

D/1/90

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

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IN THE MATTER OF A COMPLAINT AGAINST THE  
SELF-EMPLOYED AND EMPLOYED ELECTRICIANS ASSOCIATION

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DATE OF DECISION

10 July 1990

DECLARATION

Under section 5 of the Trade Union Act 1984 (the Act) I am empowered 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. In making a declaration, I am required to specify the provisions with which the trade union has failed to comply.

For the reasons which follow I declare that the Self-Employed and Employed Electricians Association failed to comply with section 1(1) of the Act, in that the Association failed to ensure that each member of the Association's principal executive committee was elected to that position.

The Application

1. On 2 March 1990 I received a complaint from a member of the Self-Employed and Employed Electricians Association alleging that the Association had failed to supply him with information about its principal officers. In further correspondence the complainant asserted that no elections had been held for membership of the principal executive committee of the Association, nor for the positions of General Secretary or President.

The Facts

2. The Association is a listed trade union which appears to have been formed on 31 March 1986. The General Rules of the Association provide in Rule 4 that "The general management and control of the Association and the handling of the

whole of its affairs shall be vested in the Executive Committee...". The Association did not dispute that the Executive Committee is their principal executive committee, nor that the members of the Executive Committee were self-appointed when the Association was formed and have not since undergone any form of election. By Rule 3(1) the Association's Executive Committee consists of the President, General Secretary, Treasurer and three other members.

### Reasons for making the Declaration

3. Section 1(1) of the 1984 Act provides -

"... 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 its principal executive committee holds that position by virtue of having been elected as such a member ...; and

(b) that no person remains such a member for a period of more than five years without being re-elected at such an election".

4. The 1984 Act clearly applies to the Association and a declaration must be made unless the Association can show that it is exempt in some way. The Association submitted that the 1984 Act was intended to ensure that existing unions elected their principal executive committee every five years and that, as the Association was formed after the commencement of the Act, they did not need to hold such elections until five years after formation.

5. In my view that is not the effect of the relevant provisions. Sub-section 1(1)(b) of the Act makes clear that the five year period is the period after which, at the latest, a member of a union's principal executive committee must submit himself for re-election. There is no reference here to first election. Moreover, the Association's argument overlooked the fact that sub-sections 7(4), 7(5) and 7(7) of the Act expressly deal with the position of newly-formed unions. They provide as follows:-

"(4) This Part does not apply to a trade union at any time when the conditions mentioned in subsection (5) below are satisfied in relation to it.

"(5) The conditions are that -

(a) the trade union was formed after the commencement of this Part;  
and

(b) not more than one year has elapsed since its formation.

"(7) Where a trade union is formed otherwise than by amalgamation under the 1964 Act, the date of its formation shall be taken, for the purposes only of this section, to be the date on which the first members of its principal executive committee are first appointed or, as the case may be, elected to that committee."

6. The effect of these provisions is that the "period of grace", as it were, for a newly-formed union is one year. The name of the Association was entered by me on the statutory list of trade unions on 5 October 1987; and I note from my records that the Association's application for listing stated that the Association was formed on 31 March 1986. It is clear that the one year period has long expired, and I therefore make the declaration sought. The complainant drew my attention particularly to the positions of General Secretary and President. Under Rule 3 of the Association, the persons holding those positions are members ex officio of the Executive Committee and they fall within the terms of this declaration accordingly.

#### Remedial steps, and Observations

7. The Association appear to have been under the mistaken impression that they were not obliged to hold the elections required by the 1984 Act until 5 years after the Association's formation. It is a matter for regret that those in charge of the Association did not take steps to clarify the position when the complainant specifically raised the matter with them by letter in September 1989. However, they have now said that they will hold elections for membership of the Executive Committee forthwith; and I have been informed that nomination papers were sent out on 11 June with a view to completing the elections during this summer.