

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

**MR P SWEENEY**

**V**

**UNISON**

**Date of decision:**

**5 February 2004**

**DECISION**

Upon application 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 UNISON breached rule 6(g) of its 2001 United/Homefirst Branch rules.
2. I consider it inappropriate to make an enforcement order.

**REASONS**

- 1.1 Under Article 90A(1) of the 1995 Order 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 90A(2) of that Order, may apply to me for a declaration to that effect.
- 1.2 Article 90B of the 1995 Order empowers me to make such enquiries as I think fit

and, after giving the applicant and the union an opportunity to be heard, to make, or refuse the declaration asked for.

1.3 Whether or not I make the declaration sought, I am required to give the reasons for my decision in writing. Where I make a declaration under Article 90B I am required, unless I consider it inappropriate, to make an enforcement order on the union. My enforcement order is required to impose on the union one or both of the following requirements -

- (1) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;
- (1) 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.

1.4 The applicant in this case, Mr Patrick Sweeney, is a member of UNISON; he has been a member of the union for over 30 years and has held union office for 3 years. By an application dated 27 May 2002 he made 7 separate complaints alleging that the union breached its rules in relation to a branch election in the United Hospital and Homefirst Branch (United/Homefirst Branch) held in April 2002. He specifically cited rule 6(g) of the 2001 branch rules, claiming that it had been breached, viz: *"In the event of a ballot, official papers will be supplied and each member of the branch shall be entitled to vote in respect of each post to be filled. Arrangements may be made for a postal ballot if appropriate."*

1.5 These are matters mentioned in Article 90A of the 1995 Order, namely the appointment, election and removal of a person from office and the constitution or proceedings of that branch. A copy of the relevant legislation is attached at **Appendix 1**.

1.6 On 17 February 2003, Mr Sweeney made a further complaint alleging that the union had failed to maintain an accurate and up-to-date register of the names and addresses of members as required by Article 3 of the 1995 Order (complaint 8). I wrote to the parties advising them that I would deal with complaint 8 together with the other complaints.

1.7 Mr Sweeney's 8 complaints may be summarised as follows;

(No 1) the branch election, held in April 2002, breached branch rule 6(g) of the 2001 branch rules adopted in June 2001 (alleged breach of Articles 90A(2)(a) & 2(d) of the 1995 Order);

(No 2) more than a hundred branch members did not receive any ballot papers for that election (alleged breach of Articles 90A(2)(a) & 2(d) of the 1995 Order);

(No 3) significant numbers of members did not receive ballot papers until after the closing date of that election (alleged breach of Articles 90A(2)(a) & 2(d) of the 1995 Order);

(Nos 4) & (5) new members of the union (specifically those joining in January – March 2002) were denied an opportunity to vote in that election (allegedly because a December 2001 membership register was used; and ex-members were allowed to vote because their names had not been removed from the register (alleged breach of Articles 90A(2)(a) & 2(d) of the 1995 Order);

(No 6) the union set unreasonable timescales for that election (alleged breach of Articles 90A(2)(a) & 2(d) of the 1995 Order);

(No 7) there was interference in the ballot process by candidates in that election (an alleged breach of Articles 90A(2)(a) & 2(d) of the 1995 Order) and

(No 8) the union had failed to maintain an accurate and up-to-date register of the names and addresses of members (an alleged breach of Article 3 of the 1995 Order).

- 1.8 I investigated the complaints in correspondence with the parties.
- 1.9 In regard to complaint 1, Mr Sweeney claimed that UNISON failed to ensure that every member entitled to vote in the election was allowed to do so.
- 1.10 The union argued that complaint 1 was a duplication of complaints 2–6, the latter being specific allegations of breaches of the same rule.
- 1.11 It submitted that the rules in force were not the 2001 rules (as Mr Sweeney claimed) rather it was the rules which were agreed in 1994, at branch merger; adding that since merger, branch practice is to send ballot papers by post to “each fully paid up member”. In addition to rules and practice, the union said the branch had adopted a code entitled “Good Branch Practice” for the conduct of its business. The union claimed Mr Sweeney’s reference to 2001 branch rules

related to an amended version "currently on the table" which had not been adopted by the branch.

- 1.12 In regard to complaint 2, Mr Sweeney claimed that 114 members who were on the members register and entitled to vote, did not receive ballot papers. As part of his application, he submitted a document containing these 114 signatures and claimed he could provide additional signatures, if I required them. In response the union said that 22 of the signatures were unreadable, 10 signatories could not be traced and a further 3 had indicated that their papers were returned to the region. UNISON said it had genuine concerns about some of the signatures, "with almost 50% of the names appearing questionable".
- 1.13 Under complaints 3-5, Mr Sweeney claimed in correspondence that, in addition to the 114 members above, other members only received ballot papers after the election closed; "ex-members" were allowed to vote whilst "new members" were denied their right to vote. The union explained that its electoral register is updated from the members' list of deductions provided by the employers and it asserted that the register of names used for the elections was as accurate as reasonably possible, given that the maintenance of records is an ongoing exercise to take account of the shifting membership population. The union also said 6 members contacted the region before the ballot closed and an additional 2 members, both candidates in the election, sought ballot papers on the date of the count.
- 1.14 In relation to complaint 6, Mr Sweeney claimed that the time by which ballot papers had to be returned for the April 2002 election was too short; the union disputed this, submitting that nomination and balloting occurred over a 7-week period, asserting that this was a reasonable timescale.
- 1.15 In relation to the alleged interference, complaint 7, the union said that "no candidate had opened or counted ballots relating to themselves" and the only evidence of interference it had seen was "the apparently unauthorised circulation by Mr Sweeney of a leaflet implying that the balloting period had been extended."
- 1.16 Regarding complaint 8, Mr Sweeney sought in his correspondence to argue that UNISON had failed to maintain an accurate and up-to-date register of members. Having corresponded for over 9 months with the parties on these complaints, I decided to accept this as a separate complaint and I invited the union's comments. It made these to me by way of a jurisdictional point on the day of the hearing and I deal with this below.

- 1.17 Mr Sweeney also complained to me about UNISON's lack of response to his initial attempt to resolve matters internally; he questioned how 32 completed membership application forms, from potential new members, were opened as part of an election count, inferring that potential new members were given ballot papers and membership application forms simultaneously. The union, in correspondence questioned Mr Sweeney's credibility and claimed, by letter of 28 November 2002, that my decision to hold a hearing was premature and perverse.
- 1.18 In a subsequent letter dated 23 January 2003, in relation to complaint number 1, UNISON accepted there was "some confusion as to eligibility and participation" associated with the April 2002 ballot.
- 1.19 In relation to complaints 2 and 3, it accepted there were errors associated with the updating of member records. In subsequent correspondence the union suggested a number of proposals to "move matters forward". This included postponing the 2003 branch elections, preparing a fresh timetable of nominations and elections commencing on 1 March 2003 and using a more up-to-date membership register with a proposed cut-off date of 1 March 2003.
- 1.20 The union stated it saw no point in a formal hearing "to verbalise at some inconvenience to all parties" that which it had always accepted, adding however, that if I decided to hold a hearing its representatives were "more than willing to attend".
- 1.21 In reply Mr Sweeney noted "with alacrity" that the union "had always accepted that members did not receive a ballot paper or received them after the closing date". Mr Sweeney said "far from accepting there were any deficiencies with the manner in which the ballot was conducted the union sought to disparage and attack my credibility". He repeated his request for me to set a date for a hearing.
- 1.22 As required by Article 90B(2) of the 1995 Order, the parties were offered the opportunity of a formal hearing. This took place on 7 July 2003. The union was represented by Mr Anthony White Q.C. Mr Chris Remington, UNISON head of Constitutional Affairs, Ms Patricia Mc Keown, (then) acting regional secretary and Mrs Pamela Dooley, acting head of organisation development gave evidence, Ms S David also attended but did not give evidence. The applicant represented himself, Mrs Lynn Barrett, formerly a clerical officer in Antrim Area Hospital and Mrs Isobel Mc Caughan, staff nurse, Whiteabbey hospital (both union members in 2002) gave evidence. Ms A O' Connor, United/Homefirst branch secretary, also attended but did not give evidence. I am grateful to the parties for the care taken in preparing their presentations.

- 1.23 Before the hearing, Mr Sweeney advised that he intended to bring 5 witnesses. In the interests of saving time and public money, I instructed my staff to advise him that I would expect each of his witnesses to make a material contribution and avoid rehearsing broadly similar evidence. Mr Sweeney subsequently confirmed that he would call 2 witnesses. On the same basis, the union called 3 witnesses.
- 1.24 My Office prepared a bundle of documents for the hearing, consisting of the exchanges of correspondences with the parties, together with their enclosures. The parties also submitted further documents during the hearing.
- 1.25 This decision has been reached on the basis of the representations made by the applicant and the union, together with the documents provided by them.

#### Jurisdictional point on complaint 8

- 1.26 On the day of the hearing Mr White addressed me on the alleged breach of Article 3 of the 1995 Order (complaint 8) submitting that I did not have the jurisdiction to hear this complaint. Upon examination of this matter I agree with Mr White that I do not have the jurisdiction to hear this complaint.
- 1.27 I instructed my office to advise Mr Sweeney that, if he wished to pursue this matter, he should contact the GB Certification Officer. Mr Sweeney confirmed in December 2003 that he would not be taking this matter any further, as he felt to do so would cause him considerable inconvenience and cost. He also expressed the view that complaints about the accuracy of trade union membership registers relating only to Northern Ireland members, and specifically maintained in Northern Ireland, should come within my jurisdiction for the benefit and convenience of N.I. members.

#### Complaints 1 - 6

These complaints relate to an alleged breach of rule 6(g) of the 2001 United/Homefirst branch rules and Article 90A(2)(a) & (d) of the 1995 Order and, therefore, I have decided to deal with them together.

#### The applicant's case

- 2.1 Mr Sweeney was a candidate in the April 2002 United/Homefirst branch elections. He explained, by way of background, that these elections were first held in March 2002 but were aborted because his name had been omitted from

the ballot papers and also because the union had set an unreasonable timescale for the return of ballot papers. He said, in the aborted election, ballot papers were issued on 19 March 2002 and had to be returned by noon on 25 March using second class post- effectively allowing members less than 4 working days in which to respond.

- 2.2 Mr Sweeney claimed members could not have received, considered, completed and returned ballot papers in such a tight time frame. He said using second class post meant ballot papers sent on 19 March would not be delivered to members until the 21 or 22 March, making a return date of noon on 25 March almost impossible to meet. He also said a "significant number" of members only received ballot papers after the closing date.
- 2.3 He alleged the second ballot (April 2002) was conducted under the United/Homefirst 2001 branch rules and that rule 6(g) of those rules was breached.
- 2.4 Mr Sweeney said ballot papers issued over a 3 day period commencing 3 April 2002 with a 15 April return date. Before the closing date he and the joint branch secretary (Ms O' Connor) told the Branch Chair, Ms Coey, that many members (including both of them) had not received ballots. On 10 April, Ms Coey phoned Ms O' Connor to advise the closing date was being extended to 19 April "because a large number of members had not received ballots".
- 2.5 He said Ms O' Connor confirmed the closing date had been extended, and he undertook another round of canvassing to inform members of the extension. He prepared printed information notices for display; I was provided with a copy of this 1 page notice, it is in bold type and headed UNISON branch elections; directly below the heading it reads; "Closing date extended to Friday 19". He submitted, that despite the extended time, the majority of members still did not receive ballot papers. He also argued that "less than 12 working days was insufficient time for members to receive, consider, complete and return their ballot paper".
- 2.6 He said it was his and Ms O' Connor's understanding that the 2001 branch rules were in force and in support of this he drew my attention to the following. In 2000, Ms O'Connor, had attended a branch election count where a number of faxed ballot papers for the joint branch treasurer's post were deemed to be "suspicious" and had been eliminated by the (then) acting regional secretary, Ms Mc Keown. He said, as a consequence of this, and to prevent this problem recurring, branch rules were amended to require the serial numbering of ballot papers. He drew my

attention to rule 6(h) of the 2001 branch rules, viz: "Each ballot shall have a serial number".

- 2.7 Mr Sweeney referred me to the minutes of a core group meeting of 12 June 2001, which he attended. He claimed that the 2001 branch rules were adopted at this meeting (The core group consists of branch officers & stewards). The minutes of this meeting record a failure to reach agreement on the joint treasurer's post and also that the branch "would not vote on this issue today". Mr Sweeney submitted this implied the remaining rules had been adopted.
- 2.8 In her evidence, Ms Barrett said that she had attended the (aforesaid) core group meeting as branch education officer. Her recollection of what took place was very clear as it was at this meeting she was appointed branch international officer (a new post introduced by the 2001 branch rules). She claimed her appointment was part of the overall adoption of the branch rules, despite the fact that the minutes do not record either decision. She confirmed her understanding that the branch rules were adopted, except for the issue relating to the post of joint treasurer. In cross-examination by Mr White she said the minutes of branch meetings "varied in accuracy" and "they were all quite used to this".
- 2.9 In further evidence, Mr Sweeney said that the 2001 branch rules are the only rules specifically requiring serially numbered ballot papers and he confirmed that the April 2002 ballot papers were so serially numbered, adding that this was a costly exercise, necessitating temporary staff being recruited by UNISON. In his view, UNISON would not have gone to the expense of this, if it did not need to do so and the only "valid reason" it did, was the tacit acceptance, by the union, that the 2001 rules were in force.
- 2.10 He argued, that if the union's claim was correct and the 1994 rules were extant, it was still required to ensure that all current members receive ballot papers, and this did not happen. Mr Sweeney said if I found in the union's favour I would have to conclude that it had breached its 1994 branch rules, which was "a breach of union democracy under paragraph 5 of chapter 2 of the 2001 union rules and Article 90A(2)(a) & (d) of the 1995 Order".
- 2.11 Turning to his allegation that a substantial number of members who received the first ballot paper in March 2002 (the aborted election), did not receive the second ballot paper in April 2002, he entered in evidence a document signed by 114 members of the Homefirst section of the branch. The document read as follows:

"UNISON BRANCH ELECTIONS APRIL 2002



We the undersigned confirm that we did not receive the second set of ballot papers for the above elections.

We did not receive the second ballot paper for the election of branch secretary Homefirst.

We did not receive the second ballot paper for the election of branch treasurer United/Homefirst.”

- 2.12 Mr Sweeney said that the Homefirst section of the branch had a ballot constituency of some 1,300 members, which effectively meant that about 9% of that constituency was prevented from voting. He claimed that this was a “sample” and he could provide additional signatures, if I required them.
- 2.13 Mr Sweeney claimed the union had used the same register for the aborted election and the April election, and as far as he was aware most of the 114 signatories had received the first ballot papers. He said, in the circumstances, he could not understand why a considerable number of members were denied their voting entitlement in the April ballot.
- 2.14 Both of Mr Sweeney's witnesses confirmed that they had received a ballot paper in the aborted election but not in the April election. Both also confirmed that they knew of “many members” who had not received their ballot papers in the April election.
- 2.15 Continuing, Mr Sweeney asserted that a significant number of members did not receive ballot papers until after the closing date; and ex-members were allowed to vote whilst new members were excluded. He attributed most of these problems to the use by the union of a December 2001 membership register for the April 2002 ballot. In his opinion a four month time lag was too long a period and submitted that the union should have used a more up-to-date register. He felt that most of these problems could have been avoided had this been done.
- 2.16 Mr Sweeney then addressed me on the timescale set by the union for the April 2002 election. He said that the regional office issued the ballot papers by post over the period 3 to 5 April, with a return date (again by post) of noon on 15 April. He submitted that those which issued on 3 April allowed members a maximum of 7 working days (excluding the mail delivery days) to receive, consider, complete and return their papers; whereas those issued on 4 and 5 April reduced this to 6 and 5 working days respectively. He argued that these timescales were too short.

- 2.17 Mr Sweeney also claimed that the union extended the closing date to 19 April, as it had been informed that a considerable number of members had not received ballot papers. He said this effectively gave members up to 4 more working days to receive, consider, complete and return their ballots. This meant those whose ballots issued on 3 April had, at most, 11 working days to meet the return date, and 10 and 9 working days respectively for those ballots issued on 4 and 5 April. He argued that these timescales were also unreasonable.

#### The union's response

- 2.18 Responding to Mr Sweeney's allegations that many members had not received ballot papers, or had only received them after the ballot closed, Mr Remington accepted that this was the case because of "confusion and errors associated with the process of updating the register".
- 2.19 In relation to allegations that new members were denied the opportunity to vote whilst ex-members were allowed to vote, Mr Remington submitted it "had maintained, so far as is reasonably practicable, an accurate and up-to-date register of members" however, it accepted "it is sometimes inevitable that recent joiners are missed while old leavers are accepted". In response to a question, Mr Remington said that a register of members with a February 2003 cut-off date had been used by the union for a March 2003 branch ballot.
- 2.20 Continuing, he made the following points, viz: the August 2001 rules were not adopted by the branch; Ms Coey had advised Ms O Connor that the date for the election count had been changed to 19 April, and that the return date for the ballot papers remained the 15 April; ballot papers were numbered at Ms Coey's request; nomination and balloting occurred over a 7 week period which was a reasonable timescale; and he asserted that UNISON had not breached any branch or national rule regarding the conduct of elections in the United/Homefirst Branch nor breached Articles 90A(2)(a) & 2(d) of the 1995 Order.
- 2.21 In relation to the 114 signatures presented by Mr Sweeney, he said that 22 of the signatures were "unreadable", a further 10 signatures were "untraceable" and 3 signatories had indicated their papers were returned to the region. The union questioned the identity of a number of signatories on the document. Following a detailed cross examination of Mr Sweeney, it failed in its attempts to reconcile a number of names and addresses on its membership register with the information in Mr Sweeney's possession.

## My Decision and reasons

- 2.22 Mr Sweeney is seeking a declaration from me to the effect that the union has breached rule 6(g) of its 2001 United/Homefirst Branch rules. The union claims that these rules had not been adopted or agreed by the branch, asserting that it is the 1994 branch rules that are extant. Therefore, I must first decide which rules were in force in this case.
- 2.23 I accept that the branch minutes dated 12 June 2001 did not record that the 2001 branch rules were adopted, but rather they recorded difficulty in relation to one post and that the branch agreed it "would not vote on this issue today". Ms Barrett said in evidence that branch minutes varied in accuracy and that the core group were "all quite used to this". She gave as an example, the fact that she was appointed International Officer at this meeting and she confirmed that she commenced her new duties immediately following that meeting, despite the fact that the minutes did not record her appointment. The union did not dispute this evidence.
- 2.24 In response to a question, Ms Barrett confirmed her understanding that the branch was capable of reaching its own decisions, in respect of adopting its own rules and appointing its officers; it did not need to have its decisions ratified at regional or national level. The union did not dispute this evidence.
- 2.25 I was also presented with evidence that the ballot papers in this election were serially numbered. I do not accept they were numbered solely at the request of the Branch Chair merely to ensure "good practice". This exercise was carried out at short notice and at some considerable expense to the union. It was the first time ballot papers had been numbered and all this leads me to conclude that it was the union's intention to run this ballot in accordance with the 2001 United/Homefirst Branch rules.
- 2.26 It is well established that the rules of a trade union are not to be interpreted as statute but rather they must be construed so as to give a reasonable interpretation, which accords with the inferred intention of those who drafted them, and be interpreted to accord with what they must have been intended to mean, bearing in mind their authorship, their purpose and the readership to which they are addressed. Unions rely heavily on this argument in cases before me.
- 2.27 I believe this approach can be applied to minutes of branch meetings in this case, as the level of detail recorded in those minutes reflects their authorship,

their readership and should be taken in that context. I believe that in practice such minutes may not always be a verbatim record of what was said; rather they can be a summary. On balance I am persuaded by the evidence presented by Mr Sweeney and his witnesses. I believe the members of the branch believed the 2001 rules were in force and I also believe this to be the case.

- 2.28 Indeed, if I were to accept Mr White's proposition that because the minutes did not specifically state that the branch rules were adopted then they were not adopted I would be placing an unreasonable and disproportionate burden on lay members who take notes and write these minutes.
- 2.29 I find accordingly that the 2001 branch rules were the rules in force at the relevant time.
- 2.30 Even if I accept the union's assertion that the 1994 branch rules are extant, I would nevertheless have to find that the union still had a requirement to ensure that all those entitled to vote are allowed to do so. To quote the union's own words "if a postal ballot is held, steps must be taken to ensure that, so far as reasonably practicable, each member of the branch who is entitled to vote is provided with a ballot paper."
- 2.31 Having decided that the 2001 branch rules were the rules in force at the time of the April 2002 election I must now decide if rule 6(g) has been breached as Mr Sweeney alleges.
- 2.32 It is implicit in the rules governing the conduct of any postal ballot, that a union must ensure that, so far as is reasonably practicable, each member of the branch who is entitled to vote is provided with a ballot paper. It is also implicit that the union has a responsibility to ensure that a reasonable period of time is afforded to members entitled to vote, to receive, consider, complete and return their ballot papers.
- 2.33 The union used a register with a cut-off date of December 2001 for an April 2002 election in this case – this meant that the members details were four months out of date (given the usual monthly changes to the data). I do not find that the union acted reasonably in this matter. I believe it would have been reasonably practicable for it to have used a more recent cut-off date. I am drawn to this conclusion by the fact that the union confirmed that it had been able to use a register with a cut-off date of February 2003 for its March 2003 branch elections.

- 2.34 I must also take into account the evidence that 114 members signed a petition to say that they did not receive a ballot paper and that significant numbers of members did not receive ballot papers until after the closing date. The parties disputed the number of members who were prevented from voting in this election for one reason or another. The evidence was inconclusive and prevented me from determining with any certainty the arithmetical impact this had on the accuracy of the register. If I accept Mr Sweeney's evidence the register may have been in error by at least 9% and if I accept the union's evidence it was, perhaps, nearer the order of 4%.
- 2.35 I believe that the union, measured against its own standards (as it demonstrated in 2003) could have done better in this case simply by using a more up-to-date register.
- 2.36 Turning to the time set by the union for the posting and return of ballot papers in this case, I was again presented with conflicting evidence. Whilst the parties agreed that the ballot papers issued over the period 3 to 5 April 2002, the union said the ballot closed at noon on 15 April whereas Mr Sweeney said it closed at noon on 19 April. If I accept the union's evidence that ballot papers issued by first class post and were returned by second class, members were given a maximum of 8 days (excluding mail delivery days) to receive, consider, complete and return their ballots to the region and if I agree with Mr Sweeney's evidence, that ballots were issued and returned by second class post, this would extend the maximum period to 11 days (excluding mail delivery days).
- 2.37 I find either period is unreasonably short. In my view the period of time allowed for issuing, receiving and returning ballot papers, using the postal services, should be a minimum of three calendar weeks, to allow sufficient time for the postal deliveries and to accommodate differing working patterns and members' absences from home or workplace on holiday or other forms of leave.

#### Declaration

- 2.38 Having considered all the evidence in respect of the accuracy of the members' register and the timescales set by the union for this election I declare that UNISON breached rule 6(g) of its 2001 United/Homefirst branch rules.

#### Enforcement Order

2.39 I refuse to make an enforcement order in this case as it would be inappropriate. United/Homefirst branch elections are held annually and the election process for the 2003 elections was completed before the date of the formal hearing.

#### Complaint 7

Alleged interference in the ballot process by candidates in the election and a breach of Articles 90A(2)(a) & 2(d) of the 1995 Order

#### The applicant's case

2.40 Mr Sweeney claimed that there had been interference in the April election. In support of this he told me he was present at a branch meeting where members, who had also been candidates in the election, said they had participated in the count and had remarked that "their fingers were sore opening all the returned ballot papers".

#### The union's response

2.41 The union denied interference in the ballot. It said that Ms Dooley and Ms Coey were responsible for overseeing the count and that all candidates were invited to attend the count by Ms Coey. The union submitted that "none of the candidates touched or opened any ballot papers in relation to any election in which they were involved. The majority of the ballot papers were opened by regional staff and branch committee members not involved in the elections".

#### My Decision and reasons

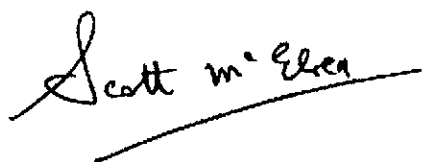
2.42 I agree with the union, that there is no evidence of any interference in the election process in this case. The meaning of the term "interference" for the purposes for which I have to decide, relates to intimidation or other physical interference with the voter, and there was no evidence presented to me that this had happened in this case. I have already ruled on the meaning of interference (*Welsh v NIPSA D/2/2001*).

2.43 I therefore refuse to make any declaration in this matter.

#### Observations

- 3.1 The union said in correspondence to me that my decision to hold a hearing in this case was “premature and perverse”. I do not have the power to turn away any complaint from a trade union member, where there is an alleged or threatened breach of his or her union’s rules under Article 90A of the 1995 Order.
- 3.2 Whilst I recognise that this creates the potential for cases of a frivolous or vexatious nature, I would not have acted differently in this case. Despite the fact that the parties had corresponded through my office for almost a year, a number of issues remained in dispute. In such circumstances I expect the parties to exercise their rights to insist on a formal hearing, but only after attempts at internal resolution have not succeeded, and where there remains some issue in dispute.
- 3.3 In cases where a claim is conceded and the remedy agreed, there is generally no need for a formal hearing and the party who insists on a hearing in such circumstances can expect me to disallow its expenses.
- 3.4 I have sympathy with the views expressed by Mr Sweeney in paragraph 1.27 concerning my lack of jurisdiction to hear complaints under Article 3(7) of the 1995 Order (duty to maintain a register of members' names and addresses) where a trade union does not have its head or main office in Northern Ireland. I intend to raise this issue with the Department for Employment and Learning, with a view to having the legislation amended.
- 3.5 With regard to the accuracy of registers of members entitled to vote in elections, I fully recognise the practical difficulties for unions in maintaining up-to-date information; members routinely join, leave, change addresses and so on, it is a constantly shifting population. However, this does not detract in any way from the union’s statutory responsibility to maintain an accurate and up-to-date register. As a rule of thumb, I expect register accuracy to be of the order of 96%.
- 3.6 With regard to the timescales set by unions in branch elections for the issue and return of ballot papers by postal services, as a rule of thumb I expect a minimum period of three calendar weeks to be built into the election process.

- 3.7 I also expect the counting of ballots to be conducted by the union in such a way as to be demonstrably fair in the eyes of all its members – i.e., to be fair and to be seen to be fair.

A handwritten signature in black ink that reads "Scott Mc Elrea". The signature is written in a cursive style and is underlined with a single horizontal stroke.

**S Mc Elrea**  
**Northern Ireland Certification Officer**



**THE EMPLOYMENT RELATIONS (NI) ORDER 1999**

**Breach of union rules**

22. After Part VI there shall be inserted –

“PART VIA

BREACH OF RULES

**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;
- (b) disciplinary proceedings by the union (including expulsion);
- (c) the balloting of members on any issue other than industrial action;
- (d) the constitution or proceedings of any executive committee or of any decision-making meeting;
- (e) such other matters as may be specified in an order made by the Department.

(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) A person may not apply under paragraph (1) in relation to a claim if he is entitled to apply under Article 55 in relation to the claim.

(5) No application may be made regarding –

- (a) the dismissal of an employee of the union;
- (b) disciplinary proceedings against an employee of the union.

(6) An application must be made –

- (a) within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or
- (b) if within that period any internal complaints procedure of the union is invoked to resolve the claim, within the period of six months starting with the earlier of the days specified in paragraph (7).

(7) Those days are –

- (a) the day on which the procedure is concluded, and
- (b) the last day of the period of one year beginning with the day on which the procedure is invoked.

(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.

(9) In paragraph (2)(c) “industrial action” means a strike or other industrial action by persons employed under contracts of employment.

(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.

(13) No order shall be made under paragraph (2)(e) unless a draft of it has been laid before and approved by resolution of the Assembly.

(14) If a person applies to the Certification Officer under this Article in relation to an alleged breach or threatened breach he may not apply to the High Court in relation to the breach or threatened breach; but nothing in this paragraph shall prevent such a person from exercising any right to appeal against or challenge the Certification Officer's decision on the application to him.

(15) If –

(a) a person applies to the High Court in relation to an alleged breach or threatened breach, and  
(b) the breach or threatened breach is one in relation to which he could have made an application to the Certification Officer under this Article,

he may not apply to the Certification Officer under this Article in relation to the breach or threatened breach.

### **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.

(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.

(4) The Certification Officer shall in an order imposing any such requirement as is mentioned in paragraph (3)(a) specify the period within which the union is to comply with the requirement.

(5) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this Article, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

(6) A declaration made by the Certification Officer under this Article may be relied on as if it were a declaration made by the High Court.

(7) Where an enforcement order has been made, any person who is a member of the union and was a member at the time it was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.

(8) An enforcement order made by the Certification Officer under this Article may be enforced in the same way as an order of the High Court.

(9) An order under Article 90A(2)(e) may provide that, in relation to an application under Article 90A with regard to a prescribed matter, the preceding provisions of this Article

shall apply with such omissions or modifications as may be specified in the order; and a prescribed matter is such matter specified under Article 90A(2)(e) as is prescribed under this paragraph.”.