. I therefore consider that the subsequent resolutions should be interpreted in a

manner consistent with the Addendum except where they clearly have the effect of altering it and that where there is a doubt - and I think there is a serious doubt on this issue - the terms of the Addendum should stand.

(b) The principal purpose of the Addendum was to ensure that members would see the statements before they voted; clearly there would have been no point in sending out the statements after the ballot had taken place. It is in my view implausible to suggest that the General Council had abandoned the main point of its clearly expressed intention when it had not specifically overturned the formal decision which gave expression to that intention.

21. Although the matter was not argued before me, I have considered whether the arrangements for the distribution of the statements were arrangements as to the manner in which the vote was to be taken as required by section 4(1)(b) of the Act. Arrangements of this kind might not always fall within scope of the section, but I consider that on my view of the Council's decision expressed in the Addendum, namely, that the holding of the ballot was to be conditional on the members being given the statements, there is no doubt that in this instance the arrangements were as to the manner in which the vote was to be taken. However, if I am wrong in my view that the holding of the ballot was conditional upon the sending of the statements to reach the members by the date arranged, I would still consider that in view of the close link between the date when the General Council decided the members should receive the statement and the start of the ballot, these were arrangements within the meaning of the Act.

22. On its own admission, the Union failed to distribute the Journal in time to reach all the members by 1 July, which was the required date. I therefore find the complaint to be justified, in that the manner in which the vote was taken was not in accordance with the arrangements made by the General Council at its meeting on 7 May.

23. I now have to decide whether to make an order specifying the steps which must be taken before I will entertain an application to register the instrument of amalgamation.

24. 14,550 copies of the Journal were printed and ballot papers were sent to 16,747 members, the variation being largely accounted for by the difference between the total number of members in Union shops and the number distributed to those shops via the bulk delivery system. Of those 14,550 copies, about 7,800 were distributed to individual members by post. The Union could give no reliable estimate of how many of these arrived at their destinations after 1 July.

25. Of the 16,747 members who could have voted, 7,992 did so, 4,191 voting in favour of the proposed amalgamation and 3,801 against. The majority in favour was therefore 390, and if 200 of those who voted in favour had been persuaded by the statement against amalgamation to vote the other way, the result of the ballot would have been reversed. That does not of course take any account of the influence which any of the statements might have had in persuading non-voters to vote one way or the other.

26. In this situation the effect which the statements might have had if they had all been distributed by 1 July is impossible to quantify. It is not know how many members did not see the Journal by that date, nor what effect seeing the statements might have had on their voting intentions. Further, it is not known how many members waited until they had seen the Journal before casting their votes, or how many cast their votes before they would have seen the statements if the Council's arrangements, as I understand them to have been, had been adhered to.

27. In contending that I should not make an order the Union advanced a number of propositions which can be summarised as follows:

(a) The arguments for and against amalgamation had been the subject of debate within the Union over a considerable period; the proposed rules of the amalgamated union had been the subject of a special Rules Adoption Conference.

(b) Although the editorial policy of the Journal had been to support amalgamation, the Journal had given a comprehensive account of the details of the amalgamation proposals, including the full version of the proposed rule book following the Rules Adoption Conference; moreover the arguments for and against had been freely expressed in its correspondence columns.

(c) In these circumstances the effect of issuing these particular statements was likely to be small.

(d) It could not be assumed that only the statement against amalgamation would have influenced the way members cast their votes.

(e) It would be wrong to exaggerate the influence of the Journal or to suppose that it was read by all members.

(f) The June Journal had carried a notice telling members that the statements would appear in the July issue; accordingly members could in theory, and might in practice, have delayed voting until they received the July issue.

For these reasons the Union did not consider the failure to send the statements by the required date crucial to the decision reached on the ballot.

28. The Union also made the point that the late delivery of the Journal was in part due to postal delays. No doubt this is true but while I have some sympathy with the difficulty of forecasting what postal delays are likely to occur these days, I consider that the Union must be taken to know of the delays which are inherent in the system and be expected to allow for them.

29. All the Union's points which bear on the influence the statements might have had on the voting have one thing in common, namely that they are conjectural. Any or all of them may, it is true, have meant that the influence of the statements was or would have been minimal, but the fact remains that there

can be no certainty of this. Further, the effect of the notice in the June Journal is itself a matter for conjecture.

30. I consider the decisive factor to be the intention which the General Council, as the governing body of the Union, expressed at its meeting on 7 May. That intention was, on my view of the matter, that the ballot should take place only on condition that the statements were published in the Journal and that the Journal was distributed so as to reach members by 1 June (later amended to 1 July). I accept Mr. Latimer's argument that the only rational conclusion to draw from this is that the General Council considered it to be highly important that the members should have the opportunity to read the statements before casting their votes.

31. If the vote had produced a substantial majority in favour of amalgamation, and if it were clear that only a small number of members had been denied the opportunity to read the statements by the required date, the case would, of course, be different. But in fact the majority was small; the number of members denied that opportunity cannot be closely estimated but may well have been substantial; and it cannot be shown that the failure to get the statements to those members by 1 July had an insignificant influence on the voting. In these circumstances I take the view that I should make an order.

32. I have considered whether it is possible to make an order short of requiring another ballot to be held before I will register the instrument but have concluded that it is not. I therefore order that I will not entertain an application to register the

instrument of amalgamation between the Union and the Association of Broadcasting and Allied Staffs until the Union has conducted a further ballot on the resolution to approve the instrument of amalgamation which complies with the provisions of sections 1 and 2 of the Act.

33. I now turn to that part of the complaint which concerns the financial statement. It was argued that the details given in the statement were inadequate and misleading and the Union had therefore failed to comply properly with the arrangements made by the General Council in paragraph 3 of the Addendum. Mrs. Crum-Ewing, who appeared as a witness on behalf of the complainant, gave evidence that in her opinion the details contained in the financial statement were inadequate; her main criticism was that the statement should have included the cost of a bridging loan to cover the cost of moving into a joint head office with the Association of Broadcasting and Allied Staffs following the amalgamation.

34. In giving evidence for the Union Mr. Maniatakis, who is its Finance Officer, said that the statement had been prepared in consultation with the Union's auditors who had approved its contents: further, the Union's written evidence contained a statement by the auditors that to have included the cost of a bridging loan which had not had the formal approval of the General Council or been considered by it would have been misleading. In my opinion the Union acted entirely properly and, having taken the trouble to obtain professional advice, was entitled to rely on it. No evidence was given to suggest that the advice was other than competent and I accordingly consider that I must accept that the financial statement did comply with the requirements of the General Council. I

therefore dismiss this part of the complaint.

35. Finally, in my opinion the objection to the inclusion of the ABFU Executive Committee's statements with the ballot papers is misconceived. There is nothing in the Act to prevent a union from including literature advising members to vote one way or the other with the ballot paper; indeed it is common practice to do so. A statement prepared by this particular committee (which included representatives of the Association of Broadcasting and Allied Staffs as well as of the Union) would naturally favour amalgamation; moreover its inclusion in the ballot envelopes was mentioned by the General Secretary at the General Council's meeting on 7 May and, according to the minutes, excited no comment. In view of this it cannot be held to involve a breach of the arrangements made by the Council. I therefore dismiss this part of the complaint also.

36. This is the first case in which an order has been made under the Act. I do not think I should leave it without saying that at no time was there any suggestion that the Union had acted otherwise than in good faith. The fact is that the General Council laid down arrangements which required an extremely tight timetable and despite great efforts

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

C C AMMONDS

AND

SOCIETY OF LITHOGRAPHIC ARTISTS, DESIGNERS,
ENGRAVERS AND PROCESS-WORKERS

Date of decision:

26 March 1982

1. Mr Charles Ammonds, who is a member of the Society of Lithographic Artists, Designers, Engravers and Process-Workers ("SLADE") has complained to me under section 4(1) of the Trade Union (Amalgamations, etc.) Act 1964 ("the Act") about a ballot held during January 1982 to approve an instrument of amalgamation of SLADE and the National Graphical Association ("NGA").

2. His complaints are:-

1. First Complaint

Under section 4(1)(c) of the Act, that the vote was taken under provisions in the rules of SLADE but the manner in which it was taken was not in accordance with those rules because certain classes of members of SLADE voted in the ballot on the resolution to approve the instrument of amalgamation between SLADE and the NGA when, under rule 35(4) of the rules of SLADE, they were not entitled to do so.

2. Second Complaint

Under section 4(1)(d) of the Act, that the votes recorded did not have the effect of passing the resolution

because the words "Providing a majority of SLADE members again vote in favour" appearing in the notice to members approved by the Certification Officer committed SLADE to proceed with the transfer only if a majority of all the members voted in favour of the resolution to approve the instrument;

and additionally 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 in section 1(2)(b) of the Act that every member of the union must be allowed to vote without interference or constraint because the words "Providing a majority of SLADE members again vote in favour" appearing in the notice amounted to an interference or constraint upon voting because they were capable of misleading voters into thinking that the resolution would not be passed unless a majority of all the members voted in favour of it.

3. Under section 4(3) of the Act I have the power to dismiss complaints without holding a hearing but I may only find them to be justified after giving the complainant and the union an opportunity of being heard. I have decided to dismiss Mr Ammonds' complaints without holding a hearing for the reasons which follow.

4. The First Complaint This ground of complaint only applies where the vote is taken under provisions in the rules of the union. In fact, it seems likely in view of the terms of rule 35(4) that the vote was taken under arrangements made under section 2(2) of the Act rather than under the union's rules. In that event, no complaint could lie under section 4(1)(c).

5. However, even if the vote had been taken under rules of the union section 1(2)(a) of the 1964 Act provides that "every member of the union must be entitled to vote on the resolution" and section 2(1) of the Act provides that section 1 shall apply notwithstanding anything in the rules of any of the trade unions concerned. It follows that the requirement in section 1 overrides the provision in rule 35(4) which purports to exclude certain classes of members from voting in an amalgamation with the result that all members of SLADE including those classes were required to be entitled to vote. This is therefore not a complaint which could be justified under section 4(1)(c).

6. The Second Complaint Section 2(3) of the 1964 Act provides that a simple majority of the votes recorded is sufficient to pass a resolution to approve an instrument of transfer or amalgamation notwithstanding anything in the rules of a union unless the rules expressly provide that subsection (3) shall not apply. Rule 35(a) does expressly exclude the operation of the subsection but it provides instead that a resolution for transfer or amalgamation "shall be declared carried if approved by a majority of those voting", and this is, materially, no different.

7. I consider that the expression "a majority of those voting" means that a resolution is passed if more than 50 per cent of those voting vote in favour of the resolution. More than 50 per cent of the SLADE members who voted voted in favour of the resolution; accordingly the votes recorded did have the effect of passing the resolution. The statement complained of was open to interpretation that the resolution could only be approved if more than 50 per cent of the total membership voted in favour, but it was not capable of altering the requirement laid down in rule 35(a).

8. Further, the fact that the statement was open to that interpretation and could have been misunderstood by a proportion of members does not make the statement an "interference or constraint" upon voting. Those words are aimed primarily at intimidation, physical interference and the like, and an ambiguous

11/17/1952

26 March, 1952