

**DECISION OF THE CERTIFICATION OFFICER ON APPLICATIONS MADE
UNDER SECTION 55 OF THE TRADE UNION AND LABOUR RELATIONS
(CONSOLIDATION) ACT 1992**

**IN THE MATTER OF A COMPLAINT
AGAINST THE CIVIL AND PUBLIC SERVICES ASSOCIATION**

Date of Decision: 6 June 1995

DECISION

Under section 55 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") I am empowered to make, or refuse to make, a declaration on the application of any person who claims that his or her trade union has failed to comply with one or more of the provisions of Chapter IV Part I of the 1992 Act concerning the need for, and the conduct of, elections to certain positions. In making a declaration I am required to specify the provisions with which the trade union has failed to comply.

For reasons which follow I make a declaration at paragraph 36 to the effect that following the 1994 national elections, the Civil and Public Services Association failed to comply with the requirements of section 52(6) of the 1992 Act, in that the union failed to supply two members, on request, with copies of the scrutineer's reports in respect of the election results for President, Vice-Presidents and ordinary members of the national executive committee of the union.

I wish to add that the breaches did not affect the outcome of the elections in any way. They were essentially procedural infringements, the full results and contents of the scrutineer's reports were published, albeit a few weeks late, and copies of the reports were eventually provided to both complainants.

Background to the applications

1. On 16 August 1994 I received a number of formal complaints from a member of the Civil and Public Services Association (CPSA or "the union"). Decisions on all but one of these complaints were made and issued by me on 30 December 1994 following a hearing on 8 December. The outstanding complaint about provision of copies of scrutineer's reports which I deal with here, from Complainant One, was not dealt with by me at that time as it could not have been pursued without revealing the complainant's identity before a hearing and at a time when he wished to remain anonymous.

2. Another member of the union attending the hearing on 8 December 1994 intimated, and subsequently confirmed on 23 February 1995, that he too wished to make a complaint that he was not sent copies of the scrutineer's reports by the union when he had so requested. A decision on this complaint, from Complainant Two, also forms part of the conclusions which follow.

3. Some of the facts and argument inherent in considering these two complaints emerged in the course of considering the wider issues which were the subject of my decision dated 30 December 1994 "In the matter of complaints against the Civil and Public Services Association" (D/8/94) and a number of references to that decision will be made.

The requirements of the legislation

4. The 1992 Act provides that certain officers of trade unions shall be elected through a process set out in some detail in the legislation. Section 52 contains provisions relating to the content of the scrutineer's report and the action a union must take following a scrutineer's report on an election. This action is given in the relevant parts of section 52 below:

"... (3) The Trade union shall not publish the result of the election until it has received the scrutineer's report.

(4) The trade union shall within the period of three months after it has received the scrutineer's report either -

- (a) send a copy of the report to every member of the union to whom it is reasonably practicable to send such a copy; or
 - (b) take all such other steps for notifying the contents of the report to the members of the union (whether by publishing the report or otherwise) as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.
- (5) Any such copy or notification shall be accompanied by a statement that the union will, on request, supply any member of the union with a copy of the report, either free of charge or on payment of such reasonable fee as may be specified in the notification.
- (6) The trade union shall so supply any member of the union who makes such a request and pays the fee (if any) notified to him".

Sub-sections (4), (5) and (6) are especially relevant to this case.

5. Any member who alleges his or her union has failed to meet these obligations may make an application to the Certification Officer (section 55) or to the court (section 56) but no such application may be made after twelve months have elapsed from the declaration of the election results (section 54(3)).

The Complainants' case

6. Both complainants argued:

- (i) that the union had a duty to provide them with copies of the scrutineer's reports on request even though the contents of the scrutineer's reports had been fully publicised and sent to members;
- (ii) that they requested copies of the scrutineer's reports on 12 July 1994 and 12 August 1994 respectively, and that the union's provision of copies on 6

January 1995, after the complaints had been lodged with me, did not satisfy the requirement to provide copies on request.

7. In pursuing this complaint and those dealt with in my decision D/8/94 the complainants produced evidence to establish a number of facts as set out in the following paragraphs.

8. Complainant One was a candidate in the 1994 elections for President and for ordinary members of the union's national executive. These elections were held in the four weeks ending 6 May. But a problem arose in the election of the President which resulted in it being re-run between 18 May and 14 June 1994. The July/August edition of the union's journal 'Red Tape', published on 29 June 1994, contained voting details for the re-run Presidential election (in which Complainant One was unsuccessful) but voting figures for only the 59 candidates with the highest number of votes for Ordinary membership of the NEC. It did not show the votes for the remaining 26 candidates - including those for Complainant One.

9. It was against this background that on 12 July 1994 Complainant One sent a recorded delivery letter to the union requesting a complete copy of each of the reports of the independent scrutineer (Hard Dowdy) for the 1994 elections for President, Vice-Presidents and National Executive Committee.

10. On the same day, and in the same recorded delivery envelope he sent a letter to the union requesting tape recordings of certain statements by the union's President and General Secretary at the union's 1994 National Conference.

11. Complainant One asserts he never received a reply of any sort to either of these letters.

12. Complainant One then wrote to me on 16 August about the partial publication of the results and a number of other issues dealt with in D/8/94. That letter also contained the complaint that is the subject of this decision namely that the union had failed to supply copies of the scrutineer's reports on these elections. Before the union received my letter seeking

their views on the issues eventually dealt with in decision D/8/94 they had begun, on 23 August, a special mailing of the September edition of Red Tape. This included in full the information contained in the scrutineer's three reports - including votes cast for all 75 candidates for Ordinary membership of the NEC.

13. Complainant Two wrote to the union on 12 August 1994 requesting copies of the independent scrutineer's reports for the union's national elections in 1990, 1991, 1992, 1993 and 1994. The union responded on 19 September offering to supply copies but pointing out that as the 1991-1993 copies had been archived they would levy a charge of £10 per copy.

14. There then followed an exchange of correspondence about the reasonableness of the £10 fee and whether or not publishing the contents of the scrutineer's report satisfied the obligation to provide members with a copy on request. During this correspondence Complainant Two asked the union to establish that it had met its obligation to publish the fact that scrutineer's reports were available on request and that the publication had specified the fee to be charged. The correspondence was inconclusive and copies of the scrutineer's reports for 1994 had not been sent to Complainant Two when the papers were sent to me a few days before the hearing on December 8th. Complainant Two recognises that any complaints about elections before the 1994 ones are out of time.

The Union's case

15. The union contend that in circumstances where the contents of the scrutineer's reports were reproduced in the September 1994 edition of Red Tape, it was not the intention of Parliament to insist that a union had to notify members in addition that they could have a copy - effectively a further copy - of any scrutineer's reports.

16. Aware that I had taken a contrary view on this matter in my decision D/8/94 they additionally argued that they had sent copies of the scrutineer's reports to the first complainant as requested. As evidence of this the file copy of the first complainant's letter was produced. This showed a highlighted passage reading "However, on the basis that you have published election results, the report of the independent scrutineer (Hard Dowdy) should now be in the possession of yourself and Marion Chambers. Accordingly I request a

complete copy of each of the reports for the 1994 CPSA elections for President, Vice-Presidents and National Executive Committee". The General Secretary of the union says he highlighted that passage and annotated the top right hand corner "(1) Send reports to [the first complainant's first name and initial letter of his surname] (2) File". The General Secretary further asserted in a letter dated 7 February 1995 "that one of my staff viz. the senior clerk, who has worked for me since I was elected general secretary, has annotated just under my written instruction 'copied 13/7/94'. This is her standard practice for all copying".

17. As regards Complainant Two the union claimed that it had not refused or failed to supply him reports. On 19 September 1994 the union had responded to that complainant's request (of 12 August) for copies of the scrutineer's reports by advising him that there would be a £10 charge for supplying the copies. The union asserted that it had a statutory entitlement to make such a charge if it wished to cover administrative expenses for the service. The complainant was advised to call the union if he wished to have copies supplied on this basis. The complainant did not respond to this reply but wrote again on 16 November disputing the right of the union to make a charge for the service.

18. The dispute over charging had not been resolved with Complainant Two when at the hearing on 8 December it became clear to the union that Complainant One had not received the copies the union had sent in July. When the decision D/8/94 reached the union they became aware for the first time that the Certification Officer's view was that even though they had published the full contents of the scrutineer's reports they were required to tell members they could have a copy of the reports on request. On receipt of that decision the union immediately, on 6 January 1995, sent both complainants copies of the 1994 scrutineer's reports as they had requested.

19. It was the union's contention that even if they were in breach of section 52(6) before 6 January 1995, which they did not concede, their action on 6 January meant there had been no breach. They argued that the legislative requirements to supply copies of scrutineer's reports to members contained no requirement as to time by which a union must respond to a request for copies of scrutineer's reports. As the complainants had received copies of the

reports (without charge) the union maintained that it had fully complied with section 52(6) and there was no case to answer in respect of either complainant.

Reasons for my decision

20. This case requires me to answer three basic questions:

- (i) is there a statutory obligation on the union to provide members with a copy of the scrutineer's report even in circumstances where the full contents of that report have been published and sent to members?
- (ii) what, if anything, was sent to the first complainant on 13 July?
- (iii) does the supply of reports to the complainants on 6 January satisfy the requirement to make reports available on request?

I shall consider each in turn and show how my conclusions on them lead to my decision.

21. In my decision D/8/94 I concluded that under section 52(5) the union had a duty to notify members that a copy of the scrutineer's report would be supplied, on request, either free or on payment of a reasonable fee specified in the notification. This view is based on the totally unambiguous wording of section 52(5) as quoted in paragraph 4 above. In presenting that view I commented:

"I find it somewhat odd that Parliament requires unions when sending a copy of the scrutineer's report to members, to tell them that a copy is available on request. But clearly that is what the statute says. The provision is easier to understand where a union, as in this case, decides to make available to members not a copy of the report but the contents of the report. In these circumstances members might wish to check the contents of the reports against the eventual publication and also satisfy themselves of the authenticity of the date when the report was made. I would not expect many members to avail themselves of this right but as this case demonstrates some will and I have no doubt that they have such a right".

The elections at issue in that case are essentially the same ones that are the subject of the complaints I am now dealing with.

22. It follows from the view that, even in the circumstances of this case, the union has a duty to tell members that the union will provide copies on request that it also has a duty to supply copies on request. In my opinion then it is the clear intention of Parliament, as given in sub-sections 52(5) and 52(6) of the 1992 Act that the union must, if any member so requests, supply that member with copies of the actual scrutineer's reports whether or not the contents of the reports had been published by a union. This provision is intended to give union members the opportunity to check the accuracy of election results with source documents if they so wish.

23. The answer to the first question in paragraph 19 is then an unequivocal 'yes'. In passing I might add that a fee for supplying a copy may only be charged if that fee is both reasonable and specified in the notification. In the present case no fee had been specified by the union in its notification of the 1994 election results and no fee was therefore chargeable in respect of a request under section 52(5).

24. The second question, which is a question of fact, is more difficult. There is conflicting evidence on whether anything was sent by the union to Complainant One on 13 July.

25. Evidence that reports were sent comes from the union's assertion that on receipt of the letter from Complainant One it was annotated on 13 July with "(1) send reports to [the complainant] (2) File" and with "copied 13/7/94". The general secretary said this was standard practice for all copying.

26. Evidence that reports were not sent comes from:

- (a) the assertion from the Complainant that he did not receive a reply to his request - something that is inherently untestable;

- (b) the assertion from the Complainant that he did not receive a reply on other points made in his letter of 12 July requesting the reports;
- (c) the assertion from the Complainant that he did not receive a reply to the other "recorded delivery" request sent on 12 July for tapes of statements made at the union's national conference. (See para 10 above). This as with point (b) could have been challenged by the union but was not.
- (d) the union's admission that it has adopted a policy of not responding to every item of correspondence from this Complainant eg. where, as in this case, they contain unsubstantiated allegations about the competence and integrity of union officers;
- (e) there were certain aspects of the annotations on the original letter of 12 July that give cause for concern:
 - (i) pencil annotations seemed to have been written over an indentation which could have come from a previous document or from erasing an earlier annotation;
 - (ii) the phrase "copied 13/7/94" seemed to have been inked over pencil in places;
 - (iii) the annotation "send reports to [the complainant]" is very close to the top of the page and could have been added, along with "(2)" before "File", at a later date;
- (f) doubts over who wrote, or when, "copied 13/7/94" are reinforced by the union's subsequent retraction of its original confident assertion that it was written by a senior clerk who had worked for the general secretary for about two years and with whose practice he was familiar. On being asked to report what the clerk remembered copying the union stated that it appeared that the

annotation was by a temporary secretary no longer in the union's employment or contactable by them.

27. These grounds throw considerable doubt on whether anything was sent to Complainant One on 13 July. At my request my officers put these points to the union at a meeting on 4 April 1995 and subsequently wrote giving the union a further opportunity to produce extra evidence or arguments on the issue. The only relevant outcome of these contacts was the introduction of a possible third source of the annotation 'Copied 13/7/94' There was also a letter essentially explaining the union's exasperation with the first Complainant - a matter that is irrelevant to my decision.

28. On the evidence outlined in paragraphs 24 and 25 and in the absence of further contributions from the union I have concluded that on the balance of probabilities copies of the scrutineer's reports as requested were not supplied to Complainant One on or about 13 July 1994.

29. The final question to answer is whether supplying the copies on 6 January to the two complainants satisfies the obligation to provide copies "on request". It is true that the relevant section 52(6) mentions no time limit for responses to a request for copies of scrutineer's reports. There clearly is no requirement to respond by return of post. I cannot though accept the union's implicit contention that the absence of a time limit means that providing a copy at any time after a request is made will therefore satisfy the provision. Members have only 12 months within which to make a complaint to me or the courts about these and many other issues surrounding trade union elections. It would be absurd if the union could withhold responding to a request until a complaint was made to me or the courts or until any complaint would be out of time. That clearly cannot have been Parliament's intention. The issue then becomes what constitutes a reasonable delay in responding to a request, or more precisely were the delays between 12 July 1994 and 6 January 1995, and 12 August 1994 and 6 January 1995, sufficiently short to be considered as meeting the requirement to supply a copy on request?

30. In the case of Complainant One I must take account of the fact that the complainant did not follow up the non-receipt of the reports with the union directly but came to me within a month of making his requests, that the union thought publication of the reports in full satisfied the statutory requirements and that as soon as my decision D/8/94 clarified the statutory requirements they responded to the request.

31. On the other hand I have to take account of the fact that the request came from a member with an immediate and direct interest in the elections and followed the partial publication of the results, that the union was clearly mistaken in its interpretation of its statutory obligation to provide copies of reports and that on a reasonable interpretation of words 'on request' a delay of nearly 6 months is unacceptable.

32. In the case of Complainant Two the request was made on 12 August and a delay of over a month before any reply was sent might be explained by the holiday season and the need to consider how to deal with the request for reports which had been archived. There was also a lapse of nearly two months before the union received a response to its letter of 19 September.

33. On the other hand this complainant did pursue his request with the union and argued that they could not make a charge unless it had been specified in a notification which it seemed the union had not issued. He also pointed out the important distinction between actual scrutineer's reports and the contents of such reports. In this case time was taken up by arguments on which the union was on very weak ground.

34. It is in the light of these points that I have concluded that, although some of the delay might be the fault of the complainants, sending reports to them on 6 January in response to requests dated 12 July and 12 August did not meet the union's obligation to provide reports "on request".

Conclusion and declaration

35. The union was obliged to send copies of the scrutineer's reports on its 1994 elections to the two complainants who requested them. In spite of the union's assertions to the

contrary I conclude that on the balance of probabilities reports were not sent to the first complainant on 13 July 1994. Sending reports on 6 January 1995 in response to requests dated 12 July 1994 and 12 August 1994 did not meet the requirement to send reports "on request".

36. In the light of these findings I therefore make the following declaration:

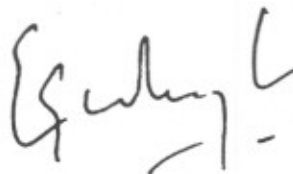
I declare that the Civil and Public Services Association breached the requirements of section 52(6) of the 1992 Act by ~

failing to meet the request of the two complainants to provide them with copies of the scrutineer's reports on the 1994 elections for its President, Vice-Presidents and National Executive Committee.

Remedies

37. No material damage was done by this breach of the legislation. The outcome of the election was not affected, the contents of the reports - if not the actual copies - were available to the complainants and all union members within 6 weeks of the first request and two weeks of the second. No material differences existed between the published contents and the actual reports. Copies of the actual reports were eventually provided to the two complainants. No further action is required by the union in respect of these complaints.

38. I am pleased to note that the union has advised all members through its journal 'Red Tape' that copies of the scrutineer's reports on the 1994 elections, the contents of which were relayed to them in the September 1994 edition, will nonetheless be available to any member for the payment of a specified fee. It is also their intention in future years to ensure that this information is published in Red Tape along with the full contents of the scrutineer's reports.



E G WHYBREW
Certification Officer