

D/1/2000

DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION UNDER
ARTICLE 22 OF THE TRADE UNION AND LABOUR RELATIONS (NORTHERN
IRELAND) ORDER 1995

IN A MATTER OF A COMPLAINT MADE AGAINST THE NORTHERN IRELAND
MUSICIANS' ASSOCIATION (NIMA)

APPLICANTS MR I GILLILAND
 MR J WILSON

Date of decision :

25th September 2000

DECISION

- 1.1 Under Article 22(1) of the Trade Union and Labour Relations (Northern Ireland) Order 1995 ("the 1995 Order") any person having sufficient interest who claims that his or her trade union has failed to comply with any of the provisions of Part III of the 1995 Order concerning the need for, and conduct of, elections to certain positions may apply to me for a declaration to that effect.
- 1.2 Whether I make, or refuse to make, the declaration sought, I am required to give, in writing, the reasons for my decision and, if I make a declaration, I am required to specify the provisions with which the trade union has failed to comply.
- 1.3 On 25 November 1999 I received a letter from Mr Ivan Gilliland, a member of the Northern Ireland Musicians' Association (NIMA) in which he alleged that the union "had for some years failed to comply with the legal requirements contained

required to make such enquiries as I think fit and, before I make or refuse to make the declaration asked for, to give the applicants and the trade union the opportunity to be heard.

1.7 Where I make the declaration sought, the 1999 Order amendment to the 1995 Order now also requires me, unless I consider to do so would be inappropriate, to make an enforcement order imposing on the union one or more of the following requirements of Article 22(5A) of the Order : -

- "a) to secure the holding of an election in accordance with the order;*
- b) to take such other steps to remedy the declared failure as may be specified in the order;*
- c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or similar kind does not occur in future."*

1.8 In any such order issued under (a) or (b) above, I am required to specify the period within which the union is to comply with the requirements of the order and, if I order a fresh election, I am required to specify that the election be conducted in accordance with Part III of the Order, and with any such other provisions as I may make in the order.

1.9 I shall now deal with the second way in which my powers have been changed since 15 December 1999. Prior to the 1999 Order amendment to the 1995 Order, I was required by Article 70 (1)(b) of the Industrial Relations (Northern Ireland) Order 1992 (the 1992 Order) to make such provision, as seemed appropriate, for

Lyttle, had, in fact, later resigned and another election to the post of President had taken place in the year 2000. The letter stated that :

"NIMA accepts that the law is not clear as to whether a Scrutineer should be appointed in circumstances where only one nomination is received for the position of President. NIMA accepts that case law, as it presently stands, dictates that a Scrutineer should be appointed."

1.13 At the hearing Mr Shevlin confirmed that the union had conceded this complaint. He added that the President, Mr Lyttle, who had been elected in October 1999 had resigned in April 2000 and a new election for President had already taken place in July 2000 with a scrutineer appointed in accordance with Part III of the 1995 Order.

1.14 After careful scrutiny of the documents and evidence presented, I concluded that the union was correct in conceding the breach of Article 15 of the 1995 Order. I do not accept Mr Shevlin's view that the law is unclear; the law requires a scrutineer to be appointed in such elections. After consideration of the statements by Mr Gilliland and Mr Shevlin at the hearing, I have decided to make the declaration sought. As the remedy has effectively taken effect, I have decided it would not be appropriate for me to make an order requiring the union to re-run the election in question. Had another election not taken place I would have ordered the union to re - run the ballot for President.

1.15 For the reasons which follow:

(d) *general secretary...*"

Article 15.-(1) requires that:

"the trade union shall, before the election is held, appoint a qualified independent person ("the scrutineer") to carry out -

- (a) the functions in relation to the election which are required under this Article to be contained in his appointment; and*
- (b) such additional functions in relation to the election as may be specified in his appointment".*

Article 15(3) sets out a number of requirements placed on the scrutineer. These include supervising (or in some cases carrying out) the production of voting papers and their distribution and receipt of completed voting papers; inspecting the register of names and addresses of the members of the trade union. He must carry out this last function if a member or candidate alleging inaccuracies in the register asks him to do so and he does not consider the allegation to be ill - founded.

Article 15(3)(c) and (d) state that he shall be required:

- "(c) to take such steps as appear to him to be appropriate for the purpose of enabling him to make his report (see Article 19);*
- (d) to make his report to the trade union as soon as reasonably practicable after the last date for the return of voting papers";*

(2) *The report shall also state whether the scrutineer is satisfied -*

- (a) *that there are no reasonable grounds for believing that there was any contravention of a requirement imposed by or under any statutory provision in relation to the election,*
- (b) *that the arrangements made (whether by him or any other person) with respect to the production, storage, distribution, return or other handling of the voting papers used in the election, and the arrangements for the counting of the votes, included all such security arrangements as were reasonably practicable for the purpose of minimising the risk that any unfairness or malpractice might occur, and*
- (c) *that he has been able to carry out his functions without such interference as would make it reasonable for any person to call his independence in relation to the union into question;*

and if he is not satisfied as to any of those matters, the report shall give particulars of his reasons for not being satisfied as to that matter.

(3) *The report shall also state*

(a) *whether the scrutineer -*

(1) *has inspected the register of names and addresses of the members of the trade union, or*

(2) *has examined the copy of the register as at the relevant date which is supplied to him in accordance with Article 15(9)(a),*

hearing, Mr Gilliland asserted that an independent scrutineer is required to be appointed by a trade union even in an election which is uncontested. Mr Gilliland's submission is straightforward. He said Article 15 is unambiguous and requires the trade union "before the election is held, to appoint a qualified independent person ("the scrutineer")... (my emphasis). He said that "election" includes an uncontested election and in support of this he pointed to five matters. First he said that the normal meaning of election includes an uncontested election. Second he said Article 20 makes it expressly clear that where the word "election" is used in Part III it is meant to include an uncontested election (Article 20 states "nothing in this Part shall be taken to require a ballot to be held at an uncontested election"). Third he said Article 12 uses "election" without qualification (like Article 15) and this must include an "uncontested election" within its meaning. Otherwise a person returned at an uncontested election would not satisfy the primary requirement of Part III contained in Article 12 namely that "every person who holds a position in the union to which this Part applies does so by virtue of having been elected to it at an election satisfying the requirements of this Part..."(my emphasis). Fourth he pointed to the fact that the union recently (April 2000) held another election for the post of President and a scrutineer was appointed in accordance with Article 15. In his view this action clearly proves that the union accepts it had acted wrongly in not appointing a scrutineer in the election of its President in 1999.

2.2 Finally Mr Gilliland cited the G. B. Certification Officer's decision in the Offshore Industry Liaison committee case (D/7/94) in which he decided that the law did require the appointment of an independent scrutineer in an uncontested election.

2.7 I accept that as a consequence of Mr Lyttle's resignation another election for the post of President has taken place and the remedy has, effectively, taken effect.

2.8 For these reasons I upheld this complaint. I made the declaration sought. I have considered it inappropriate to make an order in this case.

A handwritten signature in black ink, appearing to read 'S. Mc Elrea', written over a horizontal line.

S Mc Elrea

Northern Ireland Certification Officer