

D/6/87

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

Applicant: MS T SHEARS

Trade Union: NATIONAL AND LOCAL GOVERNMENT
OFFICERS ASSOCIATION

DATE OF DECISION: 18 August 1987

DECISION

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

For the reasons set out below I make the following declarations:

A. I declare that, in relation to the 1986 election of a Junior Vice-President, the National and Local Government Officers Association (NALGO) failed to comply with section 2(1) of the Act in that entitlement to vote in the election was not accorded equally to all members of the Association.

B. I also declare that, in relation to the 1986 elections of the Chairpersons of six of the Association's National Service Conditions Committees, by virtue of which they became voting members of NALGO's National Executive Council, the Association failed to comply with section 2(1) of the Act

in that entitlement to vote in the elections was not accorded equally to all members of the Association.

The Applications

1. This decision concerns applications under section 5 of the Act made to me in May 1987 by Ms T Shears, a member of NALGO. Ms Shears' first complaint was that the election of a Junior Vice-President in June 1986 was held in accordance with the Association's rules which provided for a branch block voting system and therefore did not comply with the Act. Her second complaint was that the method of election of the Chairpersons of six of the Association's National Service Conditions Committees, who took office in June 1986 as ex-officio members of NALGO's National Executive Council, excluded the individual members they represented from entitlement to vote and therefore did not comply with the Act.

The Facts

2. The basic facts relevant to these two applications are not in dispute. The National Executive Council of NALGO (the Council) is its principal executive committee. The Council is constituted under NALGO's rule 66 and includes, ex-officio, the Junior Vice-President who is a voting member of the Council by virtue of his Office. NALGO acknowledged that in 1986 there was a contested election between two candidates for this Office but said that each was in his personal capacity already a directly elected district representative on the Council. The election of the Junior Vice-President was carried out in accordance with Rule 60 which allowed each branch of NALGO a single vote multiplied by the number of members in that branch. In short, the process was an example of branch block voting. NALGO acknowledged that there was no standard procedure for ascertaining the views of all the members of each branch before the branch cast its vote.

3. The National Executive Council also includes, ex-officio, any Chairperson of a National Service Conditions Committee of NALGO who has not been directly elected to membership of the Council as a district representative. There are eight National Service Conditions Committees in NALGO, covering eight membership groups by industry or service. The Chairperson of each National Service Conditions Committee is elected by the members of that Committee. For the year following NALGO's Annual Conference in June 1986, the Chairpersons of six of the National Service Conditions Committees became ex-officio voting members of the Council. None of them had been elected to the Council by the ordinary membership of the Association.

Reasons for making the declaration concerning
the Junior Vice-President

4. NALGO concentrated their argument before me on two submissions. First, they asked me to reconsider the conclusion that I had reached last year in one of my decisions in the case of ALAN PAUL -v- NALGO (Decision D/9 of 1986). My conclusion then was, in short, that the Honorary Officers of the Association were voting members of the Council in their capacity as Honorary Officers regardless of the votes that they were entitled to cast by virtue of direct election as district representatives on the Council. NALGO continued to maintain that as a matter of long-standing practice no member of the Council votes more than once on any issue. However, when I last considered the question I found nothing in the Association's rules that supported that practice. However, I did find evidence that an ex-officio member could continue to maintain his or her position on the Council even after ceasing to be a directly elected member, which seemed to me then to confirm the entitlement of ex-officio members of the Council to vote in their capacity as ex-officio members. I find no reason now to alter my earlier conclusion.

5. Secondly, NALGO sought to persuade me that the application of Ms Shears should be rejected as vexatious or pointless because it was not made until 11 months after the Junior-Vice President had taken up his position on the Council, when he

had only one month left to serve in that Office. I cannot accept that submission. Section 5(2) of the Act makes it plain that the applicant was entirely within her rights to make her application when she did. That being so, it is appropriate that I should enquire into the complaint and, if I find that a breach of the Act did occur, make a declaration accordingly.

6. I turn, therefore, to the substance of the complaint. Section 1(2) of the Act required NALGO to ensure that the Office of Junior Vice-President, by virtue of which the holder automatically had a voting position on the Council, should be filled by an election which complied with the requirements of section 2. Section 2(1) of the Act says that, subject to certain exceptions none of which applies in this case:-

"Entitlement to vote at the election must be accorded equally to all members of the trade union in question"

It is evident that that provision was not complied with in 1986. There was no process by which all the membership of NALGO was guaranteed a say in the choice of Junior Vice-President in the 1986 contested election. The system of branch block voting imposed by Rule 60 denied individual members their entitlement to a direct vote. Accordingly I find that NALGO failed to comply with section 2(1) of the Act.

Reasons for making the declaration concerning the Chairpersons of the National Service Conditions Committees

7. NALGO did not seek to maintain that the inclusion on the Council of the Chairpersons of six of the National Service Conditions Committees was compatible with the provisions of the Act. Instead they sought to defend the system as it stood as an essential means of ensuring adequate representation on the Council of the Association's various industry or service groups. On that issue I make no comment; my duty in relation to the complaint made is simply to determine whether or not the Association complied with the provisions of the Act. NALGO also invited me to refuse to make the declaration sought

by Ms Shears because 11 months had elapsed between the appointments in question and the date of her complaint. As I have already indicated in paragraph 5 of this decision, I cannot accept that submission.

8. All six Chairpersons who took up voting positions on NALGO's Council in June 1986 did so solely by reason of their holding the chair of a National Service Conditions Committee. Section 1(2) of the Act therefore required the Association to ensure that the provisions of section 2 were complied with in relation to their election as Chairpersons. However, it is clear that the ordinary membership had no say in who should be the Chairpersons of the National Service Conditions Committees and therefore no say in who took up these ex-officio voting positions on the Council. I find therefore that in the appointment to NALGO's Council in 1986 of the Chairpersons of six of the Association's National Service Conditions Committees there was a failure to comply with section 2(1) of the Act.

Remedial Steps

9. I discussed my findings with the Deputy General Secretary of NALGO and two of his colleagues.

10. The first complaint concerned the 1986 election for the Office of Junior Vice-President 1986/87. The period of tenure of that Office expired on 12 June 1987, and the current Junior Vice-President was elected unopposed. Strictly speaking, therefore, on this issue there is no current breach of the Act that needs to be remedied. It is evident to me, however, that should similar circumstances arise in the future the operation of NALGO's Rule 60, which provides for branch block voting in the event of a contested election for the Junior Vice-Presidency, would result in a breach of the Act. The plain fact of the matter is that branch block voting for ex-officio voting members of NALGO's Council is incompatible with the Act, and in my judgement therefore, Rule 60 needs to be changed if NALGO wishes to ensure future compliance.

which concerned chairpersons of National Executive Committees, was that the representatives of the Association sought to defend what I hold to be a clear breach of the Act by saying, in effect, that the Association had so far been unable to come up with any changes on this particular matter that would meet the essential needs of what they regarded as NALGO's unique organisation and structure. However, the Deputy General Secretary thought that on this matter it might be possible to make simple changes to comply with the law as it stood, at least as a short-term measure pending further consideration. Again, the Association's representatives were not empowered to give any commitments at this stage but would report my findings to the National Executive Council.

Observations.

12. Whilst appreciating that changes to any organisation's rules and procedures can present difficulties, I feel bound to point out that the provisions of Part I of the Act came into effect as long ago as October 1985. Moreover, complaints similar to those dealt with in this decision were made in 1986 but, solely for technical reasons, I was unable then to make the declarations sought. Despite that forewarning, so far as concerns the matters raised by Ms Shears it appears to me that NALGO have as yet taken no steps to modify their procedures so as to ensure compliance with the Act. They therefore leave themselves vulnerable to legal action by any member wishing to seek, where appropriate, an enforcement order from the Courts.