

D/5/90

DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE UNDER SECTION 5 OF THE TRADE UNION ACT 1984

IN THE MATTER OF COMPLAINTS AGAINST THE
BROADCASTING AND ENTERTAINMENT TRADES ALLIANCE

DATE OF DECISION

21 December 1990

DECISION

Under section 5 of the Trade Union Act 1984 (the Act) I am empowered to make, or refuse to make, a declaration on the application of any person who claims that their trade union has failed to comply with one or more of the provisions of Part I of the Act. For the reasons set out below, I decline to make a declaration in this case.

The application

1. On 3 August 1990 I received a letter from a member of the Broadcasting and Entertainment Trades Alliance (the union) concerning an election to the union's National Executive Council (NEC) of a representative for the union's Independent Local Radio (ILR) Division. The applicant alleged that no opportunity was given to members of the Two Counties Radio branch of the ILR Division to nominate a candidate for election, and that each member of the branch was thereby unreasonably excluded from standing as a candidate.

The facts

2. The applicant was formerly employed by Two Counties Radio (2CR). She remained a member of the 2CR branch of the union after being made redundant in 1989. In January 1990 nominations were called for by the union to fill a vacancy on the union's NEC for a representative for the ILR Division. The union's rules provide that candidates must be nominated by a branch (not necessarily their own).

3. The 2CR branch membership had been severely reduced by this time and an attempt in January to hold a branch meeting to make a nomination was frustrated by the lack of a quorum. A quorum is defined by Rule 16(2) of the union's rules

as "five members or five per cent ... whichever is the larger". In the event, no nomination was received for the ILR Division. As this left a vacancy on the NEC, the union subsequently called a by-election in May 1990 using the same nomination procedure. Again, no nomination was received for the ILR Division, which remains unrepresented on the NEC.

4. In March 1990, at a meeting of the NEC, the 2CR branch was deemed to have no branch committee and it was decided that the members of the branch would be serviced by head office until a further decision was taken by the NEC. This further decision would await a report by the general officers of the union. By July the membership of the branch seems to have dropped to two, having been between nine and five at the time of the second call for nominations in May. Most other branches in the ILR Division have a similarly low membership. The NEC has asked the Finance and General Purposes Committee of the union to consider and advise on this situation.

5. The applicant considers that the General Secretary should have taken steps to convene a branch meeting for the 2CR branch at the time of the second call for nominations. Had this been done, she would have sought nomination as a candidate. The union have pointed out that any such attempt to convene a meeting would very probably have been abortive.

The requirements of the legislation

6. The conduct of elections for the members of a union's principal executive committee is governed by the Act as amended by the Employment Act 1988. Part I of the Act provides, amongst other things:

Section 1 - "(1) Subject to the following provisions of this Part of this Act, it shall be the duty of every trade union (notwithstanding anything in its rules) to secure -

- (a) that every person who is a member of the principal executive committee of the union holds that position by virtue of having been elected as such a member at an election in relation to which section 2 of this Act has been satisfied ...".

Section 2 - "(9) No member of the trade union in question shall be unreasonably excluded from standing as a candidate at the election".

REASONS FOR REFUSING TO MAKE A DECLARATION

7. The question I have to consider is whether the union failed to do what section 2(9) of the Act required, namely to secure that no member was unreasonably excluded from standing as a candidate.

8. Rule 26(11) of the union's rules provides that candidates must be nominated by a branch within the trade group division. It need not be their own branch. It does not seem to me to be unreasonable to expect a candidate to have a certain amount of support from other members before his or her nomination can be accepted.

9. I have to consider whether the duty on the union under section 2(9) had the effect, in the particular circumstances of the 2CR branch, of imposing a positive requirement on the union to ensure that a branch meeting was held. I have some sympathy with the applicant here. The union's head office had assumed control of her branch, yet it took no steps to convene a meeting. The union's explanation was that "Head Office received no indication of any desire on the part of 2CR members for a meeting to propose nominations, therefore none was convened".

10. Rule 16(6) provides - "Special branch meetings may be summoned on urgent business at the discretion of the branch committee, on the instruction of the General Secretary, or at the request in writing of five branch members or not less than five per cent of the branch membership, whichever is the greater ...". Since the NEC appears to have become the effective branch committee for 2CR branch it seems to me that either of the first two ways of calling a special meeting would have been open to the union, in the absence of any specific request. It is regrettable that this was not attempted, but the situation as regard 2CR branch was unpromising, to say the least. Nevertheless it was a situation which certainly made it difficult for the applicant and the other members of her branch to stand as candidates. However, it did not make it impossible, as prospective candidates could have approached other branches for support.

11. The duty under section 2(9) requires that members must not be unreasonably excluded from candidacy. But I do not think the subsection is concerned with the minutiae of branch procedure. Had a branch committee erred in not calling a meeting I do not think I would have regarded that as a matter falling within section 2(9). I think the same principle applies here. Added to that is the fact that the applicant could have made an express request to the union's head office for a meeting to be called. Although I have some sympathy for the applicant, I do not think it can be said that she was "unreasonably excluded from standing as a candidate". I am therefore unable to make the declaration which the applicant sought.

Observations

12. I am glad to note that the union appears to be reconsidering how best to secure election of an NEC member to represent the ILR Division.