

D/3/90

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

IN THE MATTER OF A COMPLAINT AGAINST THE
SOCIETY OF GRAPHICAL AND ALLIED TRADES 1982

DATE OF DECISION

5 October 1990

DECLARATION

Under section 5 of the Trade Union Act 1984 (the 1984 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 1984 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 Society of Graphical and Allied Trades 1982 has failed to comply with section 1(1) of the 1984 Act, in that the Society -

- (i) has failed to secure that Mr D Sergeant, a non-voting member of the Society's principal executive committee to whom the provisions of section 1 of the 1984 Act were extended by virtue of section 12(1) of the Employment Act 1988 (the 1988 Act), did not remain a member of that committee for more than five years after his election as General President of the Society without having been re-elected in accordance with Part I of the 1984 Act.
- (ii) has failed to secure that Mr E O'Brien and Mr F Smith, each a non-voting member of the Society's principal executive committee to whom the provisions of section 1 of the 1984 Act were extended on 26 July 1989 by virtue of section 12(1) and (3) of the 1988 Act, did not

remain as members of that committee after that date without having been elected in accordance with Part I of the 1984 Act.

The Application

1. On 26 March 1990, following earlier correspondence, I received a formal complaint from a member of the Society of Graphical and Allied Trades 1982 alleging that the Society had failed to ensure that three members of its principal executive committee had been elected to their posts within the last five years. The three named were Mr D Sergeant, General President; Mr E O'Brien, General Officer; and Mr F Smith, General Officer.

Jurisdiction

2. The Society denied that this particular applicant was a member of the Society and challenged his right to make an application under the 1984 Act. Section 5(1) of the 1984 Act, which confers the right to apply to me, provides-

"A person who claims that a trade union has failed to comply with one or more of the provisions of this Part ... may apply to the Certification Officer or to the court for a declaration to that effect if -

(a) ...

(b) in any other case, he is a member of the union at the time when the application is made".

3. "Member of the union" is not defined in the 1984 Act. However, I do not think that membership of a trade union is different in nature from membership of other kinds of association. The members are the people who together form the association, and the details of their relationship with each other and with the association as a whole are laid down in the rules of the association, possibly amplified by custom and practice. It seems to me therefore that there are two questions I must consider -

(a) is the applicant a member (of any kind) of the union under the terms of its rules and practice, and if so what kind of member is he?

(b) if he is a member other than a full or ordinary member, does section 5(1) allow an application by him?

4. I established that the applicant had been a member first of NATSOPA and then of the Society from 1936 to 1986, when he retired from work. On his retirement he was given a certificate, carrying the signature of the Society's General Secretary, which states "This is to certify that [the applicant] having completed at least 20 years' full membership has been granted free membership".

5. This certificate appears to follow from Schedule B to the Society's rules which provides (on page 55 of the Rule book) -

"All members retiring from the trade union on reaching the age of 60 who have completed 20 years' continuous full membership inclusive of sick contributions, shall be enrolled as honorary over-age members and be exempted from any further payment. They shall be eligible for funeral benefit".

6. The other main benefit available to the applicant is the entitlement to convalescent benefit, ie. the right to convalesce after illness in one of the two homes run for this purpose by the Society. Rule 26(1) provides in part:- "Registered retired free members ... shall only be granted this benefit during the winter period, ie. October to April. This shall also apply to the spouses of such members and to the widows or widowers of such members".

7. The applicant conceded that he is not accorded a vote within the Society's structure and has no say in its administration.

8. Rule 4(1) of the Society's Rules provides -

"The Society shall consist of all those persons in the Printing, Graphical, Paper, Board, Conversion, Media Personnel and Allied Trades".

Rule 3 of the Society's Rules provides -

"Where 'full member' appears in these Rules it shall mean members free to all benefits in accordance with their scale including unemployed members who are signing the book and not working and whether or not they are seeking work at the trade in receipt of benefit or have exchanged their entitlement, but will not include Retired, Out-of-Trade and Honorary members ...".

9. The first question to be decided is whether the applicant is a member of the Society. The Society's argument on this is conveniently summarised in a letter to my office dated 21 June 1990.

"With all due respect to [the applicant's] application to you, in my view it cannot come within the ambit of the 1984 nor the 1988 Act. Parliament intended these pieces of legislation for trades unions and working members. [The applicant], since his retirement from work and from this Society, cannot have any say in this Society's affairs and similarly the Society has no hold over him under the Rules. [The applicant], for instance, cannot hold any office or become a candidate for any elected position. He pays no contributions at all, and cannot be disciplined in any way. The general constitution of this Society is for members who are working in the trade and in my view Parliament intended that the legislation should cover that category of member and not ex-members and persons over 65 years of age who have long since retired and [are] in receipt of a state pension".

10. I am not persuaded by these arguments. In my judgment the applicant is a member of the Society, though not a full member under Rule 3. He is bound by the Society's rules to the extent that they deal with matters relevant to his kind of membership. His status and entitlements are governed by the rules, which describe him variously as a retired free member or honorary over-age member and confer rights to funeral benefit and convalescent benefit. His present exemption from contributions is conferred expressly under the rules. His relationship with the Society is one for which the Society's own rules use the term "member", albeit a particular category of member.

11. The second question to be decided is whether a retired member in the applicant's position can make an application under section 5(1). I start by observing that section 5(1) seems to me to embody a simple principle. The 1984 Act imposes a statutory duty to hold elections and those within the union are to have the right of complaint. Those outside it are not. Such a principle does not, at first sight, appear to require any special or narrow meaning to be given to the word "member".

12. If one looks at the rest of Part I of the 1984 Act for further indications, it seems significant that section 2 provides, in subsection (1), that entitlement to vote in elections must be accorded equally to all members, subject to certain classes which may be excluded. Subsection (2) lists the classes as:- members who are not in employment; members who are in arrears in respect of subscriptions or contributions due to the union; members who are apprentices, trainees or students or new members of the union. This indicates that Parliament had in mind a meaning of "member" which, for example, could include members who are unemployed or retired. Moreover, while a union may exclude such classes of members from entitlement to vote in elections, it is not obliged to. The right of complaint in section 5(1) contains no exclusion or limitation similar to section 2(1); nor does it say that the member must be in work or enjoy voting rights. This is consistent with the idea that section 5(1) simply embodies the principle that enforcement of the duties in Part I of the 1984 Act is a matter only for those within the union, and not for non-members. Finally, the union's interpretation would mean that only working members of a union could complain of a failure to maintain an accurate and up-to-date register of names and addresses under section 4(1), and I can see no logic in that result.

13. My conclusion is that I cannot agree with the Society that Parliament intended that the right of complaint should be restricted to "working members". I therefore have jurisdiction to hear and decide this application.

The Facts

14. The Society is a listed independent trade union. The General Rules of the Society provide in clause 4(a) of Rule 7 that "The National Executive Council shall have the management of the affairs of the Society...". The Society did

not dispute that the National Executive Council (NEC) is their principal executive committee.

15. Rule 7 clause 1 provides that "There shall be a National Executive Council comprising 36 representatives to be elected in accordance with Schedule A at the end of these Rules, together with the General Officers". Rule 11 clause 1 provides in part -

- "(a) The General officers shall consist of a President, Secretary, Organising Secretary, a General Officer with particular responsibility for papermaking, boardmaking and conversion industries, and four other General Officers, one of whom shall be Mr F Smith for the period of his employment with the Society. They shall be elected by a ballot of the whole membership and remain in office during the pleasure of the Society, as expressed through the Delegate Council ...
- (b) No official shall continue in office after reaching the age of 65 years.
- (c) The General Officers shall be responsible to, and under the directions of, the National Executive Council through the General Secretary".

16. Rule 12 provides that the duties of the General President include "to ... preside at all National Executive Council Meetings, with the right to speak on all questions". Rule 16 provides in part that "The four General Officers shall deal with matters under the direction of the National Executive Council through the General Secretary".

17. I hold copies of annual returns submitted by trade unions under the Trade Union and Labour Relations Act 1974. The Society's return for 1985 show that Mr Sergeant was appointed General President on 6 April 1985. At that time the Society's rules provided, as they do now, that appointment was conditional on election by the membership and the Society have confirmed that Mr Sergeant was elected to the post of General President in March 1985.

18. The present union was formed as a result of an amalgamation between the Society of Graphical and Allied Trades 1975 and the National Society of Operative Printers Graphical and Media Personnel which took effect on 5 July 1982. The Instrument of Amalgamation held at this Office shows that, after the amalgamation, Mr E O'Brien was to be a General Officer of the amalgamated union and that Mr F Smith "shall be on no less favourable terms and conditions of employment and status than of a General Officer". The Society have stated that both were elected to equivalent positions some time before 1982. It seems that both have held their positions continually since the amalgamation. The current version of clause 1(a) of Rule 11 does not distinguish Mr Smith's position from that of General Officer.

Reasons for making the Declaration

19. 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 at an election [complying with the legislation] 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".

20. The Society argued that none of the three officers named in the complaint is a member of the NEC. The Society also told me that none of them has a vote on the NEC. In discussions with the Society it became clear that none of the three fell within the transitional provision for full-time employed officials who were within two years of retirement on 26 July 1989 (although Mr O'Brien is due to retire in January 1992 and Mr Smith in December 1993).

21. Mr Sergeant, General President. Having regard to the terms of Rule 7 clause 1, and Rule 12, I do not think there is any doubt that Mr Sergeant, as General President, is a member of the NEC. In any case, had there been any

doubt, the deeming provision in section 1(6B)(a) of the Act (inserted by section 12(1) of the 1988 Act) would settle the matter.

22. As Mr Sergeant is a non-voting member of the NEC, the Society was under no duty before 26 July 1989 to ensure that he held his position by virtue of an election complying with Part I of the 1984 Act. When the amendments made by section 12(1) of the 1988 Act came into force, Mr Sergeant was covered by the transitional provision in section 12(3) as he had been elected to the position of General President less than five years earlier. It was therefore unnecessary for the Society to arrange an immediate election. However, the benefit of that transitional provision ran out on the fifth anniversary of Mr Sergeant's original election, that is in March 1990. The Society had a duty to secure that Mr Sergeant did not remain as General President after that date without being re-elected in accordance with Part I of the 1984 Act. No fresh election was held at that time, or has been held since. I therefore make the declaration sought.

23. Mr O'Brien and Mr Smith, General Officers. The Society's argument was summarised in a letter to me dated 12 September 1990 from the General Secretary, as follows -

"Could I confirm that both Mr O'Brien and Mr Smith, as with our other General Officers, do not participate directly in policy making at our Executive Council. Neither of them have a vote, and the only matters they speak at the Executive Council on are in regard to trade sectors which they deal with in their day to day work. I am responsible for all reports to the Executive Council, and each of my two colleagues are invited by me to answer any technical points in regard to the industries for which they have responsibilities."

24. Subsection (6A) of section 1 of the 1984 Act, as inserted by section 12(1) of the 1988 Act, provides -

"(6A) For the purposes of this section a person is a member of the principal executive committee of a trade union if he is a voting member of that union's principal executive committee or [subject to irrelevant exceptions] if -

- (a) that person is, under the rules of the union, a member, other than a voting member, of that committee (whether by virtue of his holding any position in the union or otherwise); or
- (b) that person may, under the rules or practice of the union, attend and speak at some or all of the meetings of that committee otherwise than for the purpose of providing the committee with factual information or with technical or professional advice with respect to matters taken into account by the committee in carrying out its functions".

25. I note what the union says about how these officers participate in practice, but I am required first to look at the rules of the Society. Rule 7 clause 1 clearly provides that the NEC is comprised of 36 representatives and the General Officers. That can only mean that the General Officers are members of the NEC, albeit non-voting members. I bear in mind the provisions of Rule 11 clause 1(c), and Rule 16, to the effect that the four General Officers, of which Mr O'Brien and Mr Smith are two, are responsible to the NEC through the General Secretary. However, there is no anomaly in the idea that a person who reports to a committee may have a seat on that committee. I can see in the Society's rules no indications that the General Officers are not members of the NEC, let alone any indication sufficiently clear to indicate that the reference in Rule 7 clause 1 is an inconsistency or drafting slip and must be ignored. I therefore consider Mr O'Brien and Mr Smith to be members of the NEC within the terms of subsection (6A)(a) of the 1984 Act and that the duty to hold elections applies.

26. It follows that no question arises as to whether Mr O'Brien and Mr Smith fall within the exceptions for advisers on solely factual or technical matters in subsection (6A)(b).

27. Subsection (6A) came into force on 26 July 1989. Unlike Mr Sergeant, neither Mr O'Brien nor Mr Smith had been elected to their positions during the previous five years. The Society therefore came under an immediate duty at that time to hold elections in their cases but no such elections were held, then or since. I therefore make the declarations sought in their cases.

Remedial steps

28. The Society explained that they plan to merge with the National Graphical Association (NGA) and that the intended effective date of the merger is 1 July 1991. The intention is that as part of the merger process the General Presidents of the two unions will contest an election for the Presidency of the new union during the second quarter of 1991. The Society argued that such an election would remedy any breach regarding Mr Sergeant, albeit in some six months' time or so. No proposals were made with regard to Mr O'Brien and Mr Smith.

Observations

29. I would accept that holding an election now for the position of General President of the Society shortly before the "run off" election for the presidency of the new merged union would be highly inconvenient and might, indeed, be difficult to arrange in the time available. However these are difficulties of the Society's own making. The 1988 Act was passed on 26 May 1988 and it was abundantly clear at the time that union presidents were expressly covered by the new provisions. If the Society had cared to look into the matter it would have had ample time to realise that an election for the position of General President would be required around March 1990 at the latest, when the intended merger would still be over a year away. There is a further difficulty. I understand that the only member of the Society able to stand in the proposed election for the presidency of the new union would be Mr Sergeant. I feel bound to observe that it is hard to see how such an election would satisfy the requirements of section 2(9) of the 1984 Act which provides that "No

member of the trade union in question shall be unreasonably excluded from standing as a candidate at the election".

30. In the case of Mr O'Brien and Mr Smith, it is perhaps easier to understand how the Society came to a mistaken view that these General Officers were not covered by the provisions introduced by the 1988 Act. It is to be hoped that the Society will now take steps to rectify the matter by holding the necessary elections as soon as possible.