

D/6/86

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

Applicant: O SNEL

Trade Union: ASSOCIATION OF CINEMATOGRAF, TELEVISION AND
ALLIED TECHNICIANS

DATE OF DECISION

17 July 1986

DECLARATION

Under section 5 of the Trade Union Act 1984 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 union has failed to comply.

For the reasons which follow, I declare that in relation to the election, held on 23 March 1986, of 8 members of the Executive Committee of the Association of Cinematograph, Television and Allied Technicians, the Association failed to comply with section 2(1) of the Act, in that they did not accord entitlement to vote at the election equally to all members of the Association.

The Application

1. I accepted Mr Snel's representations to me as an application under section 5 of the Trade Union Act 1984 ("the Act") on 9 April 1986. The essence of his complaint was that his Union, the Association of Cinematograph, Television and Allied Technicians

("the Association"), were required by Part I of the Act to allow the membership to vote in the election of voting members of their Executive Committee, but that in the election on 23 March 1986 only delegates to the Annual Conference had been given votes.

The Facts

2. The Association confirmed that there had been an election for voting members of their Executive Committee on 23 March 1986 and that only delegates to the Annual Conference had been given votes. They contended however that their principal executive committee was not, as Mr Snel thought, their Executive Committee but rather their General Council; and that therefore Mr Snel's complaint was ill-founded and should be dismissed.

3. I considered this point at a hearing. The Association's Rule 42 appears to place the day-to-day management of the Association in the hands of an Executive Committee while Rule 45 describes the General Council as the supreme policy-making body of the Association between Annual Conferences. The Association, however, based their submission first on a detailed examination of their Rules and second on what they maintained was the practice when the Rules about the functions of the Council and the Committee were applied. For the first, I was directed to a number of functions assigned by the Rules either exclusively to the Council or jointly to the Council and the Committee. Most of these functions, according to the Association, are executive in nature. As to the practical application of the Rules, the Association submitted that although the Committee has the management of the Association between the meetings of the Council, it is at all times subject to the authority of the Council and does in fact defer to the Council on virtually any decision of significance relating to the organisation and running of the Association. In other words, according to the Association, the Council is the most important of the bodies within the Association exercising executive functions both because of the number of such functions assigned directly to it under the Rules and because in all matters of substance where the Committee has such functions it subordinates itself to the will of the Council, so that it is with the Council

that real executive power resides. On this, I need only comment that it was clear to me that arguments could be adduced both for regarding the Executive Committee as the principal executive committee and for regarding the General Council as the principal executive committee.

4. The composition of the two bodies in question is relevant. The Executive Committee is made up of (i) 8 members elected at Annual Conference (it is to these people that Mr Snel's complaint refers); (ii) 29 members elected by the Divisions of the Association; (iii) 3 General Officers of the Association, who are elected at Annual Conference; and (iv) the General Secretary and organisers, none of whom has a vote in the Committee. The General Council is made up of members of the Executive Committee referred to in (i) and (ii) above, as well as representatives elected by certain committees within the Association, two Trustees, and the General Officers and General Secretary and organisers. It follows that election to a voting position on the Committee ensures the person so elected of a voting position on the Council as well.

Reasons for making the Declaration

5. Section 1(5) of the Act defines a principal executive committee as

".... the principal committee of the trade union exercising executive functions, by whatever name it is know."

Section 1(1)(a) places a duty on every trade union to secure

"that every person who is a voting member of the principal executive committee of the union holds that position by virtue of having been elected as such a member at an election in relation to which section 2 of this Act has been satisfied."

Section 2(1) 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 ...".

Finally, section 1(2) says that

"Where a person is a voting member of the principal executive committee of a trade union by virtue of holding some other position in that union, subsection (1) above shall apply as if references to a voting member of that committee were references to the holder of that other position."

It seems to me in the circumstances of this case that, whether the Council or the Committee is the principal executive committee of the Association, the effect of the provisions I have quoted is the same, and that in making this decision I do not need to choose between the two bodies as to which is the principal executive committee. If it is the Committee then undoubtedly those who have a vote in its affairs are subject to section 1(1)(a) in relation to their election to that position. If, on the other hand, the Council is the principal executive committee, then it seems to me that this is just the circumstance contemplated by section 1(2). Those who by virtue of being elected onto the Committee would come to hold voting positions on the Council are again subject to section 1(1)(a) in relation to their election to the Committee.

6. Consequently I do not accept the Association's submission that Mr Snel's complaint should be dismissed. I uphold the complaint. At the election on 23 March the Association failed to comply with section 2(1) of the Act, and I so declare.

Steps to be taken to remedy the declared failure

7. The Association have undertaken to make arrangements for their General Council to be elected in accordance with the provisions of the Act. My observations on this follow below.

Observations

8. This case is noteworthy for the disagreement between the applicant and the Association as to which body was the Association's principal executive committee. However, in any event it was clear, because of the composition of the two bodies, that the Association were in breach

have given me assurances that in future they
they failed to do for the 1986 elections, that is to conduct
elections for all voting members of their principal executive
committee in full conformity with the provisions of the Act. I
note that they have chosen to do so in relation to all voting
members of their General Council. Given the constitution of their
Council, this will necessarily include providing for such elections
for the voting members of the Executive Committee who vote on the
Council as of right. That seems to me a comprehensive solution.
In this connection the Association intend to hold a special rules
revision conference. Given the size and structure of their
General Council I recognise that the task of preparing appropriate
changes to their rules and procedures will be a major one. That
said, I accept the unequivocal assurances given me on behalf of
the Association that all the necessary steps will be undertaken
as soon as reasonably practicable.

Certification Office

for Trade Unions and Employers' Associations

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Press Notice

17 July 1986

DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE UNDER SECTION 5 PART I OF THE TRADE UNION ACT 1984 CONCERNING THE ASSOCIATION OF CINEMATOGRAPH, TELEVISION AND ALLIED TECHNICIANS

The Certification Officer today issued a decision on a complaint made under section 5 Part I of the Trade Union Act 1984 concerning the Association of Cinematograph, Television and Allied Technicians.

The decision contains a declaration to the effect that, in relation to the election held on 23 March 1986 for certain members of the Association's Executive Committee, the Association did not comply with the provisions of the Act.

In his comments the Certification Officer draws attention to an unusual aspect in this case in that the applicant and the Association disagreed as to which body was the Association's principal executive body for the purposes of section 1(1)(a) of Part I of the Act.

The decision notes that the Association have undertaken to change their rules and procedures to ensure future compliance with the provisions of the Act.

NOTES TO EDITORS

- (i) The Certification Officer, Mr Matthew Wake, is an independent statutory authority appointed by the Secretary of State for Employment under the Employment Protection Act 1975. Under that and other legislation he has certain functions in relation to Trade Unions and Employers' Associations.
- (ii) Part I of the Trade Union Act 1984, which came into operation on 1 October 1985, requires trade unions to ensure that voting members of their principal executive committee are elected by secret ballot of the members, and sets out standards which a trade union must meet in its arrangements for such elections. Section 5 of the Act gives an individual trade union member the right to apply to the Certification Officer, or to the High Court, for a declaration that their trade union has failed to comply with one or more provisions of Part I of the Act.
- (iii) Copies of the decision (Ref D/6/86) are available free of charge from the Certification Office at the above address.