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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 NATIONAL UNION OF CIVIL AND PUBLIC SERVANTS

DATE OF DECISION

1 May 1991

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 29 November 1990 I received a letter from two members of the National Union of Civil and Public Servants (the union) concerning elections to the union's National Executive Council (NEC) of representatives for the union's Specialist and Office Support Grades. The applicants alleged that some 55 members of branches 310515 and 310019 were sent ballot papers for the Executive Grades elections and were therefore unable to vote. The applicants complained that as at least 55 members were in this way denied the opportunity to vote, and as winning margins were in a number of cases lower than this, the outcome must be in doubt. They also referred to a similar problem which had occurred in the NEC elections for the previous year. They suggested that nothing had been done to correct this and that the same problem could have recurred.

The facts

2. Voting took place between 9 April and 11 May 1990 for the NEC elections. All members in the Specialist and Office Support Grades were entitled to vote for the positions of Deputy President (Specialist and Office Support Grades) and Vice President (Specialist and Office Support Grades). In addition the

various sub-groups were entitled to vote for their own sub-group representatives on the NEC. A total of 20,621 voting papers were sent out to members of the Specialist and Office Support Grades. Members in the Executive Grades were entitled to vote for their own Deputy President, two Vice Presidents and 22 Ordinary NEC Members. 82,191 ballot papers were despatched to Executive Grade members. The results were declared on 15 May 1990. In some cases successful candidates were elected by quite narrow winning margins.

3. The applicants supplied three sheets with the following statement at the top: "We, the undersigned, being members of the NUCPS Industrial Sector-Metropolitan Police Grouping, do hereby certify that we did not receive the proper ballot forms and were prevented from participating in the 1990 NUCPS National Elections in consequence." One list (two sheets) was headed "Branch 310515" and had a total of 34 signatures. The other list was headed "Branch 310019" and had a total of 21 signatures. The applicants appeared to suggest that these 55 signatories claimed to have received ballot papers intended for Executive Grade members.

4. I asked the union for their comments on the allegations. In response they provided me with a copy of an internal report prepared by the union's Member Auditors.

5. The Member Auditors had been asked by the General Secretary to report on allegations made in June by a union official who was one of the candidates in the Industrial Grades Constituency. He had written to the General Secretary on 5 June 1990 saying that some members had received the wrong ballot paper and that of those who had received ballot papers some had received them very late. He identified two branches, 310019 and 310515, where this problem had occurred.

6. The Member Auditors explained: "It is possible for members to be placed in the wrong category by clerical error when data is processed although new members' applications are carefully checked. All members are issued with guidance notes immediately prior to the elections and there is a guidance leaflet included with the ballot paper. Both advise members to contact either their Branch Secretary or NUCPS Headquarters if they are unsure about completing the ballot paper." The Member Auditors examined the NUCPS records

for the two branches and approached the Electoral Reform Society (ERS) who had acted as scrutineers and were responsible for dispatching ballot papers to members. In the light of their enquiries they concluded that Specialist and Support Grade ballot papers had been correctly sent to members in branches 310515 and 310019.

7. The Member Auditors then advised the original complainant of the investigations that had taken place and asked whether there was any more information he could provide. He responded on 30 August 1990 saying that he was convinced that an error must have taken place but he was unable to give any evidence. However, on 24th October he met with one of the Member Auditors and the General Secretary of the union. He produced two lists of members in branches 310515 and 310019 who had signed a pro-forma to say that they did not receive the proper ballot form. It was agreed that the lists would be checked and a further report made. These were the lists that were subsequently copied to me by the applicants when they lodged this complaint under the Act.

8. As explained above 21 members of branch 310019 put their signatures to a statement that they "...did not receive the proper ballot forms...". When the Member Auditors checked the names against the membership register they reported that thirteen of these signatories had not provided the union with a balloting address at the time of the ballot. Nor had they contacted the union to ask for a ballot paper during the election. The other eight members were on the register but their ballot papers had all been returned "not known at this address". These findings were not challenged before me. It seems clear therefore that these signatories had in fact received no ballot paper of any kind.

9. Thirty-four members of branch 310515 signed the same statement. The report of the Member Auditors shows that six of these had joined the union after the completion of the ballot. Two others had joined after the start of the ballot, and to obtain a ballot paper they would have needed to make a special application. There was no record of any such application. Another was not listed in the membership register. Thus nine of the thirty-four could not have received a ballot paper of any kind. The remaining twenty-five members of branch 310515 who claim not to have received the proper ballot paper were shown

on the membership register correctly as being Specialist and Support Grade members.

10. In their report, the Member Auditors explained the steps taken by the union to maintain the membership register as up-to-date as reasonably practicable. They said that action had been taken to prevent any recurrence of the problems encountered during the previous national elections in 1989 (when it is not disputed that a number of voters in the Specialist and Office Support Grades received ballot papers for the Executive Grades elections, in addition to the proper ballot paper).

11. The Member Auditors' report ends as follows:

"The substance of the complaint set out in the letter from the Certification Officer has now been brought to [us] on three occasions. Each time we have reached the conclusion that those members who had provided the union an up-to-date address would have received a ballot paper for the Specialist and Support Grades Category. The evidence from both the Union's computer and the ERS points to this conclusion. In particular no other branch has claimed that a block of its membership has received the wrong ballot paper. Indeed throughout the four week period of the ballot less than 500 members contacted the Union to request a replacement ballot paper.

Finally it is worth stressing that while it has been possible to demonstrate the probability that these members received the right ballot paper, no evidence has been produced to show the contrary. At no stage have [the applicants] been able to produce an Executive Grade ballot paper and nor throughout the whole of our enquiries has [the union official who made the original complaint]."

The requirements of the legislation

12. The conduct of elections for the members of a union's principal executive committee are governed by the Act (as amended). 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 - (7) So far as is reasonably practicable, every person who is entitled to vote at the election must -

- (a) have sent to him, at his proper address and by post, a voting paper which either lists the candidates at the election or is accompanied by a separate list of those candidates; and
- (b) be given a convenient opportunity to vote by post.

REASONS FOR REFUSING TO MAKE A DECLARATION

13. In this case, the question I have to consider is whether there is evidence that the union failed to do what section 2(7)(a) of the Act required, namely to secure so far as reasonably practicable that every person entitled to vote in the election was sent a voting paper, by post to his proper address. The requirement is clearly of vital importance in the scheme of the 1984 Act.

14. The applicants relied on the lists supplied by the union official to support their allegations. However, the earliest signature on the lists was dated 28 September 1990, more than four months after the last day of voting, and there is clearly danger in relying on evidence obtained by such a "round robin" when it is circulated some time after the event. The fact that some members were willing to sign the form even though they were not members at the time of the ballot indicates, to take a charitable view, that they either did not understand what they were signing or were willing to sign rather than give offence to whoever handed them the form. The ambiguity of the wording at the top of the form may have been another source of difficulty. At all events no individual member seems to have come forward at the time of the ballot to

complain that they had received the wrong ballot paper. Furthermore, of the 25 who, on the evidence of the internal enquiry, should have received a proper ballot paper, it seems to me quite possible that some may indeed have done so but are simply unable to recall the fact. The election may have been something they paid little regard to (participation in the national elections was only about 15% in the case of the Specialist and Office Support Grades). They may have mislaid or thrown away the ballot paper, with no clear recollection of it months after the event.

15. However that may be, it is clear from the detailed report of The Member Auditors that the claim of many of the signatories on the lists does not stand up to serious scrutiny. The evidential value of the lists is in my view seriously discredited, and there is nothing else of substance to support the allegations.

16. Of course there remains a possibility that some people who signed the lists either received no ballot paper or received the wrong ballot paper due to some error which has not been uncovered. But it does not follow that such a possibility amounts to evidence that the union failed in its duty. As was clearly explained by Lord Donaldson MR in British Railways Board v NUR [1987] ICR 678, the fact that a handful of members do not receive ballot papers is not by itself evidence of a breach of duty by the union. The same principle is applicable here.

17. For the reasons given I have concluded that there is no reliable evidence in this case to support a finding against the union. I am therefore unable to make the declaration sought by the applicants.