

STATEMENT OF THE REASONS FOR A DECISION OF THE
CERTIFICATION OFFICER ON A COMPLAINT MADE UNDER
SECTION 4 OF THE TRADE UNION (AMALGAMATIONS, ETC.)
ACT 1964

A D MILLAR
AND
THE NATIONAL UNION OF
AGRICULTURAL AND ALLIED WORKERS

Date of hearing	29 April 1982
Date of decision	30 April 1982

The complainant appeared in person.

The Union was represented by Mr J Burke, Counsel, instructed by
Messrs Lawford and Co.

1. Mr A D Millar was at the time of the hearing a member of the National Union of Agricultural and Allied Workers ("the Union"). He was also the branch secretary of two branches, the chairman of the North Cumberland District Committee and the chairman of the North West Area Committee of the Union. He complained to me under section 4(1) of the Trade Union (Amalgamations, etc.) Act 1964 ("the Act") about a ballot held between 13 and 25 January 1982 on a resolution to approve an instrument of transfer of the engagements of the Union to the Transport and General Workers' Union.

2. Mr Millar and the committees on which he sat were opposed to the proposed transfer. He said that he was complaining to me on his own behalf and also on behalf of the North West Area Conference, the North West Area Committee and the five District Committees falling within the North West Area.

The Complaint

3. His complaint was that the manner in which the vote on the resolution was taken did not satisfy the condition specified in section 1(2)(b) of the Act that every member of the union must be allowed to vote without interference or constraint. The interference and constraint were, he said, contained in a passage in a letter signed by the General Secretary of the Union, Mr Jack Boddy, and sent to each member of the Union with the ballot paper. The passage was headed "NUAAW Financial Position" and it read as follows:-

"The Executive Committee has asked me to place the financial position of the NUAAW squarely before you as at November 1981.

Our investments were £470,000 in 1960. They are now £98,979. We have a Bank overdraft of £22,594. This position has come about despite considerable cuts in staff. In 1982 the NUAAW will have the additional costs of the ballot (about £30,000) and the Biennial Conference (about £50,000).

In 1981 we had an unprecedented rise in contribution rates which went up from £1.45 to £2.00 per month (they will go up to £2.20 in February) and

we had no exceptionally large items of expenditure. Yet by the end of November 1981 expenditure for the year for the normal functions of the Union still exceeded income by £5,500. That is, although the grim deficit of 1980 which amounted to £134,458 has not been repeated - the financial position has continued to get worse.

With our membership continuing to decline and inflation continuing to soar, our financial advisers have told us that the Union requires a surplus of £150,000 per year in order to replenish our investments and stave off the serious financial crises which would mean even more drastic cuts in services to the membership".

4. Mr Millar stressed that he was not saying that the figures quoted in the passage were inaccurate, but that they were not explanatory enough. Other figures and additional information would have given a fairer picture of the financial position. For instance, there was no indication of the reasons for the drop in the total amount of investments over the period 1960 to 1982; there was no figure quoted to show the current assets of the Union; and there was no forecast of the expected effects of the increase in the contribution rate due in February 1982. As to the information which did appear in the passage, he particularly objected to the use of the figure of £5,500 as the amount by which expenditure for the year for the normal functions of the Union exceeded income by the end of November 1981. He said that this was an unaudited mid-quarter figure which was a convenient estimate and a compelling influence for a "yes" vote.

5. Mr Millar did not dispute the fact that the financial position of the Union had deteriorated and he agreed with Mr Burke, who represented the Union, that the audited accounts showed a larger deficit than £5,500 so that if the statement had been delayed until the accounts had been available it would have shown a worse rather than a better picture. Mr Millar contended, however, that although the full audited accounts for 1981 might not have made any difference to the voting if they had been available at the time of the ballot, they were nevertheless not before the members when they voted and were in that sense not relevant to his complaint. He said that the financial report in the letter was produced to influence the ballot and was sufficient to have some effect on the ballot.

The figures were presented in a biased fashion in such a way that they were misleading and amounted to interference or constraint.

The Decision

6. Having heard Mr Millar explain his complaint it is clear to me that the matters which concerned him could not amount to a breach of the condition in section 1(2)(b) of the Act that every member of the union must be allowed to vote without interference or constraint. The condition does not prevent a union from recommending its members to vote one way rather than another, nor does it prevent the union from supporting that recommendation by providing members with such information as it thinks appropriate. Under the Act members must be supplied with a copy of the instrument of transfer itself or with a sufficient account of its main effects and this ensures that they are alerted to the effects of the transfer, but the Act sets no boundaries to the additional information which may be revealed to members as background. Nor is there any requirement that members should be informed of the case against the union's recommendation if they are told the case in favour of it. In other words there is no requirement that the literature sent to members before the vote should be "balanced" in an objective sense.

7. This is therefore another complaint which has arisen as a result of a misunderstanding of the meaning of the words "interference or constraint". Mr Millar is not the first union member to find these terms confusing. I can only repeat the remarks I made in my decision on the complaint of G Clare and the Eagle Star Staff Association:-

"The condition is that 'every member of the union must be allowed to vote without interference or constraint'. It is aimed primarily at intimidation, physical interference and the like. It does not prevent unions from advising or seeking to persuade their members to vote one way rather than another; indeed, it is common practice for them to do so. Further, a statement made to persuade members to vote one way rather than another does not in my view amount to an 'interference or constraint' merely because it is exaggerated, misleading or inaccurate. I do not rule out the possibility that in some circumstances a blatant untruth or

a seriously misleading statement could amount to an 'interference or constraint' under the Act, for instance if it affects members' freedom to vote or their freedom to vote as they please".

The condition therefore does not cover a complaint such as Mr Millar's where there is no allegation of any interference with members' freedom to vote, but rather an allegation that the information sent to members was not in a form which was considered fair by some of those who opposed the proposal to transfer. That cannot amount to "interference or constraint".

8. I would add that I am satisfied that none of the evidence produced at the hearing showed that the financial passage in the letter to members was in fact misleading. Mr Millar did not question the accuracy of the figures used. I have considered his contention that the passage was insufficiently explanatory and that additional information would have given a fairer picture of the financial position. I do not consider it unreasonable that a document of this sort should contain only a selection of the financial information available. Mr Millar did not convince me that the addition of other items would have materially affected the impression given by the passage that the Union was in financial difficulties. Indeed, the Union's financial position was not in dispute at the hearing. As to the figure of £5,500 to which Mr Millar particularly objected, Mr Boddy the General Secretary of the Union explained that this figure was used because he was asked at an Executive Committee Meeting to give updated financial information to the members. The most updated financial information available before the letter was printed in time to be sent out with the ballot paper on 4 January 1982 was the monthly financial statement prepared by the finance department of the Union and showing the position as at 30 November 1981. The figure of £5,500 was taken from that statement.

9. For these reasons I dismissed the complaint.