

D/2/97

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE
UNDER SECTION 55 OF THE TRADE UNION AND LABOUR RELATIONS
(CONSOLIDATION) ACT 1992**

**IN THE MATTER OF A COMPLAINT
AGAINST THE UNION OF SHOP, DISTRIBUTIVE AND ALLIED WORKERS**

Date of decision:

2 May, 1997

APPLICATION AND DECISION

1. Under section 55 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") I am empowered to make, or refuse to make, a declaration on the application of any person who claims that his or her trade union has failed to comply with one or more of the provisions of Chapter IV, Part I of the 1992 Act concerning the need for, and the conduct of, elections to certain positions. In making a declaration I am required to specify the provisions with which the trade union has failed to comply.

2. On 9th and 15th January 1997 respectively I received formal complaints from two different members of the Union of Shop, Distributive and Allied Workers ("USDAW" or "the union"). The background to the complaints was an allegation that during the election for a new General Secretary of the union, the union conspired with Tesco plc to support one of the candidates. The Employee Relations Manager of Tesco sent an e mail message to branch managers. The message was headed "Vote for B. Connor" and it asked branch managers to pass a leaflet of that title to the local USDAW Representatives.

3. The complainants alleged that not only did this reflect preferential treatment for one candidate,

who was the sitting Deputy General Secretary, but it also breached the statutory requirements on the union to:

- (i) to give equal facilities to all candidates in the preparation and circulation of election addresses; and
- (ii) allow all members to vote without interference or constraint.

They sought a declaration from me to that effect.

4. For reasons which I set out below I decline to make the declarations asked for. In reaching these decisions I did not feel it necessary to conduct a formal hearing. The parties were given an opportunity to comment on each others letters and arguments. There was no real dispute about the facts. The issue was how the law applied to these facts and the complainants failed to convince me that this was other than a straightforward matter. In my judgement there was no case for the union to answer.

THE REQUIREMENTS OF THE LAW

5. On election addresses the law may be summarised as requiring the union to:

- (i) provide every candidate with an opportunity of preparing an election address in his own words;
- (ii) secure, so far as is reasonably practicable, that copies of every election address submitted in time is distributed by post along with ballot papers to those entitled to vote in the election;
- (iii) ensure that candidates are treated equally in terms of the structure, presentation and production of election addresses.

(See section 48 of the 1992 Act).

6. On the question of interference the law states:

“Every person who is entitled to vote at the election must:

- (a) be allowed to vote without interference from or constraint imposed by, the union or any of its members, officials and employees.....” (See section 51(3)(a))

REASONS FOR MY DECISION

The facts

7. At the request of one of the candidates (Mr Connor, USDAW Deputy General Secretary, Tesco sent an e-mail message to its branches which read:

"4/12/96

USDAW Leaflet

Subject: VOTE FOR B. CONNOR

You will be receiving a leaflet through the post asking you to vote for Bill Connor for Usdaw General Secretary, can you please ensure that this is passed to your Usdaw Representative.

Many thanks

Peter Barley

Employee Relations Manager

01992 658581"

8. There is no reason to believe that Mr Barley's wishes were not met by at least some, and possibly all. Tesco branch managers.

The issues.

Was the union involved?

9. Against that background I have to consider if Mr Connor in his position as Deputy General Secretary of the union was acting on behalf of the union or of himself as a candidate when he asked Tesco to distribute his leaflet? This is potentially important because only the union can infringe the statutory requirements on election addresses or on non-interference. The employer acting alone cannot do so. In this case the union's view is that Mr Connor was acting entirely in a private capacity as a candidate and not as their agent in any approach he may have made to Tesco. The complainants say that as the Deputy General Secretary of the union Mr Connor has regular contact with Tesco at the highest levels. A request from him would be received by Tesco in the same way as any other request made by the union. It was Mr Connor's position in the union that Tesco responded to.

10. It is of course possible for the union and Tesco to have a completely different view of the same act. When an official of a union is a candidate in an election in that union it can be extremely difficult to determine when he is acting as an official and when as a candidate. With the information I currently have I am not willing to decide these complaints solely on whether the union had any part in Tesco's decision to assist in the circulation of the leaflet. In this case as explained below I judge that the actions complained of do not amount to unequal treatment in relation to election addresses, nor to interference in the election. Therefore I do not have to decide the issue of whether or not the union was involved in the actions.

Was the leaflet an election address?

11. I saw the leaflet "Vote for Bill Connor" and it was quite clearly a campaigning leaflet and not an election address within the meaning of the 1992 Act. The union assured me (no one contradicted this and indeed one of the complainants confirmed it in part), that it gave both candidates an opportunity to produce election addresses in their own words, that both did so and that these addresses were circulated, as submitted, with the ballot papers. In doing that the union satisfied the requirements of the law in respect of election addresses set out in section 48 of the 1992 Act. The campaign material circulated by or on behalf of Mr Connor, and probably also the other candidate, did not constitute an election address within the meaning of that section. There are no statutory restrictions on the circulation of other material by anyone. There was therefore no infringement of the requirements relating to election addresses.

Did the e-mail message and circulation of the leaflet constitute "interference with or constraint on" voters?

12. The first point I would make on the e-mail message is that, in context the words "Vote for B Connor" were not an instruction, or even an encouragement to recipients to vote in a particular way. They merely referred to the title of the leaflet "Vote Bill Connor" that branch managers were expected to receive. In addition by telling branch managers to hand the leaflets to USDAW representatives (presumably for onward distribution) management played only a minimal role in the election. If managers had distributed or displayed them direct to staff they could be accused of playing a much more direct role. So on a point of fact I find that what Tesco did was essentially to provide a channel of communication, albeit an unusual and possibly unnecessarily complicated one, between a candidate and branch officials. I received no evidence that Tesco

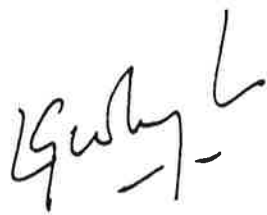
management put any form of pressure on its employees to vote in the USDAW election or to vote in a particular way.

13. Cases decided by me and my predecessors to date have recognised two types of "interference or constraint" which fall foul of the statutory requirements. The first entails intimidation amounting to physical interference with voters (this was set out in detail in Paul v National and Local Government Officers (1987) IRLR 43). The second entails physical interference with ballot papers (see Prison Officers Association - Decision D/4-9/1996). On neither of those tests does the e mail message or the distribution of the leaflet constitute interference. Nor am I prepared to accept that in the circumstances of this case any employer/union cooperation to assist the campaign of one candidate constituted a further category of unlawful interference.

14. It is for these reasons that I dismiss the complaint that any collusion there may or may not have been between the union and Tesco in this election constituted interference contrary to the 1992 Act.

OBSERVATIONS

15. Section 55(5) of the Act allows the Certification Officer to make written observations on any matter arising from, or connected with, proceedings in relation to elections. I do so in this case as complaint was also made that the union's own rules had been breached in the conduct of the election. It is not my function to investigate allegations that a union had breached its own rules in respect of elections. Such complaints fall outside my jurisdiction.



E G Whybrew
Certification Officer

