

D/14/21-22

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

Morley

V

UNISON: The Public Service Union

Date of Decision

17 November 2021

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Decision

1. Upon application by Mr Paul Morley (“the applicant”) under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):

I make the following declaration:-

The union breached Rule 5(a)(vi) of the UNISON Lancashire branch rules which requires that the election of the branch secretary be by postal ballot, and that, by conducting the election in January/February 2021 by a mixture of postal and electronic means, there was a breach of that rule.

Background

2. Mr Morley is a member of Unison. He was a candidate for the position of secretary of the UNISON Lancashire branch in February 2021. Mr Morley submitted an application to make three complaints on 15 July 2021.
3. Following correspondence with my office, I struck out two of the three complaints, and accepted the remaining complaint which is set out above. This complaint relates to the election for the Lancashire Branch Secretary which took place in January and February 2021 and was conducted by a mixture of postal and electronic ballot. Mr Morley told me that this breached rule 5(a)(vi) which requires the election to be held by a postal ballot.
4. Following correspondence, the Union subsequently conceded a breach of the Rule 5(a)(vi) in the manner described by Mr Morley.

The Relevant Statutory Provisions

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

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;

108B Declarations and Orders

(3) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement Order, that is, an Order imposing on the union one or both of the following requirements—

(a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the Order;

(b) to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.

The Relevant Rule of the Union

6. The Rules of the Union which are relevant for the purposes of this application are:-

Rule 5 Branch Officers, Workplace Stewards and Senior Stewards

(a) Election of Branch Officers

(vi) The vote will be conducted by postal ballot in accordance with the procedure and timescales contained in the Code of Good Branch Practice.

Enforcement Order

7. Having made a declaration, I am required to consider whether it is appropriate for me to make an enforcement Order under s108B (3) of the 1992 Act following the Union's concession of the complaint. My powers enable me to make an Order which requires the Union to take steps to remedy the breach or to prevent a similar breach happening again.
8. When the union wrote to me conceding the breach, it told me that there was no need for me to make an enforcement order for the following reasons:
 - i. It was not possible for the ballot to be conducted fully by postal means because of restrictions on the union's ability to conduct postal ballots brought about by COVID;
 - ii. the proportion of the electronic votes cast in the Complainant's favour was greater than the proportion of electronic votes cast in the successful candidate's favour;
 - iii. total number of votes cast is not so different in scale from the total numbers cast at the last contested election in 2018; and
 - iv. the next branch secretary election, at which the Complainant will be free to stand, will in any event take place in the quarter January to March 2022.
9. The Union also told me that it will issue updated guidance to its regions and branches explaining that branch elections should be conducted in accordance with branch rules.
10. Mr Morley told me, in writing, that he considered it appropriate for me to make an Order requiring the union to re-run the 2021 Branch Secretary election even though this would result in the successful candidate serving for a limited period of

office. He believed that this was within the spirit of democracy and would ensure that the members knew that there was an issue with the previous ballot and that they had the right to vote again. He also asked that any enforcement order explain that the original ballot was not conducted within the branch rules and therefore needed to be re-run as well as requiring the fresh ballot to be held by post. More widely he asked me to require the Union to hold a fresh ballot for any other Unison ballots which had been held in breach of Rules.

11. My powers in this area are limited. Any enforcement order I make must require the union to remedy the breach complained about and/or to take steps to prevent a similar breach happening again. I do not, therefore have the power to require the union to hold a fresh ballot for any election other than the Lancashire Branch Secretary election. My decision is, therefore, necessarily limited to this election.

12. My understanding is that the current term of office for the Lancashire Branch Secretary ends at the end of the branch's two day AGM which is due to take place on 10 - 11 March 2022. The process for the election of branch officers, including Branch Secretary, begins with a notice sent to members informing them of the date of the branch AGM, and inviting nominations for election of officers, including branch secretary. That notice is sent to members at least 12 weeks before the AGM which, in this case, means that it will be sent before mid-December 2021.

13. It does not, therefore, seem practical, or proportionate to require the union to hold a ballot which, if administered to a similar timetable would result in the successful candidate being in post for approximately a month. My view is that this would carry a disproportionate cost to the union for limited benefit. In reaching this decision I have taken into account the fact that the election complained about was conducted at a time when restrictions were in place during the COVID pandemic. I have noted that Mr Morley believes that, as the Union was able to conduct an election for the General Secretary by post, it should have been possible for this election to be held by post. It seems reasonable to me, however, that at a time when public safety was a priority the Union might take a different decision about

the conduct of a statutory election and a Branch election. I have also taken into account the Union's intention to issue guidance.

14. I do not, therefore, consider it appropriate for me to make an enforcement Order.

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

Sarah Bedwell

The Certification Officer