

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

MR B MORGAN

v

NASUWT

Date of Decision

2 November 2006

DECISION

Upon application dated 3 August 2005 by the applicant under Article 90A(1) of the Trade Union and Labour Relations (Northern Ireland) Order 1995 (as amended) ("the 1995 Order"):

1. I declare that the union breached rule 19(g)(i) of its rules in that the ballot papers for the 2005 election to the National Executive were not distributed to members in District 34 (Northern Ireland) within one calendar month of the closing date for nomination of candidates in that election. For the reasons given below I consider it inappropriate to make an order in respect of this declaration.
2. I dismiss, on withdrawal by the applicant, the applicant's complaint that the union breached rules 19(h)(ii) and (iii) of its rules in that it continued to progress a complaint of electoral misconduct in relation to his nomination as a candidate in the 2005 election to the National Executive even though that complaint had been withdrawn.
3. I dismiss, on withdrawal by the applicant, the applicant's complaint that the union breached rules 3(iii) and 3(iv) of its rules in that the General Secretary, by pursuing a non-valid complaint, unjustly discriminated against members of the South Down/South Armagh association of NASUWT and by her actions did not promote the interests of members of that association.

REASONS

1. By an application dated 3 August 2005, the applicant, Mr B Morgan, complained of three alleged breaches of rule by his union, the National Union of Schoolmasters Union of Women Teachers ("NASUWT" or "the union"). The complaints were as follows:
 - (i) That the union breached rule 19(g)(i) of its rules in that the ballot papers for the 2005 election to the National Executive were not distributed to members in District 34 (Northern Ireland) within one calendar month of the closing date for nomination of candidates in that election.
 - (ii) That the union breached rules 19(h)(ii) and (iii) of its rules in that it continued to progress a complaint of electoral misconduct in relation to his nomination as a candidate in the 2005 election to the National Executive even though that complaint had been withdrawn.
 - (iii) That the union breached rules 3(iii) and 3(iv) of its rules in that the General Secretary, by pursuing a non-valid complaint, unjustly discriminated against members of the South Down/South Armagh association of NASUWT and by her actions did not promote the interests of members of that association.

These matters were investigated in correspondence. By letter dated 5 October 2006, the applicant withdrew complaints (ii) and (iii), which are therefore not considered further in this decision. In the same letter, the applicant indicated that he did not wish to have a formal hearing in respect of complaint (i). For the union, its solicitor had accepted, in a letter of 31 August 2006 to my office (which my office copied to the applicant), that complaint (i) was well founded and had expressed the view that a hearing was not necessary or appropriate in relation to it. Accordingly, I have made this decision on the basis of the written representations of the parties and the documents supplied by them.

Findings of Fact

2. From the evidence before me I find the facts to be as follows.
3. On 20 January 2005 the South Down/South Armagh local association of NASUWT held a general meeting at which it nominated Mr Morgan, its Honorary Secretary, as a candidate in the forthcoming elections for District 34 members of the NASUWT National Executive. The next day Mr J McDaid, an existing National Executive member for District 34, who was

seeking re-election, sent an e-mail to the union in which he alleged that the meeting had not been quorate and that Mr Morgan's nomination was therefore invalid. On 27 January, Mr Morgan sent his nomination form, election address and photograph by e-mail and post to the union's General Secretary, Ms C Keates. Ms Keates replied on 28 January acknowledging receipt of the papers but also advising Mr Morgan that that a question had arisen over the quoracy of the meeting which had nominated him. She asked him to send her the attendance list of the meeting to confirm quoracy.

4. Mr Morgan sent the list on 2 February. On 4 February, following a meeting of NASUWT National Officers at which the matter was discussed, Ms Keates wrote to those whose names were on the list and asked them to confirm that they were present at the meeting when the vote nominating Mr Morgan took place. On receiving the replies to these letters the union was satisfied that the meeting had been quorate and that Mr Morgan's nomination was valid. Ballot papers were issued to NASUWT members in District 34 on 3 March 2005, the election went ahead, and the result was announced on 23 March 2005.

The Relevant Statutory Provisions

5. The provisions of the 1995 Order that are relevant to this application 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)

(b)

(c) the balloting of members on any issue other than industrial action;

(d)

(e)

Declarations and Orders

90B. -

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

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

(b) *.....*

(c) *.....*

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

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

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

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

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

The Relevant Union Rule

6. The rule of the union that is relevant to this application is:

19. Elections

(g) Balloting Procedures

(i) *Ballot papers accompanied by election addresses shall be distributed by post to members eligible to vote within one calendar month after the closing date for nominations.*

Conclusion

7. The closing date for nominations in the 2005 National Executive elections was 31 January. Therefore under rule 19(g)(i) ballot papers should have

been distributed to members in District 34 on or before 28 February 2005. In fact they were distributed on 3 March 2005. The union accepted that this breached rule 19(g)(i). I agree, and I make a declaration accordingly.

8. Where I make a declaration I am required, unless I consider it inappropriate, to make an order requiring the union to remedy the breach or to secure that a similar breach does not occur in future. It was not claimed that the breach of rule 19(g)(i) had any effect on the outcome of the 2005 election in District 34 and I do not consider that it is appropriate to make any order for remedy of it.
9. As regards prevention of breaches of this rule in future, I note that despite the union's promptness in dealing with the matter initially - the attendance list was sought immediately after Mr Morgan submitted his nomination papers, and within two days of its receipt the members named were asked in writing to confirm their attendance - it was still not able to settle the question of the validity of Mr Morgan's nomination in time to allow it to send out ballot papers within the period prescribed by rule 19(g)(i). The rules appear to offer no flexibility with respect to this period. The National Officers have a power under rule 19(h)(viii) to suspend an election, but it is not clear whether the exercise of that power would have any effect on the deadline for distribution of ballot papers, once the closing date for nominations was passed. This suggests that a query over some aspect of electoral procedure might well occasion a similar breach in the future. The union, however, has assured me that it will take all necessary steps to seek to ensure that in all such future elections ballot papers are distributed in accordance with rule 19(g)(i), including nominating an officer to oversee this process, and that, where appropriate, it will give careful consideration to the possible use of rule 19(h)(viii) to suspend any such election. I accept these assurances and in light of them I consider that it would be inappropriate to make an order.

R Gamble
Certification Officer for Northern Ireland