

**DECISIONS OF THE CERTIFICATION OFFICER ON APPLICATIONS UNDER
ARTICLE 90A OF THE TRADE UNION AND LABOUR RELATIONS**

(NORTHERN IRELAND) ORDER 1995

Mr. B RICE

v

UNITE THE UNION

Date of Decisions

20 December 2010

DECISIONS

Upon application by the applicant under Article 90A (1) of the Trade Union and Labour Relations (Northern Ireland) Order (as amended) (“the 1995 Order”):

(1) I refuse to make the declaration sought by the applicant that on or about 9-10 November 2009 the Union breached rule 22.5 of its rules, in that the Irish Executive Committee elected the Regional Political Committee, which under the rule is the function of the Regional Political Conference.

(2) I refuse to make the declaration sought by the applicant, that on or about 15 October 2009 the Union breached rule 6.3 of its rules, in that it allowed Geraldine Kelly to stand for and be elected on to the Area Activists Committee and to stand for and be elected on to the Irish Executive Committee, although as a paid employee of the Union she was not eligible to stand for election, as she could not qualify as an “accountable representative of workers” under the rule.

(3) I refuse to make the declaration sought, that on or about 9-11 November 2009 the Union breached rule 22 (sub-section 22.5) and the Executive Council guidelines of May 2008 for implementation of rule 22, clause 1 and clause 5, by electing three people onto the Regional Political Committee in Northern Ireland who were not members of the Labour Party when the election took place: these people being Liam Gallagher, Jim McKay and Brenda Irvine.

(4) I declare, upon the Union having conceded at the hearing, that on or about 9-11 November 2009 the Union breached rule 24.7 of its rules, in that the Irish Executive Committee allowed Brenda Irvine to stand for and be elected to the Regional Political Committee, though she was not a member of the Irish Executive Committee, but was attending as a an observer delegate elected by the Retired Members Association. I do not consider it appropriate that I should make an order with regard to this breach.

Reasons

1. By three applications dated 10 February 2010, 26 February 2010, and 26 April 2010 the applicant made four complaints against his union, Unite the Union (“the Union”). Following correspondence with my office, the applicant confirmed the four complaints he wished to pursue in the following terms: -

Complaint 1

That on or about 9-10 November 2009 the Union breached Rule 22.5 of its Rules, in that Irish Executive Committee elected the Regional Political Committee, which under the rule is the function of the Regional Political Conference.

Complaint 2

That on 15 October 2009 the Union breached rule 6.3 of its rules, in that it allowed Geraldine Kelly to stand for and be elected onto the Area Activist’s Committee and to stand for and be elected onto the Irish Executive Council, although as a paid employee of the Union she was not eligible to stand for election, as she could not qualify as an “accountable representative of workers “under the rule.

Complaint 3

That on or about 9-10 November 2009 the Union breached rule 22 (sub-section 22.5) *and* the Executive Council guidelines of May 2008 for implementation of rule 22, clause 1 and clause 5, by electing three people onto the Regional Political Committee in Northern Ireland who were not members of the Labour Party when the election took place; these people being Liam Gallagher, Jim McKay and Brenda Irvine.

Complaint 4

That on or about 9-11th November the Union breached its Rules as set out below, by permitting Brenda Irvine to stand for and be elected onto the Regional Political Committee, as she attended by being sent or elected by the Retired Members Association as an observer delegate to the Irish Executive. Under Standing order for the Regional committees dated 15th October 2009 Section 3 Sub-Section (3.2), in attending as an observer delegate she was ineligible to be nominated for election. (Observer delegates have no voting rights on the Irish Executive).Further, Rule 6 (Lay Office) clauses 6.2 and 6.3 were breached, as being a retired member she is not an “accountable representative of workers”, as required by Rule 6 to be eligible for to hold office.

2. The complaints are matters within my jurisdiction under Article 90A (2) (a) and

(d) of the 1995 Order. They were investigated in correspondence by my office and, as required by Article 90B (2) (b) of the 1995 Order, the parties were offered the opportunity of a hearing, which took place on Wednesday 24 November 2010.

3. The Union was represented by Mr. G Daly of Francis Hanna & Co. Solicitors. The Union's Regional Secretary, Mr. J Kelly, and its Regional Coordinating Officer, Mr. E McGlone, attended and gave evidence for the Union. Mr. Rice acted in person and gave evidence on his own behalf. He was accompanied by Mr. D Thompson, who did not participate in the proceedings. A 138 page bundle of documents containing relevant correspondence and papers was prepared by my office for the hearing. It included relevant statutory extracts and relevant national rules of the Union (2009), along with Guidance/Guidelines issued by the Executive Council of the Union, Standing Order papers, and Executive Council directions on the establishment of Constitutional Committees. The rules of the Labour Party in Northern Ireland, plus an extract from the 2006 Rule Book of Amicus, a predecessor union of Unite, were also included.

4. At the outset of the hearing Mr. Daly made a request to introduce a one page document on behalf of the Union. He gave sufficient explanation for its late introduction and its relevance, and I admitted it to proceedings. Mr Rice also made a request to admit six documents on his own behalf. I accepted his explanation for their late introduction and their relevance and admitted the documents to the proceedings. After the lunch break, Mr Rice sought permission to introduce more documents. Upon consideration I admitted these to the proceedings, as being relevant and brief. The Union objected on the grounds that they could have been introduced in the morning along with Mr Rice's other additional documents, but indicated that it did not wish to press for them to be excluded.

Findings of Fact

5. Having considered the oral and documentary evidence provided, I find the facts to be as follows.

6. Unite the Union was formed in April 2007 by the amalgamation of the Transport and General Workers Union (TGWU) and Amicus. Mr Brian Rice, the applicant, was a member of Amicus before the amalgamation, and had served on that union's National Executive Council for a number of years. At the time when the rule breaches he complains of allegedly took place, he was (as he is still) a member of the Bombardier Aerospace Branch of Unite in Belfast and a full-time union convenor on site in that company. He has been a member of Unite and its predecessors for some 34 years.

7. For a two-year transitional period after the 2007 amalgamation, Amicus and the TGWU retained their separate committee structures within Unite. Following the introduction of new rules on 1 May 2009, the process began of electing committees in the Union's regions which would, for the first time, be composed of members from both of the predecessor unions. The complaints made by Mr Rice concern elections to committees in the Ireland region of Unite, which covers both Northern Ireland and the Republic of Ireland; the committees in question

are the Irish Executive Committee, the Regional Political Committee and the Belfast Area Activists Committee.

8. On 3 October 2009 a meeting of area activists was held in Belfast during which the Belfast Area Activists Committee (AAC) was to be elected from those attending, who included Mr Rice. Because of a difference of view over the allocation of seats on the AAC between branches and industrial sectors, the election was not held and the meeting had to be reconvened for 15 October. In the interim, on 5 October, Mr Rice wrote to the Irish Regional Secretary, Mr J Kelly, complaining about the way the meeting was conducted, and stating also that one person present at the meeting and seeking a place on the AAC was an employee of the Union and not eligible to stand. Mr Kelly did not reply on this last point (though Mr Rice acknowledges that he did deal with other issues raised in the letter).

9. When the meeting reconvened on 15 October, the Regional Secretary attended and provided advice on election procedure. The election then went ahead and the person who Mr Rice claimed was not eligible to stand (now identified as Mrs Geraldine Kelly) was elected to a place on the Belfast AAC. Immediately after the meeting, the newly-elected AAC proceeded to hold its first meeting. At this it elected four of its members to places on the Irish Executive Committee (IEC). One of the four was Mrs Kelly, who duly took her place at the first meeting of the IEC, held in Belfast on 9-10 November 2009.

10. That first IEC meeting had before it proposals for the formation of the Regional Political Committee (RPC). These were, in brief, that the IEC would elect an RPC of 12, six each from Northern Ireland and the Republic of Ireland, from among its own members. Three of the six from the Republic of Ireland were to be members of the Irish Labour Party; no requirement as to political party membership was placed on candidates for the Northern Ireland seats.

11. The minutes of the meeting record that there was considerable debate about the proposals and give a brief indication of the main point at issue, namely, which of the Union's rules should govern the election of the RPC. The proposals were based on the assumption that the operative rule was Rule 24 ("*Ireland*"), but some IEC members considered that it should be Rule 22 ("*Political Organisation – Labour Party*") and that to act on the proposals would be a breach of rule. (If Rule 22 applied, then under 22.5 it would be the role of a specially convened Regional Political Conference, not the IEC, to elect the RPC). In the end, the proposals were accepted and the meeting elected 12 of those present to be the members of the RPC. Of the six Northern Ireland members, three were members of the Labour Party, one had applied for membership, and the remaining two had agreed to apply for membership if elected.

12. On 23 November 2009, in an e-mail to Mr Kelly, Mr Rice said he had heard about the IEC's election of the RPC. He said he believed this was a breach of Rule 22.5, which states that "*the Regional Political Conferences shall elect Regional Political Committees*". Rule 22 also states that those attending the Regional Political Conferences shall be Labour Party members and Mr Rice went on to say that he felt that he and other Labour Party members had

been disenfranchised from participating in the lay structures of the Union by the IEC's action. He asked that his e-mail be accepted as a formal complaint and placed before the next meeting of the IEC. He received no reply and on 18 January 2010 sent a copy of the e-mail to Mr C Whelan, the Union's political director, who he understood was advising Mr Kelly on the matter. He received no reply.

13. On 11 February 2010 my office received from Mr Rice a Notification of Complaint form, claiming breaches of the Union's rules in respect of the election of the RPC and in respect of Mrs Kelly's election to the Belfast AAC (Complaints 1 and 2 above). On 22 February Mr Rice e-mailed Mr Kelly and Mr Whelan advising them that he had made a complaint to me and adding that he had now found out that a number of those elected to the RPC were not members of the Labour Party when elected, which was, he said, a clear breach of Rule 22.5. He asked that this be added to his earlier complaint and investigated also. He received no reply. He then sent a complaint about the matter to my office (Complaint 3 above). Finally, on 26 April 2010, he sent a further complaint to my office, alleging that there was breach of other rules on eligibility (apart from that requiring Labour Party membership) by one of those elected to the RPC (Complaint 4).

The Relevant Statutory Provisions

14. The provisions of the 1995 Order which are relevant to these applications are:

Right to apply to Certification Officer

90A. —

(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 paragraph (2) may apply to the Certification Officer for a declaration to that effect, subject to paragraphs (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;

(d) The constitution or proceedings of any executive committee or of any decision-making meeting;

(3) The applicant must be a member of the union, or have been one at the time of the alleged breach or threatened breach.

(8) The reference in paragraph (1) to the rules of a union includes references to the rules of any branch or section of the union.

(10) For the purposes of paragraph (2)(d) a committee is an executive committee if—

(a) it is a committee of the union concerned and has power to make executive decisions on behalf of the union or on behalf of a constituent body,

(b) it is a committee of a major constituent body and has power to make executive decisions on behalf of that body, or

(c) it is a sub-committee of a committee falling within sub-paragraph (a) or (b).

(11) For the purposes of paragraph (2)(d) a decision-making meeting is—

(a) a meeting of members of the union concerned (or the representatives of such members) which has power to make a decision on any matter which, under the rules of the union, is final as regards the union or which, under the rules of the union or a constituent body, is final as regards that body, or

(b) a meeting of members of a major constituent body (or the representatives of such members) which has power to make a decision on any matter which, under the rules of the union or the body, is final as regards that body.

(12) For the purposes of paragraphs (10) and (11), in relation to the trade union concerned—

(a) a constituent body is any body which forms part of the union, including a branch, group, section or region;

(b) a major constituent body is such a body which has more than 1,000 members.

Declarations and orders

90B. —

(1) The Certification Officer may refuse to accept an application under Article 90A unless he is satisfied that the applicant has taken all reasonable steps to resolve the claim by the use of any internal complaints procedure of the union.

(2) If he accepts an application under Article 90A the Certification Officer—

(a) shall make such enquiries as he thinks fit,

(b) shall give the applicant and the union an opportunity to be heard,

(c) shall ensure that, so far as is reasonably practicable, the application is determined within six months of being made,

(d) may make or refuse the declaration asked for, and

(e) shall, whether he makes or refuses the declaration, give reasons for his decision in writing.

The Relevant Union Rules (Unite the Union Rules 2009) etc

15. The Union rules (and documents) that are applicable to these applications are:

RULE 6. LAY OFFICE

- 6.2 *In order to be eligible to be a candidate for election to, or hold office on, the Executive Council and/or any committee, council, or other body of the Union provided for by these rules, the member in question must be an accountable representative of workers.*
- 6.3 *The definition of the term “accountable representative of workers” shall be in the exclusive power of the Executive Council, which is empowered to take into account changing industrial realities and the unique nature of some industries (e.g. construction, contracting, leisure, rural etc) in formulating such a definition. It must nevertheless include Branch office-holders who are in employment, shop stewards, health & safety and equalities representatives.*

RULE 22. POLITICAL ORGANISATION – THE LABOUR PARTY

- 22.1 *There shall be Regional and National Political Committees composed of individual members of the Labour Party to co-ordinate the Union’s work in the Labour Party, acting under the direction of the Executive Council.*
- 22.2 *Neither the Union, nor any constituent part of the Union, shall affiliate to or give support to the candidates of any other political party in Great Britain other than the Labour Party.*
- 22.3 *Each Branch of the Union in Great Britain shall be entitled to affiliate and elect delegates to Constituency Labour Parties in appropriate areas subject to agreement by the Regional Political Committee and approval of the Executive Council.*
- 22.5 *All Branch Constituency Labour Party delegates together with representatives from the Regional Industrial Sector Committees, Area Activist Committees and the Regional Committee, who are Labour Party members, shall be entitled to attend annual Regional Political Conferences. The Regional Political Conferences shall elect Regional Political Committees. The size and composition of the Regional Political Committees shall be determined by the Executive Council from time to time. The Regional Political Conferences shall also elect delegates who, together with delegates from the Executive Council, shall form a National Political Committee, the size of which shall be determined by Executive Council.*
- 22.6 *The Executive Council shall designate a Regional Political officer in each Region, who shall act as Secretary to the Regional Political Conference and Regional Political Committee. Any individual Regional Political Officer may also have other responsibilities. The Executive Council is free to designate this role to a different employee at any time as it sees fit.*

22.7 *The Union shall be represented at the Labour Party Annual Conference by delegates elected by the Regional Political Conferences, the National Political Committee and others as determined by the Executive Council. The Regional Committees shall represent the Union at the Labour Party regional conference.*

RULE 24 IRELAND

- 24.1 *There shall be an Irish Executive Committee which shall make decisions in matters of an industrial or political nature which arise out of and in connection with the economic or political conditions of the Republic of Ireland or Northern Ireland and which are of direct concern to members of the Union resident in the Republic of Ireland or Northern Ireland and which do not affect members of the Union not so resident. Each member of the Irish Executive Committee shall be resident in the Republic of Ireland or Northern Ireland.*
- 24.2 *The Irish Executive Committee shall be composed of elected lay members who are resident in the Republic of Ireland or Northern Ireland.*
- 24.5 *The Irish Executive Committee shall take the place and have the powers, duties and responsibilities of the Regional Committee for Ireland. The Regional Secretary shall act as secretary to the Irish Executive Committee and shall be responsible for implementing its decisions.*
- 24.7 *The Irish Executive Committee shall have power to appoint one or more sub-committees from among its members and, except where otherwise determined by the Executive Council, shall have the power to delegate to any such sub-committee all or any of its powers including therein the conduct of hearings, appeals, inquiries, investigations or any other proceedings or functions whatever which it is authorised by these rules to undertake.*

EXECUTIVE COUNCIL GUIDANCE RULE 6 – LAY OFFICE (agreed Sept. 2008)

ELIGIBILITY RULE 6: LAY OFFICE – CLAUSES 6.2, 6.3

- 6.2 *In order to be eligible to be a candidate for election to, or hold office on, the Executive Council and/or any committee, council or other body of the Union provided for by these rules, the member in question must be an accountable representative of workers.*
- 6.2.1 *Only members who are elected to represent workers will be eligible to participate in any body of the union, including any conferences, but with the exception of branch and workplace meetings (which all members can attend).*
- 6.3 *The definition of the term 'accountable representative of workers' shall be in the exclusive power of the Executive Council, which is empowered to take into account changing industrial*

realities and the unique nature of some industries (i.e. construction , contracting, leisure, rural etc) in formulating such definition. It must nevertheless include branch office holders who are in employment, shop stewards, health and safety and equalities representatives.

6.3.1 An accountable representative of workers must have been elected by the Unite members at a Unite branch or workplace. The workplace must contain a minimum of three members. The election must comply with the guidance under 6.5 below.

6.3.2 The range of relevant elected office may be specified by the Executive Council guidance in relation to specific rules, however in all cases where the representative has been elected under this guidance to the following roles, such representative will count as 'accountable representative of workers':

6.3.2.1 Convenor

6.3.2.2 Shop steward (or "workplace representative"/"father/mother-of-the-chapel", etc., where such phrases are the local colloquial term for such representative as represents members in bargaining and disciplinary and grievance matters.)

6.3.2.3 Health and safety representative

6.3.2.4 Equalities representative

6.3.2.5 Learning representative

6.3.2.6 Branch Secretary/Treasurer/Chair (where that branch officer is a paid employee of a company or organisation which is not Unite the Union), save with the specific permission of the Executive Council, (taking into account their current employment).

May 2008

Appendix II

EXECUTIVE COUNCIL GUIDELINES FOR IMPLEMENTATION OF RULE 22

POLITICAL ORGANISATION – THE LABOUR PARTY

Under Rule 22 the Executive Council is required to determine the size and composition of Regional Political Committees and of the National Political Committee, the Relevant Clauses of Rule 22 together with the appropriate recommendation are as follows:-

Clause 1

'There shall be Regional and National Political Committees composed of individual members of the Labour Party to co-ordinate the Union's work in the Labour Party, acting under the direction of the Executive Council'.

Clause 5

Regional Political Conferences

'All Branch Constituency Labour Party delegates together with representatives' from the Regional Industrial Sector Committees, Area Committees and the Regional Committee, who are Labour Party members shall be entitled to attend annual Regional Political Conferences'.

Suggested make up of the Regional Political Conferences

The delegation to the annual Regional Political Conferences would be as follows:

All Unite Branch CLP Delegates.

All LP members on the Regional Council

One LP representative from each of the Regional Industrial Sector Committees elected by the members of the Regional Industrial Sector Committee.

One LP representative from each of the Area Activist Committees elected by the members of that Area Activist Committee

There will be a Labour Party membership card check prior to the conference

Regional Political Committees (RPC)

'The Regional Political Conference shall elect Regional Political committees. The size and composition of the Regional Political committees shall be determined by the Executive council from time to time.'

Suggested make up of the RPC

The Regional Political conference will every two years elect from delegates present a maximum of 25 representatives for the RPC. At least 5 of those elected must be women. Nominations will be called for in advance of the meeting.

The Unite Regional Council will elect an additional 3 Labour Party members from their body to the RPC in their area. At least one of those elected must be a woman.

The RPC should meet at least twice a year. The RPC's can form sub committees to carry out and take forward business within that region. They may also ensure there is provision for sub committees to adequately represent the union at regional level where the labour party regions don't correspond with the unite ones.

National Political Committee (NPC)

'The Regional Political conferences shall also elect delegates who, together with delegates from the Executive Council, shall form a National Political Committee, the size of which shall be determined by the Executive Council'.

Suggested make up of the NPC

Each Regional Political Conference will elect every two years from delegates present 4 members from each Unite regions except Ireland to the NPC. At least 2 elected from each region must be women.

The Irish executive committee has the right to send representatives as appropriate.

In addition the Executive Council will elect 6 Labour Party members to the NPC. At least 3 must be women.

The NPC will meet at least twice a year.

Rule 7

Labour Party Annual Conference

‘The Union shall be represented at the Labour Party Annual Conference by delegates elected by the Regional Political Conferences, the National Political committee and others determined by the Executive council. The Regional Political Committees shall represent the union at the Labour Party regional conferences’.

Suggested make up of the LP Annual Conference delegation:

The NPC would attend the LP Annual Conference as delegates.

Two delegates will be elected from the Unite Ireland Region at least one of whom should be a woman.

.....

STANDING ORDERS – REGIONAL COMMITTEES (Issued 15 October 2009)

3) Delegates and attendees

3.2 The Regional Youth Forum and the Regional RMA Co-ordinating Committee may send an observer delegate each to the Regional Committee.

6) Order of Business

6.10 Reports:

- a) Executive Council*
- b) Regional Sub-Committees*
- c) Regional Political Committees*

- d) *Regional Industrial Sector Committees*
- e) *Area Activist Committees*
- f) *Regional Equalities Committees (Women, BAEM, LGBT, Disabled, Youth)*
- g) *Retired Members Co-ordinating Committee*

AMICUS RULE BOOK 2006

35. Political Organisation and Representation

(1) The Union and any body or part of the Union shall not affiliate to or give support to the candidates of any other political party in Great Britain other than the Labour Party. Each branch of the Union in Great Britain shall be entitled to affiliate and elect delegates to Constituency Labour Parties.

Regional Political Committee

(5) The delegates to the Labour Party Regional Conferences shall form the Regional Political Committee which shall meet as decided by the National Executive Council. The Committee shall be chaired by a delegate elected by and from the Committee. The Regional Political Officer shall act as Secretary to the Committee.

Submissions and Conclusions

Complaint 1

16. Complaint 1 is as follows:

“That on or about 9-10 November 2009 the Union breached rule 22.5 of its rules, in that the Irish Executive Committee elected the Regional Political Committee, which under the rule is the function of the Regional Political Conference.”

The relevant part of Rule 22.5 states:

“22.5 All Branch Constituency Labour Party delegates together with representatives from the Regional Industrial Sector Committees, Area Activist Committees and the Regional Committee, who are Labour Party members, shall be entitled to attend annual Regional Political Conferences. The Regional Political Conferences shall elect Regional Political Committees.”

The Union does not dispute that the IEC did indeed elect the RPC, as alleged.

17. **Mr Rice** said that the IEC had no authority to elect the RPC. Rule 22.5 made clear that this was the role of the Regional Political Conference, but no such conference had been called in Ireland. Delegates to the Regional Political Conferences, who would elect (and be elected to) the RPC, were to be members of the Labour Party. By the IEC's action, he and other members of the Labour Party in Northern Ireland had been denied their lawful opportunity to take part in the Union's democratic process. Mr Rice said that he had seen the Union's argument that Rule 22 did not apply in Ireland, but only in Great Britain. He rejected this argument. The use of the words "Great Britain" in Rules 22.2 and 22.3 was not in his view meant to exclude Northern Ireland. These rules, he said, echoed the wording of Rule 35(1) in the former Amicus rule book and had clearly been read across from it; but in his time as a member of the NEC of Amicus that rule had never been interpreted as excluding Northern Ireland. He pointed out that, in many contexts, "Great Britain" includes Northern Ireland – e.g. the international car identification plate "GB" applies to Northern Ireland cars, the Olympic "Team GB" includes Northern Ireland competitors, UK postage stamps are described as "GB" stamps etc; and he quoted a statement in Wikipedia that "the term Great Britain (and the abbreviation GB) is the traditional short form of the full country title of the United Kingdom of Great Britain and Northern Ireland". It could not be the intention of the rules to put Northern Ireland members of the Union or the Labour Party at any disadvantage compared to members elsewhere; yet he and others in Northern Ireland had been denied opportunities which would have been open to them had they been in, say, Wales.

18. Mr Rice pointed out that in 2003 the Labour Party had changed its rules to allow people in Northern Ireland to become members. There was now a Northern Ireland Constituency Labour Party with 300-400 members, which was a fully functioning part of the Party. So there was no reason why Rule 22 should not apply in Northern Ireland. In his view, the Ireland Region should have convened a Regional Political Conference comprising, from Northern Ireland, all Unite members who were members of the British Labour Party and, from the Republic, those who were members of the Irish Labour Party. Each section would then have elected an equal number of members on to the RPC. In that way the requirements of Rule 22 would have been fulfilled. Instead the rule had been ignored, and so breached.

19. **For the Union, Mr Daly** said that Rule 22 had no application to Ireland; it applied only to Great Britain. The designation of the UK as "the United Kingdom of Great Britain and Northern Ireland" showed that these are two separate parts of the whole, i.e. that "Great Britain" means England, Scotland and Wales, and does not include Northern Ireland. The designation derived ultimately from the Act of Union of 1800, which had created the "United Kingdom of Great Britain and Ireland" from two separate kingdoms. Rule 22 referred specifically to Great Britain and made no reference whatever to Ireland, North or South, for which there were other arrangements, made by Rule 24. The Labour Party referred to in the title and the body of Rule 22 was self-evidently the British Labour Party and it was clear from this that the Rule was not intended to apply to Ireland; for if it did, the untenable consequence would be that Unite members in the Republic of Ireland who wanted to be on the Ireland RPC would have to be members of the British Labour Party (and would be entitled, moreover, to attend the British Labour Party's Annual Conference). This made no

sense, but the Rule made complete sense if it was interpreted properly, as applying to Great Britain only.

20. Mr Daly said that the Union's Ireland Region is quite unlike any other region because it covers two separate political jurisdictions. The Union recognised this and had made separate arrangements for it, in Rule 24. Rule 24.1 created the IEC and empowered it to

“.. make decisions in matters of an industrial or political nature which arise out of and in connection with the economic or political condition of the Republic of Ireland or Northern Ireland...”

Rule 24 gave the IEC a wider scope than other Regional Committees and freedom to make different arrangements where the different political or economic situation in Ireland might require them. Under that rule the IEC had devised the method to be used for electing the RPC and it had done so with the intention of creating fair representation for the members from the two predecessor unions and the two jurisdictions in Ireland. There had been considerable discussion within the Region before the IEC had adopted the method, and it had made clear that it was prepared to review it at any time. But it had acted within its powers and had breached no rule.

21. **Conclusion.** The facts about the method used to elect the Ireland RPC in November 2009 are common ground between the parties. What is disputed is whether that method conformed to the Union's rules. Mr Rice says it did not, because it is not the method laid down in the rule which governs the election of all RPCs, including the Ireland RPC, i.e. Rule 22. The Union says that it did, because Ireland is a special case and it is Rule 24, not Rule 22, that governs the election of the Ireland RPC; and Rule 24 allows the IEC to determine how this is to be done.

22. Rule 22 is headed *“Political Organisation - The Labour Party”*, and the Union and Mr Rice agree, rightly in my view, that the reference is to the British Labour Party. Under Rules 22.1 and 22.5, therefore, delegates to Regional Political Conferences and the members of RPCs must be members of the British Labour Party. If this rule applies to the Ireland region exactly as it applies to every other region of the Union, it will mean that it is a qualification for anyone, throughout the Ireland region, North or South, who wishes to be on the RPC that he or she be a member of the British Labour Party. This is so obviously an unacceptable outcome for Unite members in the Republic of Ireland that the premise must be wrong; that is, it cannot be the case that the Rule applies to Ireland exactly as it does to the other regions. Mr Rice said that he had never argued that Republic of Ireland members of Unite needed to be in the British Labour Party: he was talking about Northern Ireland members only. His position, then, is that, as regards its criteria for membership of the Ireland RPC, Rule 22 applies in one part of the Ireland region, Northern Ireland, but not in the other, the Republic.

23. The Union argues that Rule 22 applies to neither part of the Ireland region, but to Great Britain regions only. It points to Rules 22.2 and 22.3, which state respectively:

“Neither the Union, nor any constituent part of the Union, shall affiliate to or give support to the candidates of any other political party in Great Britain other than the Labour Party”, and

“Each Branch of the Union in Great Britain shall be entitled to affiliate and elect delegates to Constituency Labour Parties in appropriate areas subject to agreement by the Regional Political Committee and approval by the Executive Council”.

Mr Rice does not deny that the rule applies to Great Britain only, but argues that “Great Britain” here includes Northern Ireland.

24. The term “Great Britain” is not used anywhere else in the Union’s rules apart from the two places just quoted. There is no definition of it in the rule book or in any of the Executive Council guidance, standing orders or General Secretary circulars that have been submitted in evidence to me. I do not find it possible to infer what the term means in rule 22 from the rules generally. In the circumstances, it is appropriate to give the term its usual meaning, that which it would have for ordinary members of the Union reading it.

25. I consider that “Great Britain” normally means England, Scotland and Wales, and does not include Northern Ireland. Mr Rice’s arguments for inclusion of Northern Ireland are ingenious but not convincing. The fact that in some international codes “GB” can stand for the UK does not seem to me to be of much relevance in the present context. Mr Rice quoted a sentence from a Wikipedia article on Great Britain which said that Great Britain was the traditional abbreviation for the UK. I failed to find that particular sentence, but I did note the following statements in the article, under the sub-heading “Use of the term *Great Britain*”: “Great Britain refers to the majority of the United Kingdom of Great Britain and Northern Ireland. It refers to the largest island only, or to England, Scotland and Wales as a unit... It does not include Northern Ireland”; and “In 1975 the Government affirmed that the term Britain, not Great Britain, could be used as a shortened form of the United Kingdom”. Wikipedia’s authority for both these statements is “Britain 2001: The Official Handbook of the United Kingdom, 2001”, published by the Stationery Office. I cite also Stroud’s Judicial Dictionary where it is said: “The United Kingdom is a union of England and Wales (Law in Wales Act, 1536) and Scotland, forming Great Britain (Union with Scotland Act, 1706) and Northern Ireland (Union with Ireland Act, 1800)” (my emphasis). Despite Mr Rice’s assertion that some members of Amicus interpreted their similarly worded rule as including Northern Ireland, in my judgment members of Unite would understand “Great Britain” in the way indicated in these citations. Accordingly I reject the view that Rule 22 applies to Northern Ireland. It has already been established (para 22) that it does not apply to the Republic of Ireland

26. If there is to be an Ireland RPC (and it is clear from 6.10c of the standing orders for the Regional Committees issued on 15 October 2009 that the Union assumes there will be an RPC in all its regions), then, since Rule 22 is not available, the only rule under which it can be created is Rule 24. Rule 24.1, however, provides broad powers for the IEC, rather than detailed prescriptions; of particular interest in the context of the present application, it lays

down no method for the election specifically of an RPC. I conclude that the rule gives the IEC discretion as to the method to be used (providing it observes the usual safeguards regarding proportionality, fairness etc), and consequently I accept that it was entitled to adopt the method it did.

27. The rules make clear that the Union sees the Ireland region as different from its other regions. The title of the Irish Executive Committee already marks a difference: no other Regional Committee is designated “Executive”. Although Rule 24.5 says that “*The Irish Executive Committee shall take the place and have the powers, duties and responsibilities of the Regional Committee for Ireland*”, Rule 24.1 gives it powers that no other Regional Committee has, to take decisions on political and economic matters. The Ireland Region is authorised (Rule 24.9) to hold a policy conference and (Rule 24.15) regional industrial sector conferences, which is not the case for any Great Britain region. Conversely, the Ireland region is not enjoined by the rules, as the Great Britain regions are, to hold a political conference or elect an RPC (though as mentioned above, other references show that it is expected to have an RPC). The Executive Committee guidelines on Rule 22 published in May 2008 lay down - under the heading “*Suggested make up of the NPC*”- that the Ireland region cannot elect members to the National Political Committee (though the IEC can send “representatives as appropriate”).

28. Rule 24 shows that the Ireland region is considered by the Union to require a different approach, and a significantly greater degree of autonomy, clearly because it is unique among the regions in covering two different political jurisdictions. That greater autonomy extends in my judgment to allowing the IEC to determine how the Ireland RPC will be elected.

29. At the hearing Mr Rice introduced some correspondence between Mr Kelly, the Regional Secretary, and Mr C Whelan, the Union’s political director, which he said showed that Mr Whelan thought the election of the Ireland RPC was in breach of rule. Mr Kelly, not Mr Whelan, initiated this correspondence and in his evidence he said that he had done so reluctantly after Mr Whelan’s alleged view had been raised several times at IEC meetings. He said that in a meeting between himself and Mr Whelan referred to in the correspondence, the latter had not said he believed there was a breach of rule; he had in fact proved to be interested in ensuring that the arrangement for the RPC made it possible for delegates from the region – Labour Party members – to attend the National Political Committee and the Labour Party Annual Conference. At any rate, in his letter to Mr Kelly Mr Whelan declared himself in support of a proposal to set up “a sub-committee for Northern Ireland Unite members who are members of the Labour Party (GB)”. Presumably (though this is not clear) a sub-committee of the RPC is meant, but however that may be, this seems to me to tell against Mr Rice’s view; for if Mr Whelan considered that the whole procedure for the election of the RPC had been in breach of rule, he could not consistently hold that an ad hoc, after-the-event modification of the outcome was an acceptable solution. This correspondence does not change my view, based on examination of the rules and other documents and evidence, that the IEC was within the rules in respect of the election of the RPC.

30. For the reasons set out above, I refuse to make the declaration sought, that the Union breached Rule 22.5 of its rules, in that the Irish Executive Committee elected the Regional Political Committee, which under the rule is the function of the Regional Political Conference.

31. Observation: Although it was strictly within its rights, nevertheless it is perhaps surprising that the IEC chose to depart quite so completely from the method used in the other Unite regions. It is hard not to have some sympathy with Mr Rice's feeling that as a Union activist and member of the British Labour Party he, and others like him in Northern Ireland, should have had the opportunity to stand for election to the RPC and perhaps to go from there as a representative to the National Political Committee and the Labour Party Annual Conference. Moreover, although it held that Rule 22 did not apply, the IEC clearly felt that Northern Ireland members of the RPC should, like members of the RPCs of Great Britain regions, be members of the British Labour Party; for it required those who were not already members to become so. It is my impression that the Union has not fully thought through its position as regards Northern Ireland members in the light of the fact that the Labour Party now permits Northern Ireland residents to join and has an organisation in Northern Ireland. If I am right about that, there must be a risk that this issue will cause further difficulties in the future unless it is addressed.

Complaint 2

32. Complaint 2 is:

“That on or about 15 October 2009 the Union breached rule 6.3 of its rules, in that it allowed Geraldine Kelly to stand for and be elected onto the Area Activists Committee and to stand for and be elected onto the Irish Executive Committee, although as a paid employee of the Union she was not eligible to stand for election, as she could not qualify as an “accountable representative of workers” under the rule.”

Rules 6.2 and 6.3 are as follows;

“ 6.2 In order to be eligible to be a candidate for election to, or to hold office on, the Executive Council and/or any committee, council, or other body of the Union provided for by these rules, the member in question must be an accountable representative of workers ”

“6.3 The definition of the term “accountable representative of workers” shall be in the exclusive power of the Executive Council, which is empowered to take into account changing industrial realities and the unique social nature of some industries (e.g. construction, contracting, leisure, rural etc) in formulating such a definition. It must nevertheless include Branch office-holders who are in employment, shop stewards, health & safety and equalities representatives.”

33. **Mr Rice** said that Mrs Kelly worked for the Union. She was based at its Antrim Road office in Belfast and had a Unite e-mail address. She was a classroom assistant at an Irish

language school run by the Southern Education and Library Board , but had not actually attended that workplace for five or six years. She also ran training courses for the Union. Mr Rice said that the Union's claim that Mrs Kelly was seconded to it by the SELB was incredible: no organisation would second an employee to another body for five years or more and pay her salary all that time. If the SELB was paying Mrs Kelly, it must be that the Union was reimbursing it, and so she was effectively and actually an employee of the Union. As such she was not eligible for election to any committee of the Union; and likewise, as an employee she could not be an accountable representative of workers, and therefore was again not eligible for election to any committee. Her election to the Belfast AAC and the IEC was a breach of Rule 6.2.

34. **Mr McGlone**, a Unite Regional Co-ordinating Officer, gave evidence for the Union. He said that in 2006 the TGWU, as it then was, along with the GMB, NIPSA and Unison had secured an agreement with the ELBs for the secondment of a number of their employees who were members of those unions to work on a change programme involving new job evaluations. This had been scheduled to finish at the end of 2009, but had been extended. Mrs Kelly was one of two Unite activists (one from Amicus, one from the TGWU) seconded to the Union under this arrangement. Her current role was to deal with issues and problems faced by Unite members who were employed in the education and library service – all the ELBs, not just SELB. She was based in the Union's office, but she went regularly to ELB workplaces, wherever she was required to represent members or defend their interests. The SELB paid her salary and the Union made no contribution to it. The union provided a print-out from its own computerised membership records which showed Mrs Kelly's employer as the Irish language school and her industrial sector as public services (local government). Mr McGlone said Mrs Kelly also worked as a part-time tutor in a further education college, delivering health and safety courses to trade unionists, for which she was paid directly by the college. She was also, he said, the secretary of her Branch (ATGWU 119) and a senior shop steward. She was fully qualified as "an accountable representative of workers" under the rules and was eligible for election to the Belfast AAC and the IEC.

Conclusion.

35. The Unite rule book contains several rules which prevent an employee of the Union from holding certain positions: rules 12.1 and 13.1 state that current employees of the Union may not be delegates to the Policy Conference and the Rules Conference respectively; while under Rule 14.3.6, current or former employees of the Union are not eligible to stand for or hold office on the Executive Council. Guidance on Rule 6 ("*Lay Office*") issued by the Executive Council in September 2008 appears to imply, at 6.3.2.6, that employees of the Union may not be Branch office holders, though this is not entirely clear. I have found no rule which states, blanket-fashion, that employees of the Union shall not hold *any* lay office in the Union. However, since the Union did not challenge Mr Rice's argument on this point, I take it that it accepts that if Mrs Kelly was its employee, she would, as he maintained, be ineligible to be a member of the Belfast AAC or the IEC.

36. Mr Rice offered little by way of evidence for his claim that Mrs Kelly was an employee of the Union. He based his case on his belief that four or five year secondments simply do not occur and on the argument that Mrs Kelly's actual place of work was the Union's office. The Union, on the other hand, produced evidence from its records to show who Mrs Kelly's employer was and explained how the secondment had come about. Mr McGlone gave evidence that Mrs Kelly received no payments from the Union except normal expenses incurred while on union duty. He said that lengthy secondments were not in fact unusual, giving as examples that there were two employees of Northern Ireland Water (a Government-owned utility) currently on long-term secondment to Unite and that the Northern Ireland Public Service Alliance (NIPSA) depended heavily on being able to have long-term secondments of civil servants and local government employees. Mr McGlone also pointed out that Mr Rice himself had been engaged full-time on union work in Bombardier Aerospace for seven years, yet he was paid by the company all that time.

37. In my judgment, Mr Rice failed to substantiate his claim that Mrs Kelly is an employee of the Union. I find the Union's evidence and argument persuasive and do not accept Mr Rice's view that it ought to have produced personal salary and/or expenses documents of Mrs Kelly's to provide conclusive proof of the identity of her employer. I accept that her employer is the SELB.

38. Mr Rice's second claim in Complaint 2 is that Mrs Kelly was not "an accountable representative of workers". His reasons for believing that she was not were that she was an employee of the Union and that she did not attend her professed place of work. As to the first of these, it may or may not be the case that being an employee of the Union means that one cannot be a representative of workers: but I have already decided that Mrs Kelly was not an employee of the Union and so that reason does not hold. As to the second reason, Mr McGlone gave evidence that Mrs Kelly visited ELB workplaces around Northern Ireland representing Unite members and dealing with issues of concern to them. He also said that she was a senior shop steward and the secretary of her Branch. Rule 6.3 states that the term "accountable representative of workers" must include shop stewards and Branch office-holders who are in employment; and the Executive Council's guidance of September 2008 (6.3.2.6) defines a Branch office-holder as a "Branch Secretary/Treasurer/Chair" who is a paid employees of a company or organisation other than the Union. Mrs Kelly meets these criteria and therefore she is an accountable representative as defined by rule 6.2/6.3 and the Executive Council guidance. Mr Rice's second reason does not hold.

39. For the reasons given above, I refuse to make the declaration sought, that the Union breached Rule 6.3 of its rules by allowing Geraldine Kelly to stand for and be elected onto the Belfast Area Activists Committee and the Irish Executive Committee.

40. I note in passing that the rule book also uses the term "workplace representative" (Rule 18). This does not mean the same as "accountable representative of workers", though it overlaps considerably with the latter. It includes shop stewards and Learning, Equalities and Health & Safety representatives, all of whom are also defined as accountable representatives of workers in the Executive Council's guidance. Branch office-holders, on the other hand,

are *not* workplace representatives, but *are* accountable representatives of workers. It seems to me possible that some part of Mr Rice's complaint about Mrs Kelly's eligibility may be due to confusion between these two terms.

Complaint 3

41. Complaint 3 is:

“That on or about 9-10 November 2009 the Union breached rule 22 (sub-section 22.5) and the Executive Council guidelines of May 2008 for implementation of rule 22, clause 1 and clause 5, by electing three people onto the Regional Political Committee in Northern Ireland who were not members of the Labour Party when the election took place; these people being Liam Gallagher, Jim McKay and Brenda Irvine.”

The text of Rule 22.5 has already been given under Complaint 1 above. Clause 1 of the Executive Council guidelines simply repeats Rule 22.1, which says that there will be Regional and National Political Committees composed of individual members of the Labour Party. Clause 5 is lengthy and need not be reproduced here (it is at paragraph 15 above): the salient point is that it shows that all delegates to Regional Political Conferences and all members of the Regional Political Committees and the National Political Committee must be Labour Party members. It also shows that the Ireland region cannot elect members to the National Political Committee; the IEC may, however, “send representatives as appropriate”.

42. The Union accepts that the three members of the Ireland RPC named by Mr Rice were not members when elected.

43. I have already decided, in determining Complaint 1, that Rule 22 does not apply in the Ireland region. Complaint 3, however, is based on the premise that it does so apply, and it therefore must fail. The IEC was entitled to elect the Ireland RPC by a method of its choosing and was not obliged to ensure that the members, whether resident in the Republic of Ireland or Northern Ireland, were members of the Labour Party.

44. For this reason, I refuse to make the declaration sought, that the Union breached rule 22.5 and the Executive Council guidelines for implementation of Rule 22 by electing three persons who were not members of the Labour Party to the Ireland Regional Political Committee.

Complaint 4

45. Complaint 4 is:

“That on or about 9-11 November 2009 the Union breached its rules as set out below by permitting Brenda Irvine to stand for and be elected onto the Regional Political Committee, as she attended by being elected by the Retired Members Association as an observer delegate to the Irish Executive. Under Standing Orders for the Regional committees dated 15 October 2009 Section (3) Sub-section (3.2), in

attending as an observer delegate she was ineligible to be nominated for election .(Observer delegates have no voting rights on the Irish Executive.

Further, rule 6 (Lay Office) clauses 6.2 and 6.3 were breached, as being a retired member she is not an accountable representative of workers.”

Rules 6.2 and 6.3 have been given above under Complaint 2 above. Section 3.2 of the Stranding Orders for Regional Committees states:

“3.2 The Regional Youth Forum and Regional RMA Co-ordinating Committee may send an observer delegate each to the Regional Committee.”

46. Since the Union stated that the IEC had elected the Ireland RPC under Rule 24, it accepted that the IEC must have done this under Rule 24.7, which says that the IEC “*shall have the power to appoint one or more sub-committees from among its members and shall have the power to delegate to any such sub-committee all or any of its powers.....*” The Ireland RPC is therefore a sub-committee of the IEC and as such must be elected from the members of the IEC. The Union accepted that Ms Irvine was not a member of the IEC but only an observer delegate, and that she was therefore not eligible to stand for the RPC. It conceded that rule 24.7 had been breached. In the circumstances, I have not addressed the question, raised in the complaint, whether Ms Irvine, as a retired member, could be an “accountable representative of workers”. Had I done so I should have been likely to conclude that she could not, given the terms of the Executive Council’s guidance on Rule 6.

47. In light of the Union’s concession, I declare that in electing Ms Brenda Irvine, an observer delegate, to the Ireland Regional Political Committee, the Irish Executive Committee breached Rule 24.7 of the Union’s rules.

48. When I make a declaration, I am required by Article 90B3 of the 1995 Order to make an enforcement order to remedy the breach and/or to ensure that it or a similar breach does not occur in future, unless I consider that it would be inappropriate to do so. The Union gave me an assurance at the hearing that it would immediately remove Ms Irvine from the Ireland RPC, and in addition it would immediately remove another observer delegate (Mr P Bond) who had been elected to the RPC at the same time as Ms Irvine. Given these assurances, I consider that it would not be appropriate for me to make an order. As to the future, I am confident that, should the Ireland region continue to elect the RPC in the same way, this breach will not be repeated.

Roy Gamble
Certification Officer for Northern Ireland

