

**DECISIONS OF THE CERTIFICATION OFFICER ON APPLICATIONS MADE
UNDER SECTION 108A OF THE TRADE UNION AND LABOUR
RELATIONS (CONSOLIDATION) ACT 1992**

**IN THE MATTER OF COMPLAINTS MADE AGAINST
UNISON - THE PUBLIC SERVICE UNION**

**APPLICANTS MR G KELLY
MR D ROBERTS**

Date of Decisions: 11 December 2000

Date Reasons Published: 25 January 2001

DECISIONS

- 1.1 Under section 108A(1) of Part I of the Trade Union and Labour Relations (Consolidation) Act 1992 (as amended) (“the 1992 Act”) a person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to me for a declaration to that effect.
- 1.2 Section 108B of the Act empowers me to make such enquiries as I think fit and, after giving the applicant and the union an opportunity to be heard, to make or refuse to make the declaration asked for. Whether or not I make the declaration sought, I am required to give the reasons for my decision in writing.

1.3 Where I make a declaration under section 108B I am required, unless I consider to do so would be inappropriate, to make an enforcement order on the union. My enforcement order is required to impose on the union one or both of the following requirements -

(a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;

(b) to abstain from such acts as may be specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.

1.4 On 8 May 2000 I received an application from Mr G Kelly, a member of UNISON, complaining that the union's Standing Orders Committee ("SOC") had refused to accept, on to the National Conference Agenda, proposed rule changes to the union's political fund rules submitted by his branch for debate. On 25 May 2000 I received an identical complaint from Mr D Roberts concerning proposed rule changes to the union's political fund rules submitted by his branch for debate at the National Delegate Conference 2000.

1.5 Both applicants argued that, under Rule D.1.1, the "*supreme government of the Union shall be vested in the National Delegate Conference*" and the ruling out of order of properly submitted rule changes was a breach of that and other rules. I investigated the complaints in correspondence and, on 14 November 2000, held a formal hearing of argument on the complaints. At that hearing the union raised for the first time the question of my jurisdiction to consider these applications. In order that the applicants might give proper consideration

to the question of jurisdiction, the hearing was adjourned until 11 December 2000 for the parties to address me on this issue and, if appropriate, for me to hear argument on the complaints.

Jurisdiction

1.6 The union was represented by Mr Antony White of Counsel who called Mr Keith Sonnet (Assistant General Secretary and Secretary of the Standing Orders Committee) as witness. Mr White stated that, whilst the union had previously conceded that I had jurisdiction to determine these complaints, it now wished to reconsider the correctness of that concession. He apologised for raising this point at a late stage.

1.7 The applications were made under section 108A(1) of the 1992 Act alleging that UNISON had breached its rules relating to a matter mentioned in section 108A(2)(d), namely: -

“(d) the constitution or proceedings of any executive committee or of any decision-making meeting;”.

The complaints related to decisions of the Standing Orders Committee and I only had jurisdiction to consider the applications if the SOC was an executive committee as set out in section 108A(10) or if the meetings of the SOC at which decisions were taken were “decision making meetings” for the purposes of section 108A(11). Sections 108A(10), (11) and (12) provide: -

“(10) For the purposes of subsection (2)(d) a committee is an executive committee if -

(a) it is a committee of the union concerned and has power to make executive decisions on behalf of the union or on behalf of a constituent body,

(b) it is a committee of a major constituent body and has power to make executive decisions on behalf of that body, or

(c) it is a sub-committee of a committee falling within paragraph (a) or (b).

(11) For the purposes of subsection (2)(d) a decision-making meeting is -

(a) a meeting of members of the union concerned (or the representatives of such members) which has power to make a decision on any matter which, under the rules of the union, is final as regards the union or which, under the rules of the union or a constituent body, is final as regards that body, or

(b) a meeting of members of a major constituent body (or the representatives of such members) which has power to make a decision on any matter which, under the rules of the union or the body, is final as regards that body.

(12) For the purposes of subsections (10) and (11), in relation to the trade union concerned -

(a) a constituent body is any body which forms part of the union, including a branch, group, section or region;

(b) a major constituent body is such a body which has more than 1,000 members.”

1.8 The union argued that, in the matters before me, the SOC was not a body which fell within the meaning of section 108A(2)(d). If this was the case then I had no jurisdiction to consider the applications. Therefore, before I could hear the complaints, it was necessary for me to consider as a preliminary issue whether the meetings of the SOC at which the decisions were taken, and which gave rise to the applications, were the “...proceedings of any executive committee or of any decision-making meeting”.

1.9 After careful consideration of the documents, evidence and argument, put to me on 11 December, I notified the parties, after a short adjournment, that I had decided that the decisions of the SOC, which were the basis of the applications before me, were not the “...proceedings of any executive meeting or of any decision-making meeting” as set out in section 108A(2)(d). Therefore, I did not have the jurisdiction to determine the applications.

I now set out the arguments put to me and the reasons for that decision.

Facts

- 2.1 Both Mr Kelly's and Mr Roberts' branches submitted motions for changes to the union's political fund rules for consideration at the National Delegate Conference ("NDC") to be held in June 2000. The Standing Orders Committee has the responsibility for the conference agenda and applies principles laid down by the rules in drawing up the agenda. Both branches received letters from the Secretary to the SOC stating that "the Committee regrettably had to rule out of order your Amendments to Rule J.7.4.4, J.8.2 and J.8.5, as the proposals being made were not competent for National Delegate Conference." Both branches embarked on an exchange of correspondence with the SOC but were unable to persuade the Committee to change its ruling.

- 2.2 The SOC considers each motion/rule amendment to determine whether it accords with the union's rules and whether it is an appropriate matter to be debated at the NDC. The SOC then draws up a preliminary agenda which is published and circulated to all branches and regions. This agenda identifies all motions and rule amendments received and states why those that were held to be out of order were so ruled. In due course the SOC publishes the final agenda containing the motions and amendments that have been approved plus rule amendments. The final published agenda is also circulated to all branches and regions. All delegates to the NDC have access to the preliminary and final agenda through this process.

- 2.3 In addition NDC delegates also receive a separate NDC information pack which includes an "Amendments to Rule" booklet and the "Conference Guide". The Conference Guide includes

the SOC's report to the NDC which sets out the SOC's recommendations for the smooth running of Conference. At the beginning of the NDC the SOC submits their second report which sets out the structure of the final agenda. The first item of business for the NDC is to vote on whether to ratify the SOC's first and then second reports. This ratifying procedure provides the opportunity to challenge the SOC's decision to exclude a motion/rule amendment. This can be done by a delegate raising an objection to the SOC report by a challenge from the floor during the consideration of the reports by the NDC. At the end of any debate the NDC then makes its decision on the final agenda.

The Union's Case

2.4 Mr White, for the union, said that the complaints were made under s.108A(1) of the 1992 Act alleging that UNISON had breached its rules relating to a matter mentioned in s.108A(2)(d), namely "the constitution or proceedings of any executive committee or of any decision-making meeting". For the complaints to succeed the proceedings of the SOC meeting in March, when the decisions to rule out of order the proposed rule amendments had been taken, would have had to have been the proceedings of either an executive committee or a decision-making meeting. It was argued that the SOC could not be, and was not, for the purposes of that subsection an executive committee. The SOC is established by Rule D.1.8.1 and was made up of 13 representatives from the Regional Councils who were not members of the National Executive Council and three members of the National Executive Council. The composition was important as it indicated that the SOC was not a committee of the National Executive Council.

2.5 Section 108A(10) (see para 1.7 above) provides a definition of an executive committee for the purposes of subsection (2)(d). It was stated that the SOC was not “a committee of a major constituent body” and therefore (b) did not apply. The SOC was also not a subcommittee and therefore (c) did not apply. Given s.119(1), which provides that in the 1992 Act “executive” means principal committee of the union exercising executive functions, it was argued that the SOC was clearly not an executive committee for the purposes of s.108A(10)(a). Under UNISON’s rules only its National Executive Council could satisfy the definition of an executive committee for the purposes of subsection (2)(d).

2.6 It was also stated by Mr White that the SOC was not itself a constituent body which fell within subsection 12. The SOC was not in any way one of the groups or bodies set out in subsection 12(a) whilst 12(b) indicated that for the purposes of the Act a constituent body was made up of members. As this did not apply to the SOC the complaints did not relate to a meeting of “a major constituent body” as defined in s.108A(12)(b) and therefore s.108A(11)(b) could not apply. Consequently I only had jurisdiction if the meeting of the SOC fell within s.108A(11)(a) and that was dependent on whether the meeting had “power to make a decision on any matter which, under the rules of the union, is final as regards the union”. The union argued that the decisions of the SOC were not “final as regards the union”.

2.7 The question that I had to determine, it was argued, was whether the SOC, in making a decision in respect of the matters which formed the basis of the complaints to me, it was making a decision that was final within the rules of the union. Rule P.2.3 dealt with the functions of the SOC and, for ease, these are set out as follows: -

“2.3 The functions of the Committee shall, subject to these Standing Orders, be to:

2.3.1 ensure that the Union’s Rules and Standing Orders relating to the business of Conferences are observed, and notify the President of any violation that may be brought to the Committee’s notice

2.3.2 draw up the preliminary agenda and final agenda of Conference business, and the proposed hours of business, to be circulated in accordance with the timetable stated in Rule D.1.9.

2.3.3 determine the order in which the business of Conference shall be conducted, subject to the approval of Conference

2.3.4 consider all motions and amendments submitted for consideration by Conference and, for the purpose of enabling Conference to transact its business effectively the Committee shall:

.1 decide whether such motions and amendments have been submitted in accordance with the Rules

.2 group together motions and amendments relating to the same subject, decide the order in which they should be considered and whether they should be debated and voted on separately or debated together and voted on sequentially

.3 *prepare and revise, in consultation with the movers of motions and amendments, composite motions in terms which in the opinion of the Committee best express the subject of such motions and amendments*

.4 *refer to another representative body within the Union a motion or amendment which in the opinion of the Committee should properly be considered there; the mover shall be informed of the reason for so doing*

.5 *have power to do all such other things as may be necessary to give effect to these Standing Orders.*

2.4 *Any decisions of the Committee which are to be reported to Conference shall be announced by the Chairperson of the Committee and shall be subject to ratification by Conference.”*

Mr White introduced evidence to indicate that the procedure as set out in the rules above had been followed in respect of the National Delegate Conference 2000.

2.8 It was stated for the union that the crucial point to take into account in reaching a decision on jurisdiction was Rule P.2.4. This provided that any decision of the SOC had to be ratified by Conference. The Chairman of the SOC introduced the Committee’s first and second reports to the NDC. In the debate in respect of the SOC’s second report there was the opportunity to

question the Committee on its decisions and it was open to the NDC to decide whether to accept, or decline to accept, the SOC's report. Mr Sonnet, in his evidence, reported on the first NDC in 1994 when a challenge was made to the SOC's decision to exclude certain motions. The challenge resulted in the NDC referring the issue back to the SOC to reconsider. The SOC produced a further report which, after extensive debate, was accepted by the NDC.

2.9 This, Mr White stated, demonstrated how ratification worked. Ratification meant to confirm and validate and this is what happened. On the union's behalf it was argued that decisions of the SOC in respect of the matters which formed the basis of the complaints were not "final as regards the union." Therefore the SOC did not fall within subsections (10) or (11) of s.108A and consequently I had no jurisdiction to hear the applications.

2.10 The suggestion that the National Executive Council was in a similar position to the SOC because decisions of National Executive Council were similar to those of the SOC in that they were also subject to ratification by the NDC was rejected by the union. Mr White argued that it was unhelpful to make a comparison between the SOC and the National Executive Council. Decisions of the "executive committee", whether they were subject to ratification or not, were specifically covered by s.108A(2)(b) taken in conjunction with subsection (10).

2.11 It was also argued for the union that "reference back" was not the only option open to the NDC when giving consideration to a report by the SOC. Conference would be capable of not ratifying a SOC report or of proposing any course of action it felt appropriate. However, the question of the outcome of ratification was not a consideration. Mr White stated that the fact

was, the rules required the ratification by Conference of the decisions of the SOC. Consequently the decisions of the SOC which formed the basis of the complaints before me were not the “proceedings of any executive committee or of any decision-making meeting” within the provisions of s.108A(2)(d) and therefore I did not have jurisdiction to deal with the applications made by Mr Kelly and Mr Roberts.

The Applicants’ Case

2.12 Mr Roberts stated that they did not accept the arguments put forward by UNISON that I had no jurisdiction in the applications made by himself and Mr Kelly. The union’s case was that the SOC was neither an “executive committee” nor a “decision-making meeting” within the meaning of the Act. This appeared to be on the basis that the SOC made decisions which, according to the rules, were subject to ratification by the NDC. It was the applicants’ argument that the SOC was an executive committee for the purposes of s.108A.

2.13 The SOC was a committee defined within Rule P.2 and whose sole purpose was to oversee the running of the NDC and ensure that it acted within the rules of the union. The SOC has the power to make executive decisions on behalf of the conference by the virtue of a number of rules. Under Rule P.10.1 “*A motion or amendment which is shown on the final agenda may not be withdrawn without the consent of the SOC.....*” who only have to “report” their decision to conference. Rule P.11.1 provided that “*A motion or amendment which is not shown on the final agenda may not be considered by Conference without the prior approval of the SOC and the consent of Conference.....*”. Similarly Rule P.11.3 provided “*If the SOC*

gives its approval to the motion or amendment being considered,”. It was clear, it was argued, from these rules alone that the SOC did have power to make executive decisions as set out in subsection (10)(a). On the basis of these rules, if the SOC did not give its approval then a motion could not be withdrawn and a motion which did not appear on the final agenda could not be considered, its decisions were final.

2.14 There were also similarities between the position of the National Executive Council in respect of its relationship with the NDC and the SOC with regards to decisions taken by both bodies. Each year the work of the National Executive Council was subject to a report to the NDC. This report must be endorsed by the NDC and, in the event of the NDC not accepting decisions taken by the National Executive Council, then matters were referred back by the NDC. The process acted in exactly the same way as the relationship between the SOC and the NDC. Presumably, it was claimed, the union would not seek to argue that the National Executive Council was not an “executive committee” because it had to account for all its decisions through an annual report to Conference.

2.15 Turning to s.119 Mr Roberts argued that the reference here was to the principal executive committee and that there was a significant difference between s.119 and s.108A(10). Section 119 was defining the principal executive committee whilst s.108A(10) was defining those bodies which have executive functions. He argued, there was more than one body that had executive functions within a union. He also stated that whilst the union’s National Executive Council had the power to make “executive” decisions none were final in perpetuity as all its decisions were subject to ratification. Consequently, whilst a decision of the National

Executive Council might be implemented and acted upon it might not be “final” at some later stage. It was also argued that in a number of instances the SOC was a final decision-making body. The SOC determined the Conference documents. That decision was final and was not subject to endorsement by any other body. In a number of other ways, it was argued, the SOC also acted in matters outside of those that were reported back to the NDC.

2.16 Alternatively it was contended, if the SOC was not considered an “executive committee” for the purposes of s. 108A(10) then it was a decision-making meeting for the purposes of s. 108A(11)(a)&(b). The union argued that decisions of the SOC were subject to ratification by the NDC. However this ignored, the applicants argued, rules P.10.1, 11.1 and 11.3 referred to previously (see para 2.13 above). It also misinterpreted the meaning of “ratification” and practice in the union as the options open to the NDC were either acceptance of the SOC report or reference back.

2.17 Mr Roberts argued that it was not the case that all decisions of the SOC were subject to ratification. Rule P.2.4 actually states “... *any decision of the Committee which are to be reported...*” were subject to ratification. It did not provide that all decisions of the SOC had to be reported and subject to ratification and this was supported by the reference to rules P.10.1, 11.1 and 11.3.

2.18 The union’s argument that the NDC had the right to overturn, replace or amend the decision of the SOC was not the case. The only mechanism available to the NDC was to move “reference back”, in effect to ask the SOC to reconsider the matter. If the SOC so wished, it

could disregard the views expressed by the NDC and keep bringing back the same position several times until delegates were worn down by attrition.

2.19 Mr Roberts also stated that it was not obvious that the SOC, an elected body, was not a “constituent body”. It consisted of members and played a significant role within the union with its functions regulated by the union’s constitution. The SOC was also a body acting on behalf of a “major constituent body”, the National Delegate Conference, its sole role being to act on behalf of that constituent body.

2.20 In response to questions Mr Roberts stated that motions that had been ruled out of order by the SOC did not appear in the SOC reports to the NDC. Consequently there was nothing before Conference in respect of motions that had been rejected by the SOC for the NDC to consider. In addition only delegates to the NDC are permitted to speak at Conference and delegates attend as branch representatives. It was therefore not possible for an individual who had submitted a motion to Conference through a branch to ask for “reference back” at the time the SOC report was considered by the NDC. This would have to be undertaken by the branch delegate.

Reasons for my Decision

2.21 I was grateful to both Mr White and to Mr Roberts for their submissions and also to Mr Sonnet for his evidence and for the submission of a video of the opening stages of the 2000 NDC which enabled me to gain a valuable insight into the procedure adopted for the ratification of the reports of the SOC.

2.22 I had no difficulty with the union's view that I only had jurisdiction to deal with the applications made by Mr Kelly and Mr Roberts if the decisions of the SOC were decisions "of any executive committee or of any decision-making meeting" and thus fell within s.108A(2)(d). What I have to determine is whether the SOC is an "executive committee" within the meaning of s.108A(10) or a "decision-making meeting" within the meaning of s.108A(11). In arriving at a decision in this matter it is important to start with the understanding that the rules of UNISON provide that: -

"The supreme government of the Union shall be vested in the National Delegate Conference, which shall meet annually for four days at such time and place as the National Executive Council shall determine." (Rule D.1.1)

2.23 I turn first to s.108A(10) and accept the union's argument that it does not assist in determining whether or not the SOC is an "executive committee" by comparing it to the union's National Executive Council. The National Executive Council is clearly, whatever the comparisons that might be made, covered by subsection (10)(a) and thus falls within my jurisdiction. But that does not mean that the SOC cannot be an "executive committee". What distinguishes an "executive committee" is that it has power to make executive decisions. I therefore have to decide what constitutes an "executive decision" in order to determine whether the SOC falls within subsection (10)(a).

2.24 In my opinion an "executive decision" is one that is final and which is acted upon. It is one which does not require the ratification or approval of another party before action is taken on

it. That however, does not mean that those responsible for an “executive decision” do not have to account for it. They may well have to in reporting their actions to a superior body, but that does not prevent their decisions being acted upon. In this instance it was clear, both from the rules of the union(Rule P.2.4) and from the evidence put to me, that the decisions of the SOC which formed the basis of the complaints to me were subject to ratification by Conference. I am therefore satisfied that in this matter the SOC were not acting as an executive committee or taking final executive decisions and thus were not covered by subsection 108A(2)(d).

2.25 I turn now to subsection (11). Whether or not a meeting is a decision-making one depends entirely on whether or not the decision reached is one which is final. I have already found that, the decisions of the SOC in this matter were not final being subject to ratification by the NDC.

2.26 Before I can conclude that the SOC falls outside the definitions of an executive committee or of a decision making meeting in subsections 10(a) and 11 I have a further issue to consider. In this case, the SOC appeared to be able to make ‘final decisions’ on matters of process, such as the timing of meetings or the printing of a report, but only recommendations on matters of substance or policy. Is the power to make decisions on process sufficient that the SOC fell within the definitions of 10(a) or 11 and was thus an executive committee or decision making meeting covered by section 108A(2)(d)? In my judgement no. I view the SOC power to make decisions on matters of process as administrative matters and do not regard them as either ‘executive decisions on behalf of the union’ or final decisions as regards the union that would qualify the body as an executive committee or decision making committee.

2.27 There was one other particular point that was raised in the submissions which I need to deal with. It was argued that, as had happened previously, it was open to the SOC to frustrate the will of Conference by responding to a “reference back” by resubmitting what in effect was an identical report. This could continue until the Conference run out of time and was forced to accept the report. I am unable to accept this argument. The rules of the union are quite clear, the supreme governing body of the union is the National Delegate Conference and it is open to the NDC to see that it got its way. Even in the event that the SOC adopted this tactic it was still dependent in the end on the NDC accepting the report.

2.28 It is for these reasons that I determine that I do not have jurisdiction to deal with the applications made by Mr Kelly and Mr Roberts.

E G WHYBREW
Certification Officer