

**DECISIONS OF THE CERTIFICATION OFFICER ON APPLICATIONS UNDER
ARTICLE 90A OF THE TRADE UNION AND LABOUR RELATIONS
(NORTHERN IRELAND) ORDER 1995**

Mr J. SMITH and Mr J. TAYLOR

v

UNITE THE UNION

Date of Decisions

16 March 2012

DECISIONS

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

- (1) I refuse to make the declaration sought by the applicants that on numerous occasions prior to October 2011 Unite the Union breached rule 17.7 of the Unite rule book in that it failed to hold Branch meetings to elect Branch officers as it must every second year by 31 December of that year.
- (2) I refuse to make the declaration sought by the applicants that on numerous occasions prior to October 2011 Unite the Union breached rule 17.8 of the Unite rule book in that it failed to hold Branch meetings once a month.
- (3) I refuse to make the declaration sought by the applicants that up to October 2011 Unite the Union breached rule 18 of its rules, that at each workplace the members employed shall elect from amongst themselves, at least every two years, one or more representatives, and that the Branch failure to elect one or more representatives breached rules [18.1] 18.1.1, 18.1.2, 18.1.3, 18.1.4; 18.5; 18.6; and 18.7.

REASONS

1. By separate applications dated 10 October 2011 the applicants, Mr Smith and Mr Taylor, made three identical complaints against their Union UNITE. Following correspondence with the applicants, the complaints they wished to pursue were confirmed by each of them in the following terms:

Complaint 1

That on numerous occasions prior to October 2011 Unite the Union breached Rule 17.7 of the Unite Rule book. That it failed to hold Branch Meetings to Elect Branch Officers, there must be an Election ever 2nd year by 31st December of that year. In my eight years of employment I had not heard or seen any notices of Elections.

Complaint 2

That on numerous occasions prior to October 2011 that Unite the Union breached rule 17.8 of the Unite rule book. In that each branch shall meet once a month. Clearly a branch has to meet to hold an election. In my eight years of employment I had not heard or seen any notices of Elections.

Complaint 3

Up to October 2011 Unite the Union breached Rule 18 of its rule that at each workplace the members employed shall elect from among themselves at least every 2 years 1 or more representatives. Rule 18 and 18.1.1 + 18.1.2 + 18.1.3 + 18.1.4 + 18.5 + 18.6 + 18.7

No Elections for the above positions, again I have been a union member for eight years and no election has taken place in my eight years of service.

(The branch referred to in the Complaints is branch 3/120; the branch of Mr Smith and Mr Taylor).

2. The complaints are matters within my jurisdiction under Article 90A (2) (a) and (c) 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 Thursday 16 February 2012, the applicants and the Union having agreed that the applications should be taken together.

3. The Union was represented by Mr J. O'Neill of Thompsons McClure Solicitors. The Union's Regional Coordinating Officer, Mr E. McGlone, attended and gave evidence for the Union; Mr H. Lewsley (the branch Secretary and Treasurer and a senior shop steward) and Mr G. Hamill (a shop steward) also attended and gave evidence for the Union. Mr Smith and Mr Taylor acted on their own behalf and each gave evidence. A 122 page bundle of documents containing relevant correspondence and papers was prepared by my office for the hearing. In addition to the applicants' and Union's correspondence, it included a set of notices and minutes of branch 3/120 meetings supplied by the Union, plus a cover letter setting out the Union's overall response to the complaints. The relevant national Rules of the Union and relevant statutory extracts were included in the bundle, and copies of the full Rule book of the Union (2009) were in evidence at the hearing. A copy of the 2005 version of the Rule book of the T&G, one of the two predecessors unions of Unite, was also in evidence. On the day of the hearing and prior to its commencement, my office supplied the parties with

two additional pages. These were notices of branch meetings, in September and October 2007, of another local branch of Unite. At the start of the hearing Mr Smith and Mr Taylor both indicated that they would have to leave the hearing at specified times if it had not already finished. This was agreed, and each did, in fact, leave before the hearing ended (in Mr Taylor's case, just a few minutes before.) On leaving, Mr Taylor agreed to submit to my office a letter setting out any remedy he (and Mr Smith) would want if their complaints were upheld.

Preliminary application by the Union for striking-out

4. At the outset of the hearing Mr O'Neill, for the Union, made application that I should use my powers under Article 70ZA(1)(a) of the Industrial Relations (Northern Ireland) Order 1992 to strike out the applicants' complaints on the grounds that they were vexatious and/or had no reasonable prospect of success. He said that the applicants were fully aware that their branch, 3/120, was functioning properly. At the time when they were seeking representation in a disciplinary case in 2011, they knew that Mr Hamill was the elected shop steward in their work area and one of them (Mr Smith) had actually attended the workplace meeting in early 2010 at which Mr Hamill was elected. In late 2010, both had attended a meeting on bullying in the workplace which was addressed by Mr Lewsley and at which Mr Hamill had been introduced as a Unite shop steward. In July 2011, after being contacted by the Personnel Department of QUB, Mr Hamill had offered to help the applicants in the disciplinary case, but they rejected that offer and also several others for different shop stewards to represent them. For some reason they had wanted nothing to do with the elected representatives in their work area. Now they had seemingly conceived a grievance about how they had been represented by the Union and it was because of that, Mr O'Neill said, that they were bringing these spurious and unfounded allegations. As to the matter of branch meetings and elections, the Union had provided notices and minutes which showed that meetings had taken place on a monthly basis over a long period and that elections had been held as required by the rules.

5. Mr O'Neill suggested that in the light of the statements he had just made, the applicants might wish to withdraw their complaints. They chose not to do so. I declined to strike out the complaints at that stage, because there were some aspects of the documents the Union was relying on that seemed to me to need exploration in order to clarify the nature of the meetings they referred to.

Findings of Fact

6. At the times relevant to their applications, Mr Smith and Mr Taylor were members of Branch 3/120 of Unite. This is a composite branch, the members of which are drawn from a number of workplaces, including Queen's University Belfast (QUB), Northern Ireland Water and the Northern Ireland Fire and Rescue Service, among others. Mr Smith and Mr Taylor were employed as cleaners by QUB and were located in the University's David Keir Building. They had been members of Unite and previously of the T&G (which merged with Amicus in 2007 to form Unite) for eight years or more. Mr Taylor remains a member of Unite, but Mr Smith is no longer a member. Neither is now employed by QUB.

7. In late June 2011 Mr Smith, Mr Taylor and two other cleaners were given a warning by a manager at QUB about their performance at work. Subsequently, on 22 July, they were sent

a letter by management, summoning them to attend a disciplinary hearing. Presumably to help them understand what assistance they could get from their union to defend the disciplinary charges, they acquired a Unite rule book (Mr Taylor said they “came across” it, Mr Lewsley said, in evidence for the Union, that they asked for a copy and were given one each). They wished to be represented at the hearing by a Unite shop steward, but noted in the rules that shop stewards had to be elected at least every two years (Rule 18.1). They believed, however, that the shop stewards in the area in which they worked had not been elected, since, to their knowledge, there had been no elections there for years. They contacted Unite’s regional headquarters at Antrim Road, Belfast to ask for an elected shop steward to be assigned to represent them at the hearing. They were told that the shop stewards at QUB had been elected and were recognised by the Union, and several names were suggested to them as possible representatives. They were not content with any of these, being convinced that they had not been elected. On 25 July they and the other two cleaners co-signed a letter to Unite headquarters in London, in which they complained that their local workplace representatives were unelected and that they had never had the opportunity to vote in any election to choose their representatives. More generally, they alleged that *“the current union representatives.... have never consulted [us] on any issues, we have been kept in the dark. We are not even informed of when branch meetings take place, we are told nothing.”* The letter went on to say that until these matters were resolved *“we cannot accept the current “unelected” representatives. They do not speak on our behalf.”* The letter was copied to Mr Jimmy Kelly, Unite’s Regional Secretary (Ireland).

8. Mr McGlone, the Regional Co-ordinating Officer for Region 3 (Ireland), wrote to Mr Kelly about this letter on 25 August 2011, after consulting with Mr Lewsley. He said that Mr Lewsley himself had conducted the last election for shop stewards in the David Keir Building, in the spring of 2010. Mr Lewsley had assured him that notice of the meeting had been posted and nominations sought, and about 15 members had attended, including Mr Smith and one of the other signatories of the letter, a Mr Alan Gordon. There was only one candidate, Mr Gregory Hamill, who was duly elected. His election was reported to union HQ and to QUB, which recognised him as the elected representative of the Unite members in that work area.

9. This letter was not copied to Mr Taylor and Mr Smith, and no other reply to their letter was sent to them.

10. In the meantime the QUB disciplinary hearing had taken place. Mr Taylor and Mr Smith were represented by a Unite shop steward, Mr Martin Stroud, who was from a different work area and from the former Amicus side of the Union. They were assured that he had been properly elected. The outcome was unfavourable to them, however, and they were advised on 16 August that they were to be dismissed from their jobs in QUB. Mr Stroud also represented them at an appeal hearing in September, but the appeal was not successful and they were informed by the University on 3 October 2011 that they were dismissed.

11. On 10 October 2011 Mr Taylor and Mr Smith sent their Notification of Complaint forms to my office. Their complaints concerned not only workplace elections for shop stewards and other representatives, but also branch meetings and elections for branch officers. They were prompted to raise these latter issues by noting, in their reading of the rulebook, that branch meetings were to be held once a month and branch officers were to be elected on or before 31 December every other year (Rules 17.8 and 17.7 respectively). They believed that these requirements had not been met in their branch.

The Relevant Statutory Provisions

12. The provisions of the Industrial Relations (Northern Ireland) Order 1992 and the 1995 Order that are relevant to this application are:

1992 Order

Striking Out

70ZA. – (1) *At any stage of the proceedings on an application made to the Certification Officer, he may –*

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

(b) - (c)

1995 Order

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 removal of a person from, any office;*

(b) – (e)

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

(4) – (7)

(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.*

Declaration 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)

13. The Union rules that are relevant to this application are as follows:

Rule 17. BRANCHES

17.1 - 17.4

17.5 *The Regional Committee shall be required to ensure that each Branch meets at regular intervals and operates in accordance with the standing orders provided for in clause 10 of this rule. Where a Branch fails to convene an Annual General Meeting of all members that Branch shall be suspended and members of the Branch shall be allocated to a Branch which meets subject to the right of the Branch to appeal to the Executive Council.*

17.6 -

17.7 *Each Branch shall have for its management a Chair, a Treasurer and a Secretary and such other officers as the Branch may elect. They shall be elected at a Branch meeting by show of hands, or by ballot, if so decided by the meeting. The election shall take place and be completed not later than December 31 in each alternate year, and the elected candidates shall take office the following January for two years. Casual vacancies may be filled at an ordinary Branch meeting, but notice of the impending election must be given to members of the Branch on the notice convening the meeting. The positions of Secretary and Treasurer may be held by the same member if the Branch so chooses.*

17.8 *Each Branch shall meet once each month at a designated meeting time and place. New members shall be notified of that time and place. A Branch which immediately prior to these rules coming in to force met at a frequency other than once each month may continue to do so. A Branch may decide to change its meeting time or place or the frequency of its meetings provided it obtains the Regional Committee's consent before implementing that change and takes such steps to inform Branch members of the change as shall be required by the Regional Committee. If the Regional Committee rejects the change, the Branch may appeal in writing to the Executive Council whose decision shall be final.*

17.9 -

17.10 *The Executive Council shall issue standing orders to regulate the conduct of Branch meetings and business and may amend the standing orders from time to time. Those standing orders may only be varied in respect of a Branch with the prior approval of the Executive Council. The quorum for a Branch meeting to make a decision on any*

matter shall be 5 members and all matters should be decided by a simple majority of those voting. If the votes are equal the proposition before the meeting shall fail.

17.11-17.14

RULE 18. WORKPLACE REPRESENTATION

18.1 *At each workplace, the members employed at that workplace, shall elect from amongst themselves, at least every two 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*

18.2 -18.4

18.5 *The constituency of a workplace representative shall be the workplace from which they were elected, or such grouping of workplaces as was defined by the Executive Council under clause 4 of this rule.*

18.6 *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.*

18.7 *The Executive Council may issue guidance on the powers and procedures of the Regional Industrial Sector Committee in relation to ratification of such election. The Regional Industrial Sector Committee shall ensure compliance with such procedures.*

T & G Rule Book (2005) - relevant extract

Rule 10

BRANCHES

1-3

4 (a) - Each branch subject as hereinafter mentioned shall have for its management a Chair and Secretary, and a committee.

Summary of Submissions

14. The applicants both stated that in their years of work at QUB they had never had a vote in any election for workplace representatives or for branch officers. They had never been notified of meetings or seen any notices of meetings or posters advertising elections. In breach of rules 17.8 and 17.7, branch meetings and branch elections had not been held, and in breach of rule 18.1 shop stewards had been put in place without a workplace election. When they were facing the disciplinary charges, they wanted an elected shop steward to represent them, but since they knew that no elections had taken place for years, they would not accept representation by persons who had not been chosen by the ordinary members on the shop floor. Up to that time they had never even been given a copy of the Union rulebook and

therefore knew little about the way the Union was run; they believed they were kept in the dark because this suited a small clique in their area that was appointing itself to union office again and again without ordinary members having any say. They had accepted Mr Stroud, a shop steward from a different work area, as their representative because they were told that he was the only one who stood for election every two years.

15. The Union, through Mr O'Neill and by the evidence of Mr Lewsley, Mr McGlone and Mr Hamill, rebutted these allegations. There had been no breaches of rule. Branch meetings had taken place regularly and elections had been properly held for branch officers and workplace representatives. Meetings and elections had been publicised by notices put up at well-known sites within the applicants' work area and elsewhere in the University; members had also been advised of them by word of mouth. The applicants, like every other member of the Union, had been given copies of the rulebook at the time of the merger between the T&G and Amicus which brought Unite into being. If they had needed another copy at any time they could simply have asked any shop steward or branch officer for one; they had known who the officers and representatives were and had sought their help over problems on previous occasions. They had every opportunity to vote in elections, as other branch members had done. They seemed to be making the remarkable argument that because they had not seen notices of branch meetings or elections, that meant there had been no notices and no meetings or elections had taken place. But the Union had provided documentary evidence that branch meetings and elections had taken place, and its witnesses would give oral evidence of the same. There had been branch elections in October 2007 and again in August 2010 (the Union having decided that the term of office of those elected in 2007 would be extended to three years instead of the normal two because of the substantial reorganisation that was still ongoing after the merger). The Union was unable to supply documentary evidence that there had been a workplace election in early 2010 at which Mr Hamill had been chosen as a shop steward for the David Keir Building; the notice of the meeting had not been kept and there was no minute of the meeting, since it was not customary to take minutes of workplace meetings. However, the Union's witnesses would affirm that the meeting had taken place and that, as already mentioned, Mr Smith had been present. Union HQ and QUB management had been notified of Mr Hamill's election immediately after the event and both recognised him as a shop steward in that work area. He had subsequently been granted leave by the University to undertake training to equip him for his new role.

Conclusions

16. Before turning to the individual complaints, I note that the success or otherwise of the applicants' claims depends solely on the facts in this case. No issues of jurisdiction or law were raised.

17. Complaint 1 is (in respect of Branch 3/120):

That on numerous occasions prior to October 2011 Unite the Union breached Rule 17.7 of the Unite Rule Book. That it failed to hold Branch Meetings to Elect Branch Officers, there must be an Election every 2nd year by 31 December of that year. In my eight years of employment I had not heard or seen any notices of Elections.

Rule 17.7 states:

Each Branch shall have for its management a Chair, a Treasurer and a Secretary and such other officers as the Branch may elect. They shall be elected at a Branch meeting by show of hands, or by ballot, if so decided by the meeting. The election shall take place and be completed not later than 31 December in each alternate year and the elected candidates shall take office the following January for two years. Casual vacancies may be filled at an ordinary Branch meeting, but notice of the impending election must be given to members on the notice convening the meeting. The positions of Secretary and Treasurer may be held by the same member if the branch so chooses.

18. The applicants brought no witnesses to corroborate their allegation that branch 3/120 had held no elections for branch officers. They had no documentary evidence, unless the letter of 25 July 2011 to Unite HQ, which was signed by two other Unite members, and which complains about the failure to hold elections, may be considered (on a generous interpretation) to refer to elections for branch officials as well as elections for workplace representatives. Of course, if one's contention is that there were no notices of meetings, one naturally can't bring a notice to prove that; but it might be expected that, if there had been no meetings for several years, there would be some other documentary evidence - perhaps letters from other members asking why not. In effect, the applicants simply asserted that there had been no notices and no meetings to elect branch officers, and that they had never had any say in choosing the officers. The Union, however, gave in evidence a notice of the meeting on 2 August 2010 which indicated that branch officers would be elected at it.

19. The Union also provided in evidence a document which purported to be the minute of that meeting. This listed the ten members who attended, named the proposers and seconders of the candidates, and declared Mr Peter Sherman re-elected branch chairman and Mr Lewsley elected branch secretary. There were, however, several points which cast a degree of doubt on the authenticity of this minute. It was not dated or signed, as other minutes given in evidence were, no apologies were noted, and there was no reference to the other agenda items which had been set out in the notice of the meeting. Mr Lewsley explained that he had taken the minute (though I note that Mr Albert Mills, who was still the branch secretary at this point, was present): this was the first time he had done so and this, he said, probably accounted for its inadequacies. He affirmed in evidence, however, that the meeting, and the elections at it, had taken place as recorded; Mr Hamill, who is shown in the document as being present and having seconded Mr Sherman, gave evidence to the same effect. Although I have some lingering unease about the minute, I must on balance conclude, in light of the Union's other evidence, and in the absence of contrary evidence from the applicants, that there was indeed an election on 2 August 2010 and that it was held at a branch meeting which had been publicised by notices put up in customary places, and probably also by word of mouth.

20. Nevertheless, there are some unsatisfactory aspects of the branch's procedures around this meeting, as well as the ordinary monthly branch meetings which are the subject of Complaint 2, which potentially have a bearing on the Union's position.

21. First, the terms used in notices of meetings. The notices, the Union said, are sent to shop stewards who then post them at the usual sites. They are addressed to "3/120 Branch Committee Members" and they generally state that "a meeting of the above Branch Committee will be held" at the given date, time and place. The notice for the 2 August 2010 meeting said "a General Meeting of the Branch Committee will be held...", which

appears to indicate that it was the branch AGM (which is provided for by rule 17.5). The Union said that, despite the references to the “branch committee”, these were in fact just meetings of the branch, which all branch members were entitled to attend. It accepted that the “language” used was unfortunate, but claimed that the reality was understood by members and would have been reinforced by contacts with representatives and through normal workplace discussions. Mr McGlone said the references to the branch committee were a historical hang-over from the days before the merger of the T&G and Amicus which created Unite. He pointed out that whereas the old T&G rules (Rule 10.4(a)) stated that “*Each Branch ...shall have for its management a Chair and Secretary, and a committee*”, Rule 17.7 of the Unite rulebook (introduced in May 2009) said that “*Each Branch shall have for its management a Chair, a Treasurer and a Secretary and such other officers as the Branch may elect*”. Branch committees therefore did not exist in the new Unite structures. He admitted that some members were still struggling to come to grips with the differences in organisation of Unite as compared with the predecessor unions; but he was sure members understood that these meetings were branch meetings and open to all. Support for this view is offered by the fact that the minutes of the meetings invariably describe them as “branch meetings”.

22. Despite these explanations, it is clear that this is, at the least, loose terminology, which has the potential to mislead ordinary branch members. (The looseness is illustrated in compact form by a letter dated 22 June 2009 from Mr Albert Mills, then the secretary of Branch 3/120 . It is addressed to the Branch Committee, but then says that “*Following discussion it has been agreed to hold the next Branch meeting in September.*”). Most of the members shown in the minutes as present at the meetings were in fact shop stewards, though the Union did identify some few attendees who were not. It said that the scarcity of ordinary members was not because they thought they could not attend, but because, as frequently in unions, it was genuinely hard to get them to turn up to meetings; only activists tend to do so.

23. I have to consider whether the applicants in this case were misled as to their right to attend meetings and whether that is why they believe they never had a chance to vote in an election for branch officers. The applicants’ case, however, is that they never saw a notice and that in fact no notices were ever posted. If they never saw a notice, they obviously cannot have been misled by its terms. At the hearing they did not themselves raise any question about the terms of the notice. They made no argument that they had been misled, or that they would have been misled if they had seen the notice. It seems clear that though the terminology used in Branch 3/120’s notices was potentially misleading, it did not actually mislead the applicants in this case. They may not have voted in the branch election, but not for this reason.

24. A second issue around the Branch’s procedures relates to the length of time for which notices are posted. Notices may only be put up in QUB buildings with the approval of the University authorities. They are required to be stamped to show that they are approved, and any that appear without a stamp are liable to be taken down by the University’s porters, sometimes within 24 hours or less of being put up. Unite is recognised by the University as representing various groups of its employees and one would have thought that approval to post notices about union business would therefore be automatic. Mr Lewsley said, however, that there had been a breakdown in relationships between the Union’s officers and the responsible QUB manager (who had formerly been a T&G officer). As a result, Branch 3/120 does not apply for approval to

post its notices, which are thus liable to be removed as soon as a porter comes across them. This is a plainly an unsatisfactory situation, which creates a real risk that members will not be aware that there is to be a meeting. There is a question whether a notice taken down within a very short time would constitute a proper notice.

25. The Union argued that there is nothing in the rules which requires that notices of meeting be posted and that in any case notices are not the only way to make meetings known - information is passed on by shop stewards in their everyday contacts with members. Unfortunately, the standing orders for the regulation of branch meetings and business provided for in rule 17.10, which may in due course deal with this point, have not yet been issued by Unite's Executive Council. The Union's contention regarding notices may well be true of ordinary branch meetings: rule 17.8 requires branches to meet once a month "*at a designated meeting time and place*" and adds that "*new members shall be notified of that time and place*". This suggests that the monthly branch meetings are fixed (e.g. "first Monday of each month at 11a.m. in Regional HQ"), and that individual notices for each meeting might not be necessary. In my judgment, however, this cannot apply to a meeting at which elections are to be held, which is the kind of meeting at issue in Complaint 1. Rule 17.7 provides that where a casual vacancy for a branch office is to be filled, this may be done "*at an ordinary Branch meeting, but notice of the impending election must be given to members of the Branch on the notice convening the meeting*". This implies both a special status for the regular two-yearly branch election meetings (they are not "ordinary" meetings) and also that *any* meeting at which an election for branch office is to be held requires a notice.

26. But whether the Union's argument is right or not - in my view it is not - it did actually publish a notice of the 2 August 2010 meeting to elect Branch officers. The terms of item 3 on the published agenda - "*Secretary (A Mills) retirement for discussion including election of branch officers*" - were perhaps not of the clearest, but arguably adequate to their purpose. The question of how quickly this particular notice may have been taken down by the University porters, if at all, is undecidable by me, since I was given no specific evidence by either party on the matter. The applicants claimed that in all their years at QUB, they had never seen *any* notice of a branch meeting or branch election meeting. That is a very sweeping claim. It may be more likely that they were not in the habit of looking for union notices than that they did not have opportunity to see them.

27. Complaint 1 is that Branch 3/120 did not hold elections to elect branch officers and that the applicants had never seen any notices of elections (because no notices were posted). In light of the considerations above, I conclude that the branch did hold elections in August 2010, that a notice of the election meeting was published and that, on the balance of probabilities, the applicants had the opportunity to see that notice.

28. I therefore refuse to make the declaration sought by the applicants in Complaint 1.

29. Complaint 2 is:

That on numerous occasions prior to October 2011 Unite the Union breached rule 17.8 of the Unite rule book. In that each branch shall meet once a month. Clearly a branch has to meet to hold an election. In my eight years of employment I had not heard or seen any notices of Elections.

The relevant part of rule 17.8 reads:

Each Branch shall meet once a month at a designated time and place. New members shall be notified of that time and place.

30. This complaint 2 overlaps considerably with Complaint 1. At the hearing the applicants made clear that they were mainly concerned with its last two sentences, which are, again, allegations that branch elections were not held and notices of branch elections were not published. I have already decided above that these allegations are not well founded. As regards the first part of the complaint, the allegation of breach of rule 17.8 by failure to hold monthly branch meetings, the applicants brought no witnesses and provided no documentary evidence to support it. They merely asserted that there had been no monthly meetings of the branch. The Union provided a series of notices of meetings of “the Branch 3/120 Committee” from January 2009 to December 2011 (with some gaps due presumably to deficiencies in record keeping) and minutes of the meetings from August 2010 to December 2011 (with rather more gaps, possibly due to meetings being inquorate and not proceeding), and listed the sites in the University where they were normally posted. I have already accepted that despite the terms of the notices, these were in fact branch meetings, open to all, and that that is what members understood them to be. I therefore find that Branch 3/120 did hold monthly meetings as required by rule 17.8, which was therefore not breached, and accordingly I refuse to make the declaration sought by the applicants in Complaint 2.

31. Complaint 3 is:

Up to October 2011 Unite the Union breached Rule 18 of its rules that at each workplace the members employed shall elect from among themselves at least every 2 years 1 or more representatives Rule 18.1.1 + 18.1.2 + 18.1.3 + 18.1.4 + 18.5 + 118.6 + 18.7

No Elections for the above positions again I have been a union member for eight years and no election has taken place in my eight years of service.

The parts of rule 18 listed in the complaint read:

18.1 At each workplace, the members employed at that workplace shall elect from amongst themselves, at least every 2 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

18.5 The constituency of a workplace representative shall be the workplace from which they were elected, or such grouping of workplaces as was defined by the Executive Council under clause 4 of this rule.

18.6 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 of the constituency and contact details of the workplace representative.

18.7 The Executive Council may issue guidance on the powers and procedures of the Regional Industrial Sector Committee in relation to the ratification of such election. The Regional Industrial Sector Committee shall ensure compliance with such procedures.

32. The applicants made no submission about breaches of rules 18.5, 18.6 or 18.7. Their concern was solely with rule 18.1, i.e. that no elections for workplace representatives had been held by Branch 3/120 up to the time they made their complaint in October 2011. The Union made submissions in respect of rule 18.1 and 18.6. I therefore do not consider rules 18.5 and 18.7 in this decision.

33. The applicants offered no written evidence and brought no witnesses to substantiate their claim that no elections had taken place. They simply asserted that this was the case. The Union, on the other hand, asserted that there had been a workplace election in January 2010 for shop steward in the David Keir Building. It could not provide documentary evidence in the form of the notice of the meeting, or the minute; the notice had not been kept and, in line with normal practice for workplace meetings, no minute had been taken. However, its witness, Mr Hamill, gave evidence that he had seen notices announcing the election and seeking nominations, and that that he and other members were also made aware by word of mouth. The meeting was held, he said, in the tea-room of the David Keir Building, with Mr Lewsley in the chair and 12 to 15 members present, of whom he named several, including one of the applicants, Mr Smith. He was the only candidate and was elected, and his election was notified to the relevant people in the Union (as required by rule 18.5) and the University. He later dealt with the applicants in his capacity as shop steward and both, and Mr Smith in particular, must have known that he had been properly elected to the post.

34. In his evidence for the Union, Mr Lewsley confirmed that he himself had chaired the meeting, that it had been advertised in advance and properly conducted, and that Mr Smith was present at it. The details of place, attendance etc that he gave were broadly consistent with those given by Mr Hamill. Mr McGlone said in his evidence that the meeting had certainly been known to members in advance, for Mr Alan Gordon, a member and indeed a co-signatory with the applicants of the 25 July 2011 letter of complaint to Unite HQ, had telephoned Mr McGlone's office to request that the election at it be held by secret ballot, not show of hands, a request that was denied.

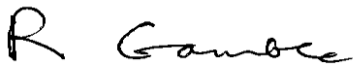
35 For his part, Mr Smith, questioned by Mr O'Neill, said that he was not sure whether or not he had been at the meeting; he would have liked to see the minute, with the list of attendees and a record of the votes cast. He suggested that the Union's inability to produce the minute might mean that the meeting and election had never happened. I reject that suggestion. I accept the Union's statement that minutes are not normally taken of workplace meetings: and it also seems likely to me that notices of workplace elections would not be routinely kept in the records for any length of time, if at all, after

the election was completed and ratified. I believe that the meeting took place and that Mr Smith was present at it.

36. Rule 18.1 requires that at least one of the workplace representatives listed in 18.1.1 to 18.1.4 (shop steward, safety representative etc) be elected every two years, and rule 18.6 requires that the result of such election be reported to certain identified officials of the Union. On the evidence available to me I conclude that an election for shop steward in the David Keir Building of QUB was held in January 2010 at a meeting notified in advance to members of Branch 3/120 in that workplace, and that the result of that election was notified to the relevant persons in the Union. Consequently there was no breach of rule 18.1 or rule 18.6.

37. I therefore refuse to make the declaration sought by the applicants in Complaint 3.

38. The Union accepted that some of the practices of Branch 3/120 were not as clear as they should have been, for example in the terms used on notices to describe the branch meetings. It also accepted that there were training needs: about the proper form of branch meeting minutes, and about the different structures of Unite as compared to the predecessor unions, which were still confusing to some members, not in Branch 3/120 alone. The Union said that it would be addressing these points.



Roy Gamble
Certification Officer for Northern Ireland