

D/29/19-20

Decision of the Certification Officer on an application made under Section 108A of
the Trade Union and Labour Relations (Consolidation) Act 1992

St John

v

Unite the Union

Date of Decision

5 February 2020

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Decision

1. Mr John St John (“the applicant”) made an application, under section 108A of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) for a declaration as follows:

On or around 7 March 2018 the Union breached rule 6.5.5 of the EC Guidance. The rule was breached in that the Complainant John St John put himself forward for the role of Manufacturing Representative at a meeting of North London Health Branch LE/0042M on that date at which elections were held for workplace representatives. Mr St John was elected unopposed by show of hands in accordance with the rule but was not put on the list of elected candidates and has not been confirmed as elected to the post.

I refuse to make that declaration.

Reasons

2. Mr St John brought this application as a member of Unite the Union (“the Union”). He did so by a registration of complaint form received at the Certification Office on 24 May 2019.
3. Following correspondence with my office, Mr St John confirmed his complaint on 27 July 2019, as follows:

On or around 7 March 2018 the Union breached rule 6.5.5 of the EC Guidance. The rule was breached in that the Complainant, John St John, put himself forward for the role of Manufacturing Representative at a meeting of North London Health Branch LE/0042M on that date at which elections were held for workplace representatives. Mr St John was elected unopposed by show of hands in accordance with the rule but was not put on the list of

elected candidates and has not been confirmed as elected to the post.

4. At a hearing before me on 7 January 2020, Mr St John represented himself. Mr St John submitted a witness statement and gave oral evidence. Mr Iraj Garzin, a member of the Union in the North London Health Branch LE/0042M, also submitted a written witness statement for Mr St John, but he did not attend the hearing to give oral evidence.
5. The Union was represented by Mr Darryl Hutcheon of Counsel, instructed by Mr Neil Gillam of the Union's Legal Department. Written witness statements for the Union were given by Mr David Agleby, the Secretary of the Union's North London Health Branch LE/0042M; Mr Omonua Agbonhaselena, the Branch's Chair; and Ms Sarah Cook, the Regional Co-ordinating Officer for the Union's London and Eastern Region. All three also gave oral evidence. There was in evidence a bundle of documents consisting of 158 pages containing correspondence and the rules of the Union. Both the Union and Mr St John provided skeleton arguments.
6. At the outset of the hearing Mr St John applied to have four documents added to the bundle. He subsequently withdrew his application to include one of these. The Union did not object to the inclusion of the remaining three documents, although it contended that they were not relevant to the proceedings, and so I admitted them. Taking into account the extra documents the bundle consisted of 162 pages. The additional documents which were admitted are listed below:
 - (a) E-mail correspondence between Ade Owadokun and Mr St John dated 4 January 2020
 - (b) E-mail correspondence between Mr St John and Mr Agleby dated 16 February 2015
 - (c) E-mail correspondence between Mr St John and Monica Kyriacou dated 10 September 2018

Agreed Facts

7. At the beginning of the Hearing the parties agreed the following facts. I have addressed the disputed facts and summarised the evidence given at the Hearing at paragraphs 18 to 36.
8. John St John is a member of the Union's North London Health Branch LE/0042M. He is based at NHS Blood and Transplant ("NHSBT") Colindale.
9. On 5 February 2018 the Branch Secretary, David Agleby, informed branch members at Colindale that the election for the Colindale workplace representatives would take place in a meeting at 13:00 on 27 February 2018. Mr Agleby asked Members to let him know if they wished to stand for any of the positions to be elected.
10. On 20 February 2018 Mr Agleby informed branch members at Colindale that the election was postponed until 13:00 on 7 March 2018.
11. On 7 March 2018, at 09:56, Mr St John emailed Mr Agleby to say that he would be standing for the Equalities Representative role and that he may stand for Health and Safety Representative if no one was willing to stand for that post.
12. Mr St John was unsuccessful in the election for Equalities Representative and withdrew, during the meeting, from the election for the Health and Safety Representative role.
13. No branch member had put themselves forward for either the role of Manufacturing Services Representative or for the role of Evening Shift representative ahead of the meeting. At the meeting Mr St John put himself forward for the role of Manufacturing Services Representative.

14. On 13 April 2018 Mr Agbley emailed Mr St John to thank him for his work as a Unite representative. Mr Agbley also explained that, as Mr St John was no longer an elected Unite representative, he no longer had agreed facility time.

15. The results of the election were published on 19 July 2019. Mr St John was not shown as having been elected as Manufacturing Services Representative.

The Relevant Statutory Provisions

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

108A Right to apply to Certification Officer

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).

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.

The Relevant Rules of the Union

17. The rules of the Union which are relevant for the purposes of this application are:-

EC Guidance on the implementation of rule revised consequential to 2nd Rules Conference

Rule 6: Lay Office: EC Guidance

...

6.5 The electoral period to hold lay office shall be three years unless otherwise provided for under these Rules.

6.5.1 All lay representatives must be elected. Elections, other than casual vacancies, should always take place between January and March to ensure synchronisation with other aspects of the union's constitutional structures.

6.5.2 They will be elected to hold office for three years, unless one of the following occurs, in which case an election will be held for a replacement as soon as is practicable:

6.5.2.1 The elected representative changes jobs so that they no longer work in the workplace (or department, or role) that they were elected to represent.

6.5.2.2 More than 50% of the members in the constituency that they were elected to represent, vote or petition to hold a new election for that post.

Should industrial circumstances or particular workplace traditions dictate that elections are necessary more frequently than three years that is permissible, but under no circumstances less frequently.

Refer also to EC Guidance Lay Office – Right of Recall.

6.5.3 There shall be no limit of the number of successive terms that an elected representative may hold, provided that they continue to comply with all other criteria applicable at the time.

6.5.4 Prior to any election, the members in the workplace should be informed of the pending election and invited to volunteer for election or nominate a colleague for election. The precise mechanics of informing the members on the workplace, and dealing with nominations and the election, may vary from workplace to workplace, but any such case will be a fair procedure. In the event of dispute the Regional Officer should be contacted and the Regional Secretary should be informed.

6.5.5 In the event of nominations having been invited from the relevant workplace, and only one candidate having been nominated, or volunteered, that candidate may be declared elected unopposed.

6.5.6 Immediately following the election of any representative notification should follow in accordance with

Rule 18:7 Following election of a workplace representative the appropriate Regional Officer shall be informed of the election by the elected representative without delay. The Regional Officer shall ensure that the Regional Industrial Sector Committee and the Union's membership department are informed of the date of the election and the identity, constituency and contact details of the elected workplace representative.

In addition, the Union's regional office should be informed and the representative's membership record should be amended to show that they are an elected representative for that workplace, and the date on which they were elected. The representative should be asked for an e-mail address which can be added to the union's database for activists so that the representative can receive relevant e-mail updates.

6.5.7 The region shall ensure that each elected representative is sent a letter confirming their representative status, and the scope of the role for which they are accredited by the union. (No lay representative is accredited by the union to advise on settlement agreements.)

6.5.8 The regions shall supply the Regional Committee and the Regional Industrial Sector Committee the full list of representatives (showing name and workplace) elected since the prior meeting of that Committee.

Unite Rule Book

Rule 18 Workplace Representatives

18.1 At each workplace, the members employed at that workplace, shall elect from amongst themselves, at least every 3 years, 1 or more of the following representatives: 18.1.1 Shop stewards/workplace representatives

18.1.2 Safety representatives

18.1.3 Learning representatives

18.1.4 Equality representatives

18.1.5 Environment representatives

The election shall take place at a meeting held between 1st January and 31st March in each third year, and the elected candidates shall take office for three years. Such workplace representatives as listed above shall be entitled to attend the triennial Regional Industrial Sector Conference.

18.2 The election of workplace representatives shall, where practicable, have a gender and ethnic balance at least reflecting the proportion of black, Asian and ethnic minority and female members which they represent. Election to one representative role shall not preclude election to another such role within the same workplace.

18.3 The method of election shall be by such means as authorised by relevant guidance which shall be issued by the Executive Council from time to time.

Considerations and Conclusions

Summary of Evidence

18. Mr St John acted as the Union's Manufacturing Services representative from 2008 until 2015. He told me that he had continued in that role until 2018. He said that in 2015 he had wished to leave the role and take up the role of Equalities Representative but that he was persuaded by Mr Agbley, to continue in the role of Manufacturing Services Representative because nobody else was willing to take on the role. Mr St John told me that Mr Agbley had pleaded with him to stay in the role and had nominated him for the role in his absence. Mr St John had then been elected into the role of Equalities Representative and Manufacturing Services Representative and continued in those roles until the elections in 2018.

19. Mr Agbley and Mr Omonua both told me that Mr St John had stood down from the role of Manufacturing Services representative in 2015. Mr Agbley referred me to the email exchange between Mr St John and himself, dated 16 February 2015, in which Mr St John had indicated that he wished to continue in the role of Equalities Representative only. Both Mr Agbley and Mr Omonua told me that the Manufacturing Services Representative role had remained vacant since 2015 and that nobody had formally covered the role although Mr Omonua undertook some of the work from time to time. Mr Agbley said that Mr St John would regularly tell him that he was not the Manufacturing Services Representative. It is worth mentioning here that all parties appeared to refer to the role as Manufacturing Services Representative and also as Ground Floor Representative. Mr Agbley explained to me that both the Hospital Services Group and the Manufacturing Services Group were located on the ground floor. Although there were representative positions open for each group there may, in practice, only be one

person willing to stand who would cover both roles and be known as the Ground Floor Representative. In addition, there were separate roles for the day shift and the evening shift. For clarity, and because it is the term used by Mr St John in his complaint, I will refer to the role which is the subject of the complaint as the Manufacturing Services Representative.

2018 Elections

20. On 5 February Mr Agbley sent out a notice for the triennial elections for Colindale workplace representatives as follows:

Dear All

The Unite triennial elections for Workplace lay representatives for the 2018-2021 elections for Colindale has been scheduled to take place on 27th February 2018 at 13:00 in LT 1. All positions are up for re-election and the period of office will commence from 1st April 2018 – 31st March 2021.

As usual, we will be electing lay representatives for the following positions

1. Floor Reps including evening and night shift reps
2. Departmental Reps
3. Health & Safety Reps
4. Learning Reps
5. Equality Reps
6. Environmental Reps

I have attached the role requirement for your information. Please let me know if you wish to stand for any of these positions.

Regards

21. On 20 February 2018 Mr Agbley emailed members at Colindale to say that the meeting had been rescheduled to 7 March 2018 and apologised for the inconvenience. When giving evidence Mr Agbley explained that this was because he needed to be present at another meeting.

22. Mr Agbley told me that he had not given details of the nomination process in his email of 5 February because branch members understood that nominations must be made to him in advance. Nominations were usually made by email and must be done ahead of the meeting. The nomination period closed at the start of the meeting. Mr Agbley had received an email from Mr St John on the morning of the meeting as follows:

Hi David

Please this is just to let you know that I would be standing for Equality and maybe Health and Safety Rep if no one is willing to stand for it.

Thank you

Kind Regards

John

23. Mr St John told me that he had been on sick leave from 20 February 2018 to 5 March 2018 returning to work on 7 March 2018. He submitted his nomination for the roles of Equality Representative and Health and Safety Representative on his return to work on the morning of 7 March 2018. He had been considering whether he should stand for a role and was concerned that Mr Agbley was plotting with senior managers at NHSBT to block him from acting as a Representative. He told me that the usual way to nominate yourself for a Representative role was to raise your hand at a meeting but that he felt it better to submit a nomination in advance as this would prevent Mr Agbley from blocking his election. He had not included the Manufacturing Services role in this email because he had not yet fully decided which role he wanted to take on and believed that he could make a nomination at the meeting as had previously been the case.

24. Mr Agbley and Mr Omonua told me that the meeting was effectively run by Mr Agbley. Mr Omonua kept a record of the nominations made, which I have seen, and this was referred to by Mr Agbley and Mr Omonua as the minutes of the meeting. The meeting began with Mr Agbley's election into the role of Senior

Work Place Representative. There was some discussion at the Hearing as to how Mr Agbley had nominated himself for the role. At one point he appeared to say that he had been nominated at the meeting; however, when I sought clarification, he assured me that he had nominated himself ahead of the meeting.

25. Mr Agbley and Mr Omonua told me that, during the meeting, Mr Agbley read out each of the roles and any nominations which had been received. Where there was only one nomination the person was elected unopposed and, where necessary, a ballot was held. Mr St John was unsuccessful in the ballot for Equalities Representative and withdrew from the election for Health and Safety Representative.

26. Mr St John told me that once he realised nobody was willing to stand for the role of Manufacturing Services Representative he nominated himself for that role. He told me that he had been elected by a show of hands. He explained that he used the term "show of hands" to mean that he raised his hand to nominate himself for the role as he had done in previous meetings, and as others had done at this meeting. He told me that there was no ballot and so other members were not invited to raise their hands to support him. Mr St John told me that his understanding was that he had been elected into the role. He also told me that his recollection was that he was the only person who nominated themselves for a role but was not elected into that role.

27. Mr St John told me that it was custom and practice that members could nominate themselves for a position at the meeting. He told me that this had always been the procedure whilst he was active in the Union. He was first elected as a representative in 2008. At that time he completed a nomination form ahead of the meeting. He told me that there was another candidate and there had been a ballot, in which he was successful, at the meeting. Since 2010; however, he had always nominated himself at the meeting. I found his evidence to be confusing on

this point. He told me that nothing had changed between 2008 and 2010 but he also told me that he had not completed a nomination form since 2008. He also told me that a nomination form was only required ahead of the meeting if there was to be a ballot; however, if nominations could be made at the meeting then candidates may not know if there is to be a ballot until the meeting itself and consequently would not know that a nomination form was required ahead of the meeting. I did not find Mr St John's evidence to be convincing on this issue.

28. Mr Agbley and Mr Omonua told me that, whilst they had been active within the Union, it had always been a requirement that nominations were made in advance of the meeting. Mr Agbley told me that he had become responsible for the elections process in 2003 and inherited the process from his predecessor. He said that it had not been necessary to provide a nomination form but that nominations were always required ahead of the meeting and were usually made by email.

29. Mr Agbley told me that the reason for requiring nominations in advance was to ensure that everyone had an opportunity to stand for election and that someone could not turn up at a meeting and be elected unopposed without the support of the branch members within their work area.

30. There was some inconsistency between the written statements given by Mr Agbley and Omonua, and the minutes of the meeting which had been prepared by Mr Omonua. For instance, it appears from the minutes that two ballots were held; however, both written statements referred to there being only one election. When giving evidence both witnesses accepted that there had been two elections but neither explained why their witness statements said that only one election had taken place. Mr Omonua told me that the minutes must be right.

31. Additionally, the minutes appear to record that Mr Owadokun had been elected into the role of evening shift representative; however, both Mr Agleby and Mr Omonua told me that Mr Owadokun had been nominated at the meeting and that he had been treated in the same way as Mr St John. Mr St John provided me with an email, dated 20 January, in which Mr Owadokun tells Mr St John that he is not an elected representative. This supports the view that Mr Owadokun had not been elected and so I am satisfied that Mr Agleby and Mr Omonua's evidence reflected what happened. But I am concerned that the minutes do not appear to reflect what had taken place at the meeting.

32. Mr St John told me that, after the meeting he and other Union members from the Manufacturing Services Department, met with Mr Omonua. At that meeting, Mr Omonua had told him that Mr Joahill was also interested in standing as a Manufacturing Services Representative. Mr Omonua agreed that he had discussed what had happened with Mr St John and others at that time but told me that he had not said that Mr Joahill was interested in standing. He told me that the meeting was to solicit interest and to see if others, including Mr Joahill, wished to stand.

33. Mr Agleby told me that, in his view, Mr St John had not submitted a valid nomination as it had been submitted at the meeting rather than before the meeting. Mr Agleby told me that he had sought nominations for the post at the next meeting; however, because of other priorities he had not been able to do so until April 2019. Nobody, including Mr St John, had nominated themselves. He also told me that Mr St John had indicated that he did not wish to take on the role and referred me to the final paragraph of Mr St John's email of 13 April 2018 in support of this:

It is not a force/must about me being a representative. I will not fight it, rather I have accepted it and I welcome this decision by you so that I can have

more time to fight my battles. I just wanted BL to know what is going on if she does not do so already.

34. Mr St John told me that he did not tell Mr Agbley that he was not interested in the role. Mr Agbley confirmed that there was no spoken conversation but that he had interpreted the email of 13 April as an indication that Mr St John did not want the role.

35. Mr St John told me several times that Mr Agbley and Mr Omonua were plotting with a senior manager at NHSBT to prevent Mr St John from being a representative. He explained that this was because he had raised a grievance about four NHSBT managers. Both Mr Agbley and Mr Omonua told me that there was no plot. Mr Agbley told me that he knew little about the grievance. Mr Omonua told me that Mr St John had asked him to represent him in the grievance but that he had declined to do so as he was, at that time, a manager in the same area and that it would not have been appropriate to do so.

36. Ms Cook explained that she was commissioned by the Regional Secretary of the Union's London and Eastern Region to conduct an investigation into Mr St John's complaint to the union about the conduct of the election. She had spoken to Mr Agbley and to Mr St John and had reached the conclusion that Mr St John had been aware of the need to nominate himself ahead of the meeting. She also concluded that there was a need to improve the communication around elections in the branch and that it would be better to have written procedures in place.

Summary of Submissions

37. Mr St John told me that it is custom and practice at this Branch for nominations, for workplace representatives, to be made at the branch meeting at which any ballot is held. He also argued that paragraph 6.5.5 of the Executive Guidance requires that anyone who is the sole candidate in an election must be declared elected unopposed. He told me that the position was straightforward; he had properly nominated himself for the role of Manufacturing Services Representative

and should, under the EC Guidance, have been elected at the meeting in March 2018 as the sole candidate. His view was that the EC Guidance formed part of the Rules of the Union and that the Union must follow those Rules. He also submitted that the only reason that he was not so elected was because of the grievance he had raised about some of his NHSBT managers and so Mr Agbley and Mr Omonua had plotted to prevent him from becoming a Union representative.

38. He confirmed to me that he understood that the role remained vacant and that the Union position was that it was open to him to stand again. He did not accept, however, that it was necessary for him to nominate himself again because he had already done so and should have been elected following that nomination. In his view he should not have to face another election for a post which was already his. That was why he did not stand for the role in April 2019 nor indicate any intention to stand again.

39. Mr Hutcheon made three points. The first was that the EC Guidance does not form part of the Rules of the Union and so the complaint is outside my jurisdiction. The second was that the complaint gives a misleading view of the facts and does not reflect what happened at the meeting on 7 March 2018. The third is that the EC Guidance does not require that a sole candidate must be declared elected unopposed.

40. In my view, it is the third of Mr Hutcheon's points regarding the wording of the EC guidance which leads me to my decision. I have set out below the wording of paragraph 6.5.5 which was in force in March 2018 (emphasis added):

6.5.5 In the event of nominations having been invited from the relevant workplace, and only one candidate having been nominated, or volunteered, that candidate **may** be declared elected unopposed.

41. Mr Hutcheon told me that this wording is permissive and does not require the Union to elect every candidate who is unopposed in a ballot. It enables them to do so but it does not place any obligation on them to do so.

42. Mr St John, in his correspondence with my office and in his submissions quoted a different wording for paragraph 6.5.5:

6.5.5 In the event of nominations having been invited from the relevant workplace, and only one candidate having been nominated, or volunteered, that candidate **will** be declared elected unopposed.

43. It is not clear what source Mr St John is quoting; however, it was not the wording in the EC guidance which was in place at the time of the election. Had it been, then I would have needed to consider whether the EC guidance formed part of the Union's Rules. Looking at the correct wording, however, I agree with Mr Hutcheon that paragraph 6.5.5 of the EC guidance is permissive and that, in following the guidance, the Union were not required to declare Mr St John elected unopposed. I, therefore, refuse to make the declaration requested by Mr St John.

43. Although not determinative for my decision, I make the following comments on the other arguments presented by Mr St John and Mr Hutcheon. Firstly, had I needed to reach a decision as to jurisdiction, I would have to have given careful consideration to Mr Hutcheon's arguments as to whether the EC guidance falls within the Rules. Rule 18.3 deals with how the workplace elections should be conducted:

The method of election shall be by such means as authorised by relevant guidance which shall be issued by the Executive Council from time to time.

44. I am not persuaded that this Rule does not require the Union to follow its Executive Guidance; however, Mr Hutcheon did not press this point at the Hearing and, in view of my finding above, I do not need to reach a conclusion on it.

45. Secondly, I have been offered different versions of custom and practice on workplace elections at the Union. In view of my finding above I do not need to reach a conclusion as to what happened in previous years. But I think it worth noting that I, like Ms Cook, am satisfied that Mr St John understood that he needed to submit his nomination in advance of the meeting. His evidence as to why he submitted a nomination for two roles but not for the third role was not convincing.

And it is not clear why, if he genuinely believed that he could nominate himself at the meeting, he submitted any nomination in advance.

45. Thirdly, I note Ms Cook's findings about election communications in her report into Mr John's complaint to the Union and I encourage the Union to take these forward. The Union may also wish to consider how election results should be recorded. The minute which I was shown did not support the evidence which was given by Mr Agbley and Mr Omonua about the treatment of attempted nominations at the meeting as it appeared to show that Mr Owadokun had been elected as evening shift representative when that was not the case. It is also worth noting that it is worrying that Mr Agbley and Mr Omonua's witness statements did not appear, in part, to be supported by the minute which Mr Omonua had taken at the March 2018 meeting. A clearer minute may have enabled them to more accurately recall what had happened.
46. Finally, I have reached no conclusion as to whether there was some sort of concerted effort to prevent Mr St John from acting as a Union Representative as it is not my role to do so. Both Mr Agbley and Mr Omonua assured me that this was not the case. However, the lack of good governance procedures around the elections means that it is difficult for them to draw on contemporaneous evidence to support their position that they were following established branch procedures.

A handwritten signature in black ink, appearing to read 'Sarah Bedwell', with a horizontal line underneath it.

Sarah Bedwell

The Certification Officer