

D/16/86

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

Applicant: F G CORTI

Trade Union: TRANSPORT AND GENERAL WORKERS' UNION

DATE OF DECISION

28 October 1986

DECISION

Under section 5 of the Trade Union Act 1984 I am empowered to make, or to refuse to make, a declaration applied for by 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 am unable to make the declarations sought in this case.

The application

1. This decision concerns an application under section 5 of the Trade Union Act 1984 ("the Act") made on 8 April 1986 by Mr F G Corti, a member of the Transport and General Workers' Union ("the Union"). It relates to the last election in late 1985 of territorial representatives to the Union's General Executive Council. Mr Corti made representations which I considered

amounted to two complaints:- (a) that in not having notified members that Branches were taking nominations for candidates to stand in the election, the Union failed to comply with section 2(9) of the Act which requires that no member of the Union should be unreasonably excluded from standing as a candidate; and (b) that the voting arrangements at the place where Mr Corti voted were so lacking in security as to cast doubt upon the result of the election. I considered that this complaint raised issues relating to section 2(8)(b) or (c) of the Act. Section 2(8)(b) requires the result of an election to be determined solely by counting the votes cast and section 2(8)(c) requires that the votes given at the election are fairly and accurately counted.

The facts

2. The Union's General Executive Council is made up of representatives of territorial regions within the Union ("territorial representatives") and representatives of National Trade Groups. Mr Corti was concerned with the election of his territorial representative. Mr Corti is a member of the Southern Division of Region 5, Midlands, which elected one territorial representative for 1986/7 at an election held between November and December 1985. The successful candidate had a majority of 417 votes over his nearest rival, out of a field of 12 candidates.

3. I will deal first with the facts concerning the nomination procedure (complaint (a)) and second with the facts concerning the security of the ballot (complaint (b)).

Complaint (a): The nomination procedure

4. According to the Union's rules, it is open to any member of the Union who has been what is termed "financial" (that is, a member less than 6 months in arrears of contributions) for two years to seek nomination as a candidate for territorial representative on the General Executive Council. Nomination is

carried out at Branch level, and in order to become a candidate the member must secure the backing of at least one Branch within his Region or Division (not necessarily his own Branch). Mr Corti claimed that the three Branches at the Cowley Assembly Plant, his place of work, failed to notify their members in advance of the intention to call for nominations at forthcoming Branch meetings. The Branches were Branch 5/55, Branch 5/293 and his own Branch 5/837.

5. I have seen the minutes of a Branch meeting of Branch 5/837, attended by Mr Corti, which record that the meeting considered a request from regional office for nominations for territorial representatives and other positions in the Union. Only one name was put forward and the Branch accepted that nomination. At that meeting Mr Corti was nominated for another office in the Union though not as a candidate for the GEC elections. Mr Corti himself provided me with a copy of the notice informing members of the meeting. As he claimed, it carried no specific reference to the taking of nominations as an item of business for the meeting. It did, however exhort all members of the Branch to attend and join in the discussions.

6. Mr Corti alleged that the same procedure had been followed within Branch 5/55, and I accept that this was the case. Minutes of another Branch meeting, this time of Branch 5/293, show that the question of nominations was discussed there too. Such evidence as was available regarding Branch 5/293 suggests that, like Mr Corti's own Branch, the meeting would have been notified as a Branch meeting in the ordinary course but without specific reference to nomination as an item of business.

7. I asked Mr Corti if he had evidence to put before me of any member who would have sought nomination but had been prevented from doing so by the absence of notice that the Branch meetings in question would be deciding who to nominate. Mr Corti did not produce any such evidence.

Complaint (b): Security of the ballot

8. Mr Corti told me that at the Cowley Assembly Plant, where he voted, Union membership cards were not required to be produced for stamping when members presented themselves to vote, nor were members' names checked against Branch membership lists. He produced statements to this effect from others working at the Cowley Assembly Plant. He therefore alleged that the way was open for members to vote more than once or for non-members to vote. When I put these matters to the Union, they frankly acknowledged that a number of members had been able to vote without showing their membership cards, but said that these were a minority and in any case were known to the scrutineers. They did not accept that any member had in fact voted more than once or that any person other than a member of the Union had voted. I asked Mr Corti if he could provide specific evidence of any member having voted more than once or of a non-member having voted, but he did not do so.

Reasons for the decision

9. I will deal with the reasons for my decision on complaints (a) and (b) in turn.

Complaint (a): The nomination procedure

10. The election about which Mr Corti was concerned was an election to which Part I of the Act applied. Section 2(9) of the Act says:-

"No member of the trade union in question shall be unreasonably excluded from standing as a candidate at the election."

Mr Corti's complaint is that the effect of not giving notice to members that nominations were about to be taken at Branch meetings amounted to unreasonable exclusion from standing. My concern therefore is whether what did happen had the effect of

excluding would-be candidates unreasonably. What did happen has already been described. Any member reading the Union's Rules should have been aware that nomination is Branch business, so that if he wished to stand he must persuade a Branch to nominate him. My enquiries showed that the Branch meetings in question were open to their members and were notified to those members in advance in the manner usually adopted for Branch meetings. In one case at least, as I have noted, the Branch stressed the importance of attendance. There was thus nothing clandestine or exclusive about the meetings themselves. The members were urged to attend and were free to attend. Any "financial member" was free to put himself forward for nomination by a Branch at any time before the closing date for nominations. Indeed Mr Corti was himself present at one meeting and was nominated for another position in the Union. In the absence of any other evidence I do not find sufficient grounds to conclude that the effect of the lack of specific notice was that members were unreasonably excluded from standing as candidates. My conclusion on the evidence produced is that the Union did not breach section 2(9) of the Act, and I therefore cannot make the declaration sought.

Complaint (b): Security of the ballot

11. Taking all Mr Corti's evidence together, I formed the view that while he had indicated some scope for potential abuses, involving the theoretical possibility of double voting or even voting by non-members, he had not shown that such abuses had in fact occurred. I am bound by the provisions of the Act. I must determine whether, in what they did, or failed to do, those in charge of the conduct of the ballot at the Cowlet Assembly Plant put the Union in breach of the provisions of Part I of the Act. I found no evidence on which I could reach the conclusion that they did. In particular, it did not seem to me that the evidence was capable of demonstrating a lack of fairness or accuracy in the counting, or that the result was determined by reference to votes improperly cast. In these circumstances I cannot make the declaration sought.