

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

Applicant: N COOPER

Trade Union: AMALGAMATED ENGINEERING UNION

DATE OF DECISION

31 March 1987

DECISION

Under section 5 of the Trade Union Act 1984 (the Act), I am empowered to make or 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 declaration requested in this case.

The application

1. This decision concerns an application under section 5 of the Act by Mr N Cooper against the Amalgamated Engineering Union (AEU). The applicant was a member of the Union at the time the application was made. He was represented by Mr D Adams.

2. Mr Cooper's complaint was that the AEU had failed to comply with section 4(1)(b) of the Act, in that they had failed to secure, so far as was reasonably practicable, that the register of their members' names and proper addresses was accurate and up-to-date.

The facts

3. To support his complaint, Mr Cooper produced six envelopes, all addressed to his home. Two were addressed to a Mr L A Cooper, two to a Mr G E Millward and two to a Mr F Litwinko. In the case of each individual, one envelope contained a ballot paper for return to the Union by 11 January 1985 and the other envelope contained a ballot paper on a different issue for return to the Union by 29 March 1986.

4. Mr Cooper gave the following details about the addresses on the envelopes, and the addressees. Mr L A Cooper was his son and had lived at his father's home until recently. He had been a member of the AEU but had ceased to pay contributions in 1981. At that time Mr N Cooper had been Branch Treasurer of the Branch to which his son belonged and he had informed the Branch Secretary that his son was ceasing to pay contributions. Mr G E Millward was his stepson and had lived at his stepfather's home until about 3 years ago. Mr Millward, like Mr L A Cooper, had been a member of the AEU but had ceased to pay contributions in 1981. Mr N Cooper in his capacity as Branch Treasurer had informed the Branch Secretary that his stepson was ceasing to pay contributions. Mr F Litwinko was unknown to Mr Cooper.

5. Mr Cooper stated he had complained to officials of his Branch about receiving these envelopes.

6. The Union accepted Mr Cooper's evidence. They said that for their postal ballots they relied on information stored on their computerised register at the Union's General Office to provide names of members and their addresses. According to the latest records at the Union's General Office the position was as follows. Mr L A Cooper was formally expelled from the Union on 15 December 1986. His address, according to the register, was the same as the complainant's. Mr G E Millward was formally expelled from the Union on 13 January 1986. His address was also recorded as being the same as the complainant's. Mr Litwinko, according to the Union's records, was a member of the AEU and his address was the same as that of the complainant; how this address came to be so recorded remains a mystery.

7. Clearly, two main elements were involved in this situation: the procedures for expelling members who had ceased to pay contributions, and the arrangements for keeping up-to-date with members' changes of address. I questioned the Union about both.

8. First, the Union explained the arrangements for the formal expulsion of members. Although under their rules a member whose arrears of contributions amounted to 26 weeks was liable to expulsion, the actual power to expel and the process of expulsion rested in the hands of the appropriate Branch Secretary. There were some 2,300 Branch

Secretaries, and the nature and timing of administrative action taken was bound to vary. The Union's General Office would not normally know what had happened at Branch level, and could not assume that an individual's membership had been terminated for non-payment of contributions until they eventually received formal notification of an expulsion from a Branch Secretary.

9. In short, in order to maintain the register of members, the Union's General Office relied on Branch Secretaries for information about expulsions. In the case of Mr L A Cooper, ballot papers had been sent to him until he was recorded as expelled on 15 December 1986. In the case of Mr Millward, 13 January 1986 was recorded as his formal date of expulsion, but there would have been an inevitable lapse of time between the expulsion date and the date when information about the expulsion had reached the Union's General Office. The electoral roll on which the ballot which ended on 29 March 1986 was based would have been produced before the end of January, and the Union suggested that information about Mr Millward's expulsion on 13 January 1986 might have arrived just too late to prevent him being sent a ballot paper. With regard to Mr Litwinko, the Union stated that they had received no information which would lead them to doubt that he was still a member. Apparently his union subscription had been paid by the "check-off" system (whereby the employer deducts the subscription from members' wages and pays it direct to the union) and his Branch Secretary had lost direct contact with him. The Union had continued to receive check-off payments from his last employer and did not regard him as in arrears: but they had recently established, on making enquiries, that he had in fact left his last known employer.

10. Turning to the second main factor in the situation, I asked the Union how they kept up-to-date with the addresses of their members. They gave me a very detailed account of their records system which I can summarise as follows. Prospective members are asked to give their full address on their application form. Contribution cards are issued from General Office to Branch Secretaries. These cards record addresses given by members and state that a member must notify the Branch Secretary in writing when he changes his address. However the General Secretary made the point that, as a result of the widespread use of the check-off system for collecting contributions, many members no longer bother with their membership cards; and in any event many fail to notify changes of address.

11. Branch Secretaries are also issued with registration cards for postal ballots on which they are expected to inform General Office of a member's change of address. Such cards are issued in large numbers to Branches and are constantly being returned to General Office with the appropriate changes noted. Before elections, the Union make special efforts to publicise the importance of records being correct. About 100 registration cards are received at General Office every day and this peaks to about 300 daily before elections.

12. The Union make further efforts to keep their records up-to-date in the actual process of running their postal ballots. Ballot material is distributed in envelopes each of which has on the front a label showing the member's name and address and Branch and membership numbers. On the back of each envelope, printed in red and in letters which the Union described as being as bold as the Post Office would allow, are the following words:-

"In the event of any enquiry regarding this envelope, or contents, please return THIS envelope together with contents, in the prepaid envelope."

13. Furthermore, above the words is a request that if the envelope is undelivered, it should be returned to the General Secretary at the Union's address, which is given. Every such envelope contains a prepaid envelope addressed to the General Secretary.

14. The Union told me that each time they hold a national ballot, approximately 9,000 envelopes are returned marked "not known" or "gone away" in response to these requests. The Union's General Office then contact each Branch Secretary about members whose address is not known, and ask them to make efforts to trace these members. If Branch Secretaries cannot submit new postal addresses for these members, the addresses (although not the names) are removed from the electoral roll before the next ballot. The Union emphasised that the return of the envelope is crucial to this process. It was my understanding that the complainant had not returned to General Office any of the envelopes sent to his address.

15. Finally, the General Secretary of the Union commented upon the obvious difficulties involved in keeping up-to-date a register of about 900,000 members with perhaps as many as 50,000 joining and a similar number leaving each year, quite apart from the considerable numbers changing their address. The Union had a long-established and highly organised postal ballot system but they were open to suggestions from any quarter as to how their arrangements might be improved.

Reasons for the decision

16. I have to decide whether the Union failed to comply with section 4(1)(b) of the Act, which provides:-

"It shall be the duty of every trade union to secure, so far as is reasonably practicable, that the entries in the register are accurate and are kept up-to-date."

17. There is no evidence to show that, as far as the Union's General Office membership records were concerned, any individuals were incorrectly recorded as members. I accept that the Union's General Office was not in a position to remove names from the electoral roll, whatever discussions may have occurred at Branch level, until they were formally notified of a member's expulsion. However, as far as addresses were concerned it seems clear that the computerised system at General Office was inaccurate with regard to Mr Millward and Mr Litwinko at the time of Mr Cooper's complaint to me.

18. The Union rely on members themselves and on Branch Secretaries to keep the register up-to-date. It was clear that if the Union's General Office received a notification that a member's address was wrong, they made every effort to encourage Branch Secretaries to investigate the matter. They also encouraged both individual members and Branch officials to initiate any necessary changes in the General Office records. It was stated by the Union that a very large number of changes were notified to them, but that nevertheless both members and officials varied in the promptness with which they took appropriate action.

offices in the Union made the immediate implementation of such a development prohibitively expensive.

20. I considered very carefully the representations which were well presented and argued before me by both the applicant and the Union. Clearly, with a Union of this size and turnover, there can be no precise borderline between what is and what is not a register which is kept up-to-date "so far as is reasonably practicable". Some vulnerable areas in the Union's arrangements are obvious; not all Branch Secretaries will be equally efficient; not all members will be equally helpful. But I was impressed by the number of measures which the Union had developed over the years to secure an efficient electoral roll system. Clearly that system needs to be kept under review; but in all the circumstances of this case I do not think that the Union could reasonably be expected to have done more to correct the errors on the electoral register on the information available to its General Office at the time that Mr Cooper made his complaints to me.

21. I therefore came to the conclusion, on balance, that I should not grant the declaration sought.

Observations

22. This case raised difficult issues. Any administrative system must depend for its efficiency to a considerable extent on the commitment of the people involved. The AEU have developed elaborate administrative arrangements for keeping their membership register up-to-date; but inevitably much depends upon the efficiency of the Union's numerous Branch officials as well as upon the co-operation of individual members. The larger the Union, the more formidable the task. Nevertheless the maintenance, so far as is reasonably practicable, of an up-to-date membership register is a very important duty. Although I felt unable to grant the declaration sought, I can well understand why Mr Cooper brought this case; and I hope that some lessons will have been learned from it.

Certification Office

for Trade Unions and Employers' Associations

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Press Notice

1 April 1987

DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE
UNDER SECTION 5 OF PART I OF THE TRADE UNION ACT 1984
CONCERNING THE AMALGAMATED ENGINEERING UNION

The Certification Officer today published a decision (D/4/87) on a complaint made under section 5 of Part I of the Trade Union Act 1984 concerning the Amalgamated Engineering Union (AEU). The complainant sought a declaration that the AEU had not complied with section 4(1)(b) of the Act, in that they had failed to secure, so far as was reasonably practicable, that the register of their members' names and proper addresses was accurate and up-to-date.

The decision notes that the Certification Officer was unable to make the declaration requested in this case, although he pointed to some vulnerable areas in the Union's administrative arrangements for keeping the register up-to-date.

Copies of the decision are available free of charge from the Certification Office at the above address.

NOTES TO EDITORS

- (i) The Certification Officer (Mr Matthew Wake) is an independent statutory authority appointed by the Secretary of State for Employment under the Employment Protection Act 1975. Under that and other legislation he has certain functions in relation to Trade Unions and Employers' Associations.
- (ii) Part I of the Trade Union Act 1984, which came into operation on 1 October 1985, requires trade unions to ensure that no voting member of their principal executive committee remains such a member for more than five years without being re-elected by secret ballot of the members, and sets out standards which a trade union must meet in its arrangements for such elections. Section 5 of the Act gives an individual trade union member the right to apply to the Certification Officer, or to the High Court, for a declaration that their trade union has failed to comply with one or more provisions of Part I of the Act.