

DECISION OF THE CERTIFICATION OFFICER ON  
A COMPLAINT MADE UNDER SECTION 103 OF  
THE TRADE UNION AND LABOUR RELATIONS  
(CONSOLIDATION) ACT 1992

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IN THE MATTER OF A COMPLAINT AGAINST  
THE NATIONAL AND LOCAL GOVERNMENT  
OFFICERS ASSOCIATION

Date of Complaint: 8 January 1993

Date of Decision: 5 May 1993

DECISION

1. On 8 January 1993 I received a letter from a member of the National and Local Government Officers Association ("NALGO") alleging that many members of the Association were not given a fair opportunity of voting in a ballot held by that union between 16 November and 7 December 1992 on a resolution to approve an instrument of amalgamation between NALGO, the Confederation of Health Service Employees and the National Union of Public Employees. The instrument had been approved in ballots held by all three unions and I received an application to register the Instrument of Amalgamation on 22 January 1993. I treated the member's letter as a complaint under section 103(1)(b) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("The 1992 Act") that the vote on the resolution had not been taken in a manner which satisfied section 100(1)(b) of that Act. I have decided to dismiss the complaint for the reasons set out in the following paragraphs.

Legislative Provision

2. Section 100(1) and (2) of the 1992 Act makes the following provision relating to the manner in which the resolution approving the Instrument of Amalgamation or Transfers is put to the members. It reads:-

- "(1) The resolution approving the instrument of amalgamation or transfer must be passed on a vote taken in a manner which satisfies the following conditions -
- (a) every member of the union must be entitled to vote on the resolution;
  - (b) every member of the union must be allowed to vote without interference or constraint and must, so far as is reasonably possible, be given a fair opportunity of voting;
  - (c) the method of voting must involve the marking of a voting paper by the person voting.
- (2) The committee of management or other governing body of the union may arrange for the vote to be taken in any manner which that body thinks fit."

### **The Complaint**

3. In his initial letter the member, stating that only 30% voted on the issue, suggested that this might be due to the fact that because of incomplete membership records only 30% received ballot papers and that consequently the remainder were denied an opportunity to vote on the resolution to approve the amalgamation. The member stated that, on enquiring at his branch as to why he and several colleagues had not received ballot papers, he was told that the membership list was incomplete due to a computerisation problem at Head Office. In later correspondence the member supplied the names of fourteen members of his own NALGO branch all of whom he alleged did not receive ballot papers. He had at the same time written to his branch asking for an explanation but had not received a reply. Furthermore, he argued that it must be probable that the situation with regard to his branch was reflected throughout the Association and thus, as a consequence, it could not be said that every member had, so far as was reasonably possible, been given a fair opportunity to vote.

### **The Ballot**

4. A postal ballot of the membership of the Association was carried out under the scrutiny of the Industrial Society. Voting material was despatched to members on 4 November 1992. There was a three week voting period from 16 November 1992 to 7

December 1992. Of the 759,735 members of NALGO, 310,804 voted in this ballot; 227,429 in favour of the resolution approving the instrument of amalgamation and 83,375 against. Thus, with 41% of the eligible members voting, the result was almost 3-1 in favour of the proposed amalgamation.

#### **Arrangements for the Ballot**

5. In their response to the complaint NALGO explained that the names of new members of the union are notified by their branch to the district office and then placed on the Central Membership Register ("the Register") and allocated a membership number. In the amalgamation ballot those members whose names were on the Register at 30 September 1992 were eligible to vote and sent ballot papers.

6. To allow for potential omissions from the Register, telephone Helplines were set up in each district and at Headquarters. Where the union was alerted that a newly recruited member's name was not yet on the Register that member was sent a ballot paper where the branch was able to confirm membership. If a current member complained that he or she had not received a ballot paper because their address had changed, a new ballot paper was issued. However, if a ballot paper sent to the correct address had not been received, a new ballot paper would only be issued once the other ballot paper had been returned by the Post Office.

7. The balloting arrangements, including details of national and district Freephone Helplines, were set out in the November 1992 edition of the Union's monthly newspaper "Public Service". At the same time branch officers were supplied with notices for display giving the appropriate Freephone number. A formal reminder for officials to urge members to use their votes was sent on 1 December 1992.

8. The Sheffield branch, of which the complainant is a member, falls within the Yorkshire and Humberside district of the Union. The Helpline number for that district was notified on 6 October and the notice for display sent out on 2 November 1992. In respect of the Sheffield branch 8,472 members were initially sent ballot papers with a further 57 members being sent them as a result of calls to the Helpline.

### Reasons for dismissing the complaint

9. Section 100(2) permits the committee of management or other governing body of the trade union to arrange for the vote on any merger resolution to be taken in a manner which it thinks fit. That manner however must comply with provisions of section 100(1). The question I am asked to decide is whether the union has been able to arrange matters so that every member, so far as is reasonably possible, has been given a fair opportunity of voting. This requirement is fundamental to the legislation governing trade union mergers. As one of my predecessors observed in Decision CO/1964/10 this requirement does not mean that the union has to guarantee the delivery of a ballot paper to every member who is entitled to vote. Clearly this would be unrealistic - a view supported in the case of the British Railways Board (the NUR) [1989] ICR 678, at page 684 by the then Master of the Rolls, Lord Donaldson. In deciding whether or not a union had "so far as is reasonably practicable" provided all members entitled to vote with the opportunity of voting he said:-

"It seems inevitable where you have a balloting operation of this size conducted in an industrial context that there will be a few people whose names ought to be on the list but which are not on the list, perhaps because they have changed jobs; there will be a few people who have not notified changes of address or whose ballot papers, if sent by post, may go astray; there will be a number of things which inevitably will go wrong. Indeed, if the situation had been that the union claimed to produce evidence that every one of the entitled members had received a ballot paper and returned it, I think that the court would have been justified in looking very carefully at the evidence to see whether something had not been fiddled. It does not happen like that in real life, and that, of course, was recognised by Parliament when it used the words 'so far as ... reasonably practicable'".

10. The test to be applied in this case is whether "the union was able to arrange matters

**How do the facts of this case stand up to that test?**

11. Of the 14 members whom the complainant alleges did not receive ballot papers, the Association states that 11 were not recorded as members either on the register or on the ballot file and were therefore not sent papers. Two of those were sent papers to addresses held by the union and one was ineligible having joined the union on 16 November 1992. The status of the remaining member was not made clear by the union. In respect of the complainant no evidence was put by the union explaining why he himself did not receive a ballot paper.

12. It seems clear from these figures that the complainant, and at least some of those whose names he submitted effectively had no opportunity to vote on the resolution to approve the instrument of amalgamation. The complainant claims membership of the union for over 30 years and he did not receive a ballot paper. This is an undesirable and unfortunate state of affairs. In regard to the complainant's branch, the membership records were inadequate to the extent that the union, by its own admission, was unable to confirm that all current members were members. There is clearly scope for improvement in the union's system of record keeping.

13. Against this the union took a number of important steps to insure against the possibility of faults in their record keeping, mishaps in the post or other technical failures leading to some of those entitled to vote not receiving ballot papers. I have noted the publicity given to the ballot through various channels in the union, the three week period allowed for the ballot, the advertising and provision of helplines both nationally and in each district for the use by members who did not receive a ballot paper, the arrangements by which recently joined members could be sent ballot papers by the scrutineer, and the attempt to provide ballot papers to members who failed to receive a ballot paper in the original mailing.

14. I will not speculate on why these arrangements did not lead to the complainant, and those among the fourteen he named who were entitled to vote, receiving a ballot paper. Certainly the union has no record of the complainant or any of those listed by him phoning any of the helplines provided. I am though mindful of the fact that it was a relatively small number of members who were alleged not to have received ballot papers and that this is the

only formal complaint made to me about this well publicised ballot in which nationwide three quarters of a million members of the union were entitled to vote.

15. In the light of all these circumstances I have concluded that on the "so far as is reasonably possible" test every member of the union was given a fair opportunity to vote. I have therefore decided to dismiss the complaint.