

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION
MADE UNDER SECTION 108A(1) OF THE TRADE UNION AND LABOUR
RELATIONS (CONSOLIDATION) Act 1992**

Mrs I E Wilson

v

UNISON: The Public Service Union

Date of Decision:

23 June 2015

DECISION

Upon application by Mrs I E Wilson (“the claimant”) under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”).

And pursuant to section 256ZA of the Trade Union and Labour Relations (Consolidation) Act 1992.

I strike out the claimant’s complaint that UNISON: The Public Service Union breached rule H6 of its rules on or about 5 November 2014 on the grounds that her complaint has no reasonable prospect of success and/or is otherwise misconceived.

REASONS

1. Mrs Wilson brought this application as a member of UNISON: The Public Service Union (“UNISON” or “the Union”). She did so by a registration of complaint form dated 1 December 2014. Following correspondence Mrs Wilson confirmed that she wished to pursue the following complaint:

“That on or around the 5th November 2014, UNISON breached rule H6 of its rules because it arranged a ballot of members of Doncaster Local Government Branch Retired Members Section which was not required, or permitted under rule H6. Members were wrongly told that a ballot was required for the collection of a voluntary contribution, and that it is to be repeated every three years which is not provided for in the rule.”

The Relevant Statutory Provisions

2. The provisions of the 1992 Act which are relevant for this purposes of this application are as follows:-

Section 108A Right to apply to Certification Officer

(1) A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).

(2) The matters are -

- (a) the appointment or election of a person to, or the removal of a person from, any office;
- (b) disciplinary proceedings by the union (including expulsion);
- (c) the balloting of members on any issue other than industrial action;
- (d) the constitution or proceedings of any executive committee or of any decision-making meeting;
- (e) such other matters as may be specified in an order made by the Secretary of State.

Section 256ZA Striking out

(1) At any stage of proceedings on an application or complaint made to the Certification Officer, he may-

- (a) order the application or complaint, or any response, to be struck out on the grounds that it is scandalous, vexatious, has no reasonable prospect of success or is otherwise misconceived,

....

(3) An order under this section may be made on the Certification Officer's own initiative and may also be made-

- (a) if the order sought is to strike out an application or complaint, or to amend or strike out anything in an application or complaint, on an application by the respondent, or
- (b) if the order sought is to strike out any response, or to amend or strike out anything in any response, on an application by the person who made the application or complaint mentioned in subsection (1).

(4) Before making an order under this section, the Certification Officer shall send notice to the party against whom it is proposed that the order should be made giving him an opportunity to show cause why the order should not be made.

The Relevant Rules of the Union

3. The rules of the Union relevant for the purposes of this decision are as follows:-

H COLLECTION OF SUBSCRIPTIONS AND FINANCING OF BRANCHES

6 LOCAL LEVIES

6.1 A branch may fix a rate of subscription for local purposes, in accordance with a scheme approved by the National Executive Council, provided that the following conditions are satisfied:

- .1 the rate of subscription fixed in relation to any member does not exceed one sixth of the basic subscription payable by that member under Schedule A, and
- .2 the decision to fix such a rate of subscription is made by a simple majority of those members voting in a ballot of all members of the branch.

(a) The proceeds of a local levy shall be accounted for separately and shall be disregarded for all purposes in connection with the calculation of branch funding.

(b) Political fund contributions paid in accordance with Rule J.8.11 shall not be included in the calculation of the rate of subscription fixed under Rule H.6.1.

Background

4. On the basis of the correspondence and documentation before me the background to this complaint appears to be as follows.
5. Mrs Wilson is a retired member of UNISON. She is, or at the relevant time was, the Retired Members Secretary of the Doncaster Local Government Branch of UNISON. The Retired Members Section of that branch operated a voluntary annual levy to pay towards social activities and events of the section.
6. The ballot about which Mrs Wilson complains opened on or shortly after 5 November 2014. Mr John Cafferty, Regional Secretary of the Yorkshire and Humberside Region of the Union sent a letter dated 5 November 2014 to all retired members members of the Doncaster Local Government Branch. The letter was in the following form:

“ UNISON Doncaster Local Government Branch – Retired Members’ Additional Contribution

You may be aware that Doncaster Retired Members have for some years operated a scheme whereby members have the option to pay an additional £5 contribution on an annual basis. These monies are used to help fund the social aspects of the Retired members section and currently approximately 200 retired members make this contribution.

UNISON’s Rule Book requires that such contributions or levies are required to be revalidated every three years. As you will be aware Doncaster LG Branch is in a period of supervision which is due to conclude at the end of this year. I am therefore writing to enquire whether you wish to continue with the additional contribution, which is operated on a purely voluntary basis.

I enclose a ballot paper and a reply paid envelope in order that you can cast your vote as to whether or not you would wish to see a continuation of this additional contribution. Please ensure that you vote and return your ballot paper by no later than 7 December 2014.

Once I am in receipt of the ballot result, if the decision is to maintain the additional contribution, I will, on your behalf, seek authorisation from the National Executive Committee to continue with an additional contribution arrangement...”

7. Mrs Wilson wrote to Mr Cafferty on 18 November 2014 in response to the above letter. Her letter was also signed by other officers of the Retired Members Section of the Doncaster LG Branch. She stated,

"I was very surprised to receive your letter dated the 5th November 2014 regarding a vote on the £5 voluntary contribution given by the active retired members..."

As a result I have consulted the Unison Handbook 2014 Section H 6 Local Levie:

I note that the rate of subscription is set by a local ballot rule 6.1.2, which is what you are proposing here.

However it does not say that this needs to be done every three years would you please provide the documentary rule that requires this, as this levy has already been set correctly therefore there is no legal requirement to conduct a further ballot.

I have consulted with the Regional Retired Members Chair who also informs me that they have no knowledge of any 3-year rule and in fact the cost Nationally for Unison to implement such a rule would be prohibitive in itself".

The letter went on to detail a number of other issues relating to the administration of the ballot to which she objected. Notwithstanding this letter and the subsequent correspondence between Mrs Wilson and the Union on this matter, the ballot proceeded.

8. On 1 December 2014, before the conclusion of the ballot, Mrs Wilson emailed her application form to make a complaint to me. She identified the rule of the union allegedly breached as "Section H Rulebook Collection of Subscriptions and financing of branches; Section 6 Local Levies". In her application Mrs Wilson raised a number of allegations/issues about the ballot. She stated, inter alia, that, "[Mr Cafferty] deliberately made up a rule that does not form part of the union handbook in an attempt to justify calling this ballot. This is a deliberate breach of union rules".
9. Mr Cafferty sent a further letter to all retired members of the branch on 22 December 2014. He informed them that the ballot papers had been counted on 11 December and the result was a vote in favour of continuing with the "additional annual contribution".
10. On receipt of an application to make a complaint of breach of union rule or of statue, it is usual for my office to write to the claimant in order to establish the terms of the complaint and if necessary to clarify any issues of jurisdiction or other matters which may be relevant to my determination of the allegations. My office responded to Mrs Wilson's application with a letter dated 5 December 2014. The letter set out a suggested form of words for a complaint of breach of rule H6.1. However the letter also set out the proposition that rule H6 was not

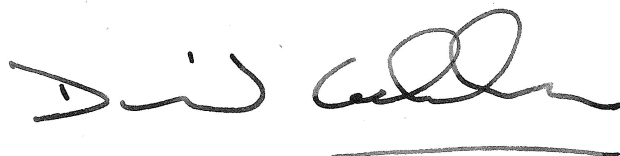
capable of addressing the circumstances of the ballot in question. This is because the rule appears to provide a means of UNISON branches imposing a compulsory levy on members who already pay a union subscription whilst the 'levy' in question appeared to be voluntary and only applied to Union members who did not pay an annual subscription. Mrs Wilson's was invited to comment on these points.

11. Mrs Wilson responded by letter of 15 December 2014. She set out the terms of her complaint and raised some further issues relating to the ballot but she did not identify any rules of the union which had arguably been breached in respect of this ballot. In a further letter dated 5 January 2015 Mrs Wilson stated with regard to rule H6, *"I find it confusing that you say that this rule H6 does not apply. Mr Cafferty has clearly relied upon this rule and stated that he is using this rule to conduct the ballot"*. My office replied by a letter of 21 January 2015, asking her to confirm the wording of her complaint and informing her that no further action would be taken in relation to the other issues in the absence of an allegation of a breach of an identified rule. Mrs Wilson agreed the terms of the complaint of breach of rule H6 by a letter dated 25 January 2015.
12. By a letter dated 29 January 2015 my office wrote to the Union with copies of the correspondence and other documents submitted by the claimant, requesting the Union to provide its comments on the complaint. The Union responded by a letter dated 19 February from Mr Godric Jolliffe, its legal officer. In response to the complaint, Mr Jolliffe stated that *"we are unable to identify that the union has breached Rule H6 as it does not appear to apply to this situation"*. Mr Jolliffe's letter also stated that the Regional Secretary had decided that Rule H6 provided the most appropriate method for consulting members as the Union's rules did not cover any voluntary donation system.
13. By a letter from my office dated 24 February the Union was referred to the Regional Secretary's letter of 5 November 2014 which stated that the voluntary levies, such as those in question, were required to be revalidated every three years. My office pointed out that Rule H6 contained no such requirement in relation to local levies. The Union responded by a letter dated 10 March 2015 which stated that the requirement for the three-yearly revalidation of the voluntary donation system was derived from the NEC guidance accompanying rule H6 but conceded that *"the Regional Secretary was mistaken in saying that UNISON's Rule Book required a revalidation every three years"*.
14. Mrs Wilson was invited to provide her comments on the Union's response. She did so by a letter of 24 March in which she stated that, *"... Unison have totally failed to justify their actions or to create enough reasonable doubt about the actual complaint to prevent it from proceeding."*

15. My office wrote to Mrs Wilson on 5 May, pursuant to section 256ZA(4) of the 1992 Act, giving her an opportunity to show cause why her complaint should not be struck out on the basis that it had no reasonable prospect of success and/or was otherwise misconceived. The letter set out my preliminary view that the complaint was misconceived because the rule alleged to have been breached did not appear to have been engaged in the circumstances set out by the claimant. Mrs Wilson responded by a letter dated 16 May 2015. In this letter Mrs Wilson referred to previous statements from the Union that Rule H6 was the relevant rule in relation to the ballot and asked, *“How can you not find that this ballot was conducted illegally under this rule H.6.1 when it so clearly evidenced and supported by written proof that this was the intention from start to finish.”*

Conclusions

16. Section 108A of the 1992 Act provides me with jurisdiction to determine certain complaints from a trade union member that his or her union has breached or threatened to breach one or more of its rules. The rules allegedly breached must relate to one of the rulebook areas specified in sections 108A(2)(a) to (d). It is the claimant’s responsibility to present an arguable case that the union has breached an identified rule within my jurisdiction.
17. Mrs Wilson objects to a ballot of retired members which sought to ascertain whether they wished to continue paying a voluntary contribution for social activities and events. I find that such a ballot is not covered by the terms of rule H6 which is the rule the claimant alleged was breached. Further I find that UNISON does not have any rule which specifically governs such a ballot. The ballot conducted by the Union was a consultative ballot. It is not one which is provided for or governed by the rules. Accordingly I find that rule H6.1 was not engaged on the facts of this case. It follows that Mrs Wilson’s complaint has no reasonable prospect of success and/or is misconceived. I order the complaint to be struck out pursuant to section 256ZA of the 1992 Act.



David Cockburn
The Certification Officer