

DECISION OF THE CERTIFICATION OFFICER ON
COMPLAINTS MADE UNDER SECTION 4 OF
THE TRADE UNION (AMALGAMATIONS, ETC.) ACT 1964

I McLAREN AND S A OGNALL

AND

THE ASSOCIATION OF CINEMATOGRAPH TELEVISION
AND ALLIED TECHNICIANS

I. Mr. I. McLaren and Mr. S. A. Ognall, who are members of the Association of Cinematograph Television and Allied Technicians ("the Union") and respectively chairman and shop steward of the Scottish Television Shop of the Union, have made complaints to me under section 4 of the Trade Union (Amalgamations, etc.) Act 1964 ("the Act") about the conduct of a ballot held during July and August 1978 on a resolution to approve an instrument of amalgamation between the Union and the Association of Broadcasting and Allied Staffs.

2. The complaints are that three members of the Union in the Scottish Television Shop who were in arrears with their subscriptions voted on the resolution, contrary to the Union's rules. By implication it is alleged that other members in the same or different branches of the Union who voted may also have been in arrears and accordingly that the breach of rules may have been widespread.

3. The relevant parts of Rules 14 and 19 of the Union's rule book read as follows:

"RULE 14

Paid-up Members: The expression "paid up member" shall denote any member who is not more than eight weeks in arrears unless such arrears shall have been excused by the General Council....."

"RULE 19

Voting Rights: All paid-up members of the Association, excepting as qualified by Rules 18 and 60, shall, subject to the Rules of the Association, have an equal voice in all concerns thereof"

I agree with the contentions of the parties that the combined effect of these two rules is that members over eight weeks in arrears are not entitled to vote on those decisions of the Union in respect of which the rules provide for a vote of the membership.

4. The Union agreed that members more than eight weeks in arrears had voted on the resolution to approve the instrument of amalgamation. Speaking on behalf of the Union Mr. Sapper, the General Secretary, said that such members had deliberately been given a vote on legal advice that to omit them would be contrary to the provisions of the Act. There is therefore no dispute as to the facts of the complaint and the point at issue is entirely a matter of law.

5. The drafting of Rule 15, which deals with expulsion from membership for arrears of subscriptions, is not entirely clear, but the correct construction is in my view that membership of the Union cannot come to an end unless either the Committee of the local branch to which the member belongs

or the General Council of the Union "erases" or "lapses" the member in question. The parties agreed that this was the correct construction to be placed on the rule but gave evidence that in practice erasing or lapsing was only done by the General Council. Rule 16 requires only persons who have been "lapsed" or "erased" to re-apply for membership and it follows that members who are simply in arrears and have not been "lapsed" or "erased" remain members. It is not alleged that any action to "lapse" or "erase" the three members in question had been taken, indeed the complainants agreed that at the time of the ballot they were members. I therefore find that at the time of the ballot they were members of the Union.

6. Section 1(2)(a) of the Act lays down, as one of the conditions necessary for an amalgamation, that:-

"every member of the union must be entitled to vote on the resolution (approving the instrument of amalgamation)."

Section 2(1) and (2) read:

"2(1) Section 1 of this Act shall apply in relation to every amalgamation or transfer of engagements notwithstanding anything in the rules of any of the trade unions concerned or in the following provisions of this section.

(2) For the purposes of the passing of a resolution to approve an instrument of amalgamation or transfer, the committee of management or other governing body of a trade union shall, unless the rules of that union

occasions considered complaints under the Act which gave rise to issues similar to those raised by the present complaint. In Johnston and Sabino and the Electrical Trades Union (reported in Part 4 of the Chief Registrar's Report for 1968), the facts of which closely resemble those of the present complaint, it was alleged that members who certain matters under the Union's rules had been permitted to vote on the issue of amalgamation between the Union and the Plumbing Trades Union. In Crook and the Amalgamated Society of Lithographic Printers and Auxiliaries thereto of Great Britain and Ireland (reported in Part 4 of the Chief Registrar's Report for 1969) it was alleged that certain apprentices and superannuated members of the Society had voted on the transfer of the Society's engagements to the National Graphical Association contrary to the Society's rules. The Chief Registrar dismissed both complaints.

8. There is in my view no doubt that "every member" means every member and I adopt the words of the Chief Registrar in his decision on the Crooks complaint where he said, at paragraph 6, "I have no doubt that Parliament intended that every member with an interest in the union should have the right to cast his vote on such an important matter as an amalgamation or transfer of engagements". In my opinion the effect of section 2(1) is to ensure that the provisions of section 1

of the Act take precedence over the rules of unions and section 2(2) gives the union's committee of management a complete discretion to make such arrangements for voting as it thinks fit, whatever the rules may prescribe for the conduct of the normal business of the union. It follows that in this case the General Council of the Union was entitled to act in contravention of the Union's rules in making its arrangements for voting and, more generally, that if the requirements of section 1 of the Act and the rules of a union are in opposition, its committee of management must act in contravention of the rules if the union is to comply with the provisions of section 1.

9. Rule 87 of Union's rule book reads:

"Amalgamation: Amalgamation with any other Union shall only be with consent of the members voting by ballot upon the question and as provided by law."

I think it is arguable that this rule creates an exception to the voting requirements of the remainder of the rules so that the qualification of having to be a "paid up" member in order to vote does not, even under the rules, apply to a vote on a resolution of amalgamation. However, in view of the conclusions I have already reached it is unnecessary for me to decide this.

10. I therefore dismiss the complaints.