

**DECISIONS OF THE CERTIFICATION OFFICER ON APPLICATIONS MADE  
UNDER SECTIONS 25 AND 55 OF THE TRADE UNION AND LABOUR RELATIONS  
(CONSOLIDATION) ACT 1992**

**IN THE MATTER OF COMPLAINTS AGAINST  
THE ASSOCIATION OF TEACHERS AND LECTURERS**

**Date of decisions**

**30 March 2000**

**DECISIONS**

- 1.1 Under section 25 of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) any member of a trade union who claims that his or her trade union has failed to comply with any of the provisions of sections 24 or 24A of Chapter III of Part I of the 1992 Act may apply to me for a declaration to that effect. Section 24 places a duty on all trade unions to compile and maintain a register of names and addresses of its members and to secure, so far as is reasonably practicable, that it is accurate and kept up to date. Similarly under

section 55 of the 1992 Act I am empowered to make, or refuse to make a declaration on the application of any person who claims that his or her union has failed to comply with one or more of the provisions of Chapter IV of Part I of the 1992 Act concerning the need for, and conduct of, elections to certain positions. In each case I am required to give reasons for my decision.

1.2 In making a declaration under either of these sections of the 1992 Act I am required to specify the provisions with which the trade union has failed to comply.

1.3 On the 23 June 1999 I received a letter from a member of the Association of Teachers and Lecturers (ATL) (“the Association”) complaining about the election process in the Association’s election for its post of General Secretary. Under Chapter IV of part I of the 1992 Act the election for the position of General Secretary of the Association has to satisfy certain specific requirements. The applicant made four complaints in relation to the Association’s election of its General Secretary, which was held between 12 February and 5 March 1999, and which was an election covered by the statutory requirements. He complained that:

- the Association, in using the candidates election addresses (which included the candidates’ biographical details) which were submitted for distribution to the electorate, and which were released to the Association’s Executive Committee to determine the Association’s preferred candidate in the election, had breached the requirements of the 1992 Act. This complaint was treated as an

application that the Association had breached Section 48 (1) (a) of the 1992 Act (Complaint One)

- the Association's membership database was not sufficiently accurate and up-to-date, and that the returning officer (for the election) paid insufficient attention to the problem with the database. This complaint was treated as an application that the Association had breached section 49 (3) (a) of the 1992 Act (Complaint Two)
- due to the relationship between the Association and the scrutineer of the election, the requirement for the scrutineer to be independent of the Association was called into question. This complaint was treated as an application that the Association had breached section 49(4) and (6) of the 1992 Act (Complaint Three)
- the conduct of the Association's President and Deputy General Secretary deliberately and consciously broke its own constitution and rules and that those actions constituted an interference by the Association on the members entitled to vote in the election. This complaint was treated as an application that the Association has breached section 51(3) (a) of the 1992 Act (Complaint Four)

- 1.4 During correspondence with the applicant to clarify these complaints the applicant, on the 18 July 1999, identified a further complaint that the Association had failed to ensure the accuracy of its membership database. This complaint was treated as an application that the Association had breached section 24(1) of the 1992 Act (Complaint Five).
- 1.5 As these complaints were made in June 1999 they fell to be dealt with in accordance with the legislation in force at that time. This was prior to any amendments to the 1992 act occasioned by the Employment Relations Act 1999 which came into effect, for the purposes of my powers, on 25 October 1999. I investigated the complaints in correspondence and, for the reasons set out below, I refuse to make the declarations sought. I made enquiries of the applicant, the Association and the Electoral Reform Ballot Services (ERBS) in this matter and gave both the applicant and the Association the opportunity to make representations. I decided that, in accordance with the provisions then in force, it was not necessary in this instance to hold a formal hearing before making my decisions.

### **Requirements of the Legislation**

- 1.6 The relevant statutory requirements in respect of the complaints are as follows:

*“24.-(1) A trade union shall compile and maintain a register of the names and addresses of its members, and shall secure, so far as is reasonably practicable, that the entries in the register are accurate and are kept up-to-date.*

*(2) The register may be kept by means of a computer.*

(3) ...

(4) ...

(5) *For the purposes of this section a member's address means either his home address or another address which he has requested the union in writing to treat as his postal address.*

(6) ...

48.-(1) *The trade union shall -*

(a) *provide every candidate with an opportunity of preparing an election address in his own words and of submitting it to the union to be distributed to the persons accorded entitlement to vote in the election; and*

(b) ...

(2) ...

49 (3) *The scrutineer's appointment shall require him -*

(a) *to be the person who supervised the production of the voting papers and (unless he is appointed under section 51A to undertake the distribution of the voting papers) their distribution and to whom the voting papers are returned by those voting;*

(aa) ...

(b) ...

(c) ...

(d) ...

(4) *The trade union shall ensure that nothing in the terms of the scrutineer's appointment (including any additional functions specified in the appointment) is such as to make it reasonable for any person to call the scrutineer's independence in relation to the union into question.*

(5) ...

(6) *The trade union shall ensure that the scrutineer duly carries out his functions and that there is no interference with his carrying out of those functions which would*

*make it reasonable for any person to call the scrutineer's independence in relation to the union into question.*

*51(3) Every person who is entitled to vote at the election must -*

*(a) be allowed to vote without interference from, or constraint imposed by, the union or any of its members, officials or employees, and*

*(b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.”*

1.7 That then is the background and relevant legislation. I now set out the arguments put by the parties on each of the complaints and the reasons for my decisions.

**Complaint One that the Receiving Officer for the election released the candidate's election address (which included the candidate's biographical details and which was submitted for distribution to the electorate) to the Association's Executive Committee to determine the Association's preferred candidate in the election. This was said to be in breach of section 48 (1) (a) of the Act.**

### **The Applicant's Case**

2.1 The applicant explained that the candidates in the election were invited to complete a biographical pro forma and to send it to the Electoral Reform Society (ERS) the Returning Officer for the election. The applicant stated that it was the Association's normal practice for the biographical details to be sent to the voters in elections with the candidates election address and photograph and, he argued, that by being bound and circulated with the candidate's election address, the biographical details were in effect part of the election address.

2.2 The applicant stated that, without the knowledge of the candidates in the election, the Returning Officer released the biographical details of the candidates to the Association's executive committee for the committee to use the details provided in a "beauty competition" to determine whether any candidate, and if so which, should be recommended by the executive to the voters.

2.3 The applicant argued that the executive committee used the biographical details of the candidates to base their support for the existing general secretary on an allegedly objective consideration of the biographical material against the existing general secretary's person specification and job description and that this was contrary to the purposes specified in section 48(1)(a) of the Act. He commented that the use of the material in this way was novel within the Association and put one candidate at a disadvantage with the executive committee's recommended candidate.

2.4 The applicant argued that the wording of section 48(1)(a) “ ... *submitting it to the union to be distributed to the persons accorded entitlement to vote in the election;...* ” meant that the material provided by the candidates was for distribution to the electorate and was not provided for any other purpose. He argued that the whole of section 48 of the Act was written in terms of “distribution” and that no other purpose other than distribution of the material to the voters was described or envisaged by the Act.

2.5 He commented that the whole thrust of section 48 was to ensure equity of treatment between the candidates and that to use the material (including the biographical material) for any other purpose, particularly for an exercise comparing the candidates was in breach of the Act

### **The Association's Response**

2.6 The Association, in responding to the complaint, stated that there were two candidates in the election and that both were given an opportunity to prepare and submit an election address

in accordance with section 48(1)(a) of the Act and both did so. Both election addresses, they stated, were distributed to persons accorded entitlement to vote.

2.7 The Association argued that it was incorrect for the applicant to argue that the biographical details of the candidates formed part of the election address and therefore came within section 48(1)(a) of the Act.

2.8 The Association quoted its "by-law 30" which they stated provided:

“ Any candidate for election (otherwise than to the Assembly) may, in addition to preparing an election address, furnish the Returning Officer with biographical details on such form as may be prepared by the Association for this purpose and such biographical details shall be distributed with the voting papers.”

and argued that a clear differentiation was made between an election address and biographical details by the Association's by-law.

2.9 The Association further argued that the booklet (containing the election address and biographical details) issued to the voters also, on the front page and in the booklet, drew a distinction between the election address and the biographical details. They drew my attention to the front page of the booklet which was entitled "Candidate's Election Addresses and Biographical Details" and showed the contents has having the biographical details of the two candidates on pages 2 and 6. They also drew my attention to the bottom of the cover page which read "Please read candidate's election addresses and biographical details before marking your voting paper."

- 2.10 In the booklet, the Association pointed out that the candidate's election addresses were printed on separate pages and that the election address for each candidate was followed on separate pages by the candidate's biographical details.
- 2.11 The Association confirmed that its Deputy General Secretary, Mr Imison, had requested the biographical details from the returning officer and stated that on the same day he had written to the two candidates drawing their attention to the executive committee meeting on the 6 February 1999 to consider, inter alia, the biographical details. The Association considered it was permissible for the executive committee to decide, at its meeting on the 6 February, to agree a resolution with a recommendation of support for a candidate and that the receiving, from the returning officer, of a copy of the candidate's biographical details did not breach any of the statutory provisions of the Act.

### **Reasons for my Decision**

- 2.12 The 1992 Act sets out, in section 48 the statutory requirements relating to a candidate's election address. Section 48(1)(a) of the 1992 Act provides that a trade union shall give every candidate the opportunity to prepare an election address and for that election address to be distributed, along with the ballot papers to those entitled to vote.
- 2.13 The 1992 Act does not prohibit a union's executive seeking to persuade members to vote for one candidate rather than another. What I have to decide therefore is were the biographical

details submitted by the candidates part of their election address and, if so, should they have been submitted to the executive committee in the way described.

2.14 It was quite clear to me from the Association's submission that it regarded the candidate's election address and biographical details as separate. They described, and I have seen, how the two documents for each of the two candidates, was bound and submitted to the electorate as one booklet.

2.15 The Association have shown that both candidates had, and took, the opportunity to prepare and submit both an election address and biographical details. The applicant confirmed to me that it was normal practice in the Association for biographical details to be provided, by the returning officer to the Association, but felt that this was for the purpose of checking whether the details and dates of membership of committees etc. were correct and that the use to which the biographical details in the general secretaries' election were put was both novel and to the disadvantage of one candidate.

2.16 It is clear to me that both candidates were aware, from the Association's rules, that they were submitting both an election address and biographical details as separate documents and that both documents would be submitted, by the Association, to the voters. The applicant's complaint was that the biographical details had been provided by the returning officer to the Association's executive who used the information to the advantage of one candidate over the other.

2.17 On the basis of the information before me, I found that the biographical details were not, and did not form part of, the candidate's election address and that this application should be dismissed.

2.18 I would add that even if the biographical details had formed part of the election address (which I found it did not) the legislation does not prohibit the Association's executive from receiving a copy from the returning officer. Indeed the legislation envisages that the election address is sent to the union. The requirement on the union to distribute such addresses does not mean that addresses can be used for no other purpose. I do not know if using the information to persuade members to vote for one candidate rather than another was novel but it is certainly not forbidden. The legislation, while providing that the process of preparing and distributing election addresses shall be done in an even handed way, does not prohibit the support of the "establishment" candidate.

**Complaint Two that section 49 (3) (a) of the Act was breached in that the Association's membership database was not sufficiently accurate and up-to-date and that the returning officer paid insufficient attention to this problem.**

### **The Applicant's Case**

2.19 The applicant stated that the Association's membership database had been inaccurate for a number of years, that this was known within the Association and regularly discussed at meetings of the executive committee and of branch secretaries.

2.20 The applicant commented that he understood the official explanation (for the difficulties with the database) was that a previous IT manager had corrupted the database and that while, following the recent appointment of a new IT manager, some improvements had been made, no copies of the improved database had been provided to branch secretaries and that it was impossible to check whether improvements had been made to bring the database up to a satisfactory level.

2.21 He informed me that there were a number of Association members who had no recorded address and that on the database their address was given as that of the Association's headquarters. He commented that, therefore, their ballot papers would be sent to the Association's headquarters.

2.22 He argued that, despite correspondence with the returning officer, it was still not clear to him that the returning officer had carried out any checks of the accuracy of the database and that its accuracy was not established. Given the doubts surrounding the accuracy of the database, the applicant argued, that there remained a question about whether the scrutineer, of the election, was able to comply with the requirements of section 49(3)(a) of the Act (to supervise the production of the voting papers and to undertake their distribution).

### **The Association's Response**

2.23 In response to this complaint the Association stated that the Electoral Reform Balloting Services (ERBS) were the independent scrutineer and returning officer for the election and that ERBS was provided with a copy of the Association's database.

2.24 The Association informed me that the data, provided by them to ERBS, contained the names and addresses of members. The registered address, they stated, was the member's school address unless there was no address or the member indicated otherwise.

2.25 The Association informed me that on receipt of a completed application form for membership, the details were entered onto the membership database. The address of the member entered, they stated, was the address notified by the member to the Association and that this address may be either the member's school or college address or home address, as shown on the membership application form. The Association advised me that the membership form

provides for the member to request that ATL treat the address given as the postal address for the member for the purposes of current trade union legislation.

2.26 They described efforts made in September 1998 to ensure the database was up to date. In September of that year all Association representatives in schools and colleges were sent a list of members, with a request to notify the Association's headquarters as to whether any changes (to the list) should be made in respect of the members at that establishment. These lists were returned to the Association's headquarters and the information entered on the membership database.

2.27 Also in September 1998, the Association informed me, subscription renewals were circulated to all members individually at their registered address, at the same time members received two forms. One requested they notify the Association's headquarters of any change of address and the members preferred mailing address should this be different from the one currently in use. The second form, I was told, was for the member to retain and use to notify any future change in their registered address.

2.28 The Association stated that any mail returned undelivered from that mailing (para 2.27) was redirected to any second address (normally the members home address) held on the database.

2.29 The Association informed me that having exhausted these processes, there remained a number of members for whom the ATL was unable to identify a current mailing address and that some members had given the address of the Association's headquarters. At the time of the election,

I was informed by the Association, there had been approximately 2000 members in this category but that no members are now entered into this category which has been closed.

2.30 The Association stated that where mailings were returned and no alternative address was held, or where post re-mailed to an alternative address was also returned, the members were entered into a separate category on the database as “no mailing suppression.”

2.31 I was told by the Association that at the time of the election there were a total of 2094 members who either had given the headquarters address or who fell into the “no mailing suppression” category. The Association advised me that ERBS decided that mail (voting papers) should not be distributed to the 2094 members for whom the Association did not have a current mailing address.

2.32 In mid February 1999 (at the time of the election) I was informed, by the Association, that there was a series of telephone calls between ERBS and the Association. These calls, the Association stated, were to discuss the procedure for dealing with non-delivered mail sent out.

2.33 It was, I was told, agreed by the Association with ERBS that (i) further information about the election should be placed in the Association’s publication “Up-Date”, which was distributed to members entitled to vote and that (ii) the address and telephone number of ERBS be included in the information published in that edition of “Up-Date.”

2.34 Finally, the Association informed me that the disc that the applicant (as a branch secretary of the Association) was working with (in common with other branch secretaries) was out of date in that significant work had been undertaken on the database since the disc had been supplied.

### **Reasons for my Decision**

2.35 During my investigation of the complaint, I made enquiries of ERBS. That organisation confirmed, to me, that it was appointed as the independent scrutineer and returning officer for the election in question and that indeed, they had administered the Association's elections for several years.

2.36 ERBS confirmed to me that at the time of the election it was brought to their attention, by a member, that a number of members had, as their registered addresses, the Association's headquarters. ERBS informed me, that the matter was investigated and a reply sent to the member concerned. ERBS stated to me that they were satisfied that ballot papers were only sent to those members for whom the Association had a registered address.

2.37 The report on the election provided to the Association as required by section 52 of the Act was dated 5 March 1999. In the report ERBS confirmed that a copy of the register of voters (as at the relevant date) was examined in accordance with section 49(3) (of the Act), that the examination took place at their own instance and that it did not reveal any matter that should be brought to the attention of the trade union.

2.38 I am satisfied, as a result of my enquiries, that ERBS had been the person appointed to supervise the production and distribution of the voting papers and that as part of its duty it had examined the membership database.

2.39 I am also satisfied that both before and at the time of the election, the Association and (at the time of the election) the Association in conjunction with ERBS, made every effort to ensure the Association's database was both accurate and up-to-date. I might add that even if they had not taken these steps it would not have involved a breach of section 49 (3) (a) which is about the terms of the scrutineer's appointment. For these reasons, I dismissed this application.

**Complaint Three that due to the relationship that existed between the Association and the scrutineer, the requirement for the scrutineer to be independent of the Association was called into question and this was in breach of sections 49(4) and 49(6) of the Act.**

### **The Applicant's Case**

2.40 The applicant cited a number of reasons why, he felt, the relationship that existed between the Association and the scrutineer of the election, called into question the independence of the scrutineer.

2.41 He argued that the decision made by the President of the Association that the election of the General Secretary should be held separately from the election for the Vice President and other

National Officers was contrary to a procedure proposed (but never called into action) in 1994. He commented that the decision to hold separate elections had approximately doubled the cost of balloting of the members in 1999. The ballots, he informed me, were conducted by ERBS an arm of the Electoral Reform Society (ERS) which employs the returning officer.

2.42 He also argued that a decision of the executive committee to endorse the candidature of the existing General Secretary led to ERBS receiving a contract for a third mailing to all voters in the election, and that this, thus, trebled the work made available to ERS. He commented that the material sent by the executive committee was deliberately timed to arrive soon after the ballot papers issued for the Association's National Officers' elections and immediately before the General Secretary papers. He also argued that the posting was in similar envelopes, using the same database and membership identification, by the same mailing house and that the work could not have been carried out by any other organisation in this form.

2.43 He further argued that the request, made to the returning officer by the Association, for the release of biographical information of the candidates to the Association (complaint one) further contributed to his belief that the Association's behaviour was unreasonable in terms of both section 49(4) and (6) of the Act.

2.44 He stated his belief that the Deputy General Secretary (Mr Imision), on a number of occasions, had meetings with the returning officer over lunch at which arrangements were discussed and approved by the returning officer. This showed, he argued, that the returning officer was too closely involved in the conduct of the election and that this was a breach of

the requirements of the Act on the Association to ensure that the scrutineer and returning officer(for the election) carried out her functions and that there was no interference with her carrying out these functions which would make it reasonable for any person to call the scrutineers independence in relation to the Association into question.

2.45 In reply to a response on this complaint from the Association, the applicant commented that he had no quarrel with the Association's explanation of the returning officers/ERS involvement with the Association, but that his concern had always been the way in which the returning officer/ ERS was continually evoked in meetings of the Association's executive as knowing, understanding and approving all action taken by the President, as advised by the Deputy General Secretary. The applicant submitted that this was at best being exaggerated and, at worst, being taken in vain by the Association and that the effect was to bring the office of the returning officer, and therefore ERS into disrepute.

2.46 In reply to my enquiry of ERBS, the applicant stated that he had no means of knowing whether or not the professionalism or independence of any employee of ERBS was impaired and that he certainly had no direct evidence to suggest that it was. However, he questioned what he considered the abuse, by the Association, of the authority of the returning officer.

### **The Association's Response**

2.47 In response to this complaint, the Association confirmed that ERS had been appointed as independent scrutineer, for the various Association elections, in 1993 and that ERS, and

subsequently, ERBS had acted as independent scrutineer in each subsequent election of the General Secretary. The Association stated that the Deputy General Secretary had confirmed these appointments. The Association added that at no time since 1993 had the appointment of ERS or ERBS been questioned and that there had been no reason why their appointment should be questioned.

2.48 The Association stated they put the appointment of ERBS as independent scrutineer of the election in question into effect, by telephone, after receipt of a nomination of the existing General Secretary in October 1998. This, the Association stated, was confirmed to the members in the November 1998 edition of the ATL's publication "Up-Date".

2.49 After receipt of a nomination for a second candidate for the post of General Secretary, the Association informed me that it telephoned ERBS informing it of the impending contested election and confirmed that ERBS should act as independent scrutineer for the election and that ERBS should also (as allowed by the Act) act as returning officer.

2.50 There was nothing, the Association asserted, in the terms of the appointment of ERBS as the independent scrutineer in the election of the General Secretary to make it reasonable for any person to call the independence of the scrutineer into question.

2.51 The Association added that the decisions to approve the holding of separate ballots for the election of the Junior Vice President/National Officers and the ballot of the General Secretary and the decision to endorse the candidature of the incumbent General Secretary, was made

by the Association's executive at its meetings on the 22 January 1999 and 6 February 1999 respectively.

2.52 The Association stated it was aware of the cost implications of separate ballots and the cost of distributing the President's letter containing information on the executive committee endorsement of the incumbent General Secretary for the forthcoming election. They informed me that the Association considered how the mailing of the letter, from the President should be carried out and who should do that mailing. I was informed that the Association sought advice from ERS as to whether it would be appropriate for ERBS to undertake the printing and mailing of this letter to the members and that, after the then Chief Executive of ERBS had been consulted by ERBS, it was confirmed to the Association that the Electoral Reform Mailing Service (ERMS) could undertake the work. The Association argued that the subsequent decision to instruct ERMS in this matter did not compromise any aspect of the election in question.

2.53 The Association therefore asserted that it was incorrect for the applicant to allege that the decisions of the executive committee and actions taken following those decisions make it reasonable for the applicant to call the independence of the independent scrutineer of the election into question.

2.54 Subsequent to the appointment of ERBS as independent scrutineer and returning officer for the election, by the Association, (the Association informed me) it was necessary for the Association and ERBS to be in regular, (and often daily) contact with regard to the issues

relating to the process to be used. This was because, I was informed, they were concerned to ensure that the conduct of the election of the General Secretary (the first contested election for the post in the history of the Association) should be entirely proper.

2.55 The Association argued that it was entirely appropriate for the Association to liaise with and seek the advice of the returning officer at all stages prior to, throughout and subsequent to the election. They argued that there were no grounds whatsoever for the applicant's assertion that the Association acted in a manner which so closely involved the returning officer in the conduct of the election and indeed informed me that they felt the Association could have been the subject of criticism if they had not sought such advice from the returning officer on a frequent and regular basis.

2.56 The Association therefore argued that (i) the independent scrutineer duly carried out her functions and (ii) that there was no interference by the Association with the carrying out of these functions which would make it reasonable for any person to call the independence of ERBS in relation to the election, into question.

### **Reasons for my Decision**

2.57 I noted that the applicant, during my enquiries, commented that he had no quarrel with the Association's explanation of its close involvement with the returning officer/ERS during the election, but that his concern had always been the way in which the returning officer/ERS was

continually invoked in meetings of the Association as knowing, understanding and approving all actions taken by officers of the Association.

2.58 The applicant also, in correspondence with me, added that he had no way of knowing whether or not the professionalism or independence of any employee of ERBS was impaired and that he had no direct evidence to suggest it was. His argument was rather that the Association abused the authority of the returning officer.

2.59 In its response to me the head of the Ballot Department at ERBS commented that most unions will have appointed the same scrutineer for their elections since the legislation came into force and that it was inevitable that a good working relationship will develop. However, he added, that at no point would we (ERBS) ever believe that this would impair our professionalism or independence.

2.60 I am satisfied that no evidence was produced that the Association had failed to ensure that the scrutineer had carried out her functions in an independent manner or that there was interference with the scrutineer, by the Association, in the carrying out of her functions.

2.61 It appears to me that, having appointed a scrutineer and finding it was involved in a contested election for the post of general secretary for the first time, the Association were likely to have, and it was reasonable for them to have, a close working relationship with the scrutineer. Indeed I would find it unusual if they had not. I agree with the Association that no evidence was produced that the Association had failed to ensure the scrutineer had carried out her

functions in an independent manner or that there was interference with the scrutineer, by the union, in carrying out those functions. It is for these reasons that I dismissed this application.

**Complaint Four that the conduct of the Association's President and Deputy General Secretary deliberately and consciously broke its own constitution and rules and that these actions in breach of section 51 (3) (a) constituted an interference by the Association on the members entitled to vote in the election.**

### **The Applicant's Case**

2.62 The applicant argued that the Association, through the conduct of its President and Deputy General Secretary on more than one occasion, deliberately and consciously broke its own constitution and rules and that such conduct must surely have breached section 51(3)(a) of the Act, in that if the Association or any of its members, officials or employees breaches the Association's rules, that must constitute interference with or a constraint imposed by the Association on the members.

2.63 The applicant cited a number of incidents where, he believed, the actions of various officials, the procedures followed and decisions reached at meetings of the executive committee and of the rules and procedure committee had breached the Associations' Constitution, Rules and By-Laws. He argued that these were deliberate breaches of the rules and was conduct which breached section 51(a) of the Act.

## **The Association's Response**

- 2.64 The Association maintained that there was no breach of its constitution and rules at any stage prior to, during or subsequent to the election of its General Secretary in 1999.
- 2.65 Further they argued that I had no statutory jurisdiction, except in relation to a union's political fund, to determine whether a trade union had breached its own rules.
- 2.66 The Association argued that, although the applicant suggested that breaches of the Association's rules must constitute interference or constraints on the part of the Association (with the members), it was not clear (from the applicant's submission) how these matters (if there were breaches, which was denied) constituted interference or restraint.
- 2.67 Additionally the Association argued that all decisions relating to the conduct of the election of the General Secretary were taken under the authority of the executive committee and that a union may legitimately express support for one candidate over another. The Association therefore submitted that there had been no breaches of either its rules and constitution or of the statutory provisions of the Act and that the applicant's complaint should not be upheld.

## **Reasons for my Decision**

- 2.68 As the Association pointed out in its submission, at the time the application was made (23 June 1999) I had no jurisdiction over a union's rules except in relation to a union's political

fund. That situation has since changed with the commencement of the Employment Relations Act 1999 (from the 25 October 1999) which extended my powers to deal with certain breaches of the rules of a union.

2.69 However, I am concerned here with an application made prior to the commencement date of the 1999 Act and I have to decide the application on the legislation as it stood at the date of the application.

2.70 I am not therefore concerned with any possible breaches of the Association's rules, but rather with whether the Association's actions in allegedly breaching its rules amounted to interference by the Association on the members' voting in the election without interference from or constraint imposed by, the Association or any of its members, officials or employees.

2.71 I am satisfied that section 51 of the 1992 Act deals with the physical conduct of a ballot. It sets out requirements relating to the content of the voting paper, how voting papers are to be distributed and returned and the security of the ballot. It also makes provision for how members should be allowed to vote, without interference or constraint, without cost and in secret.

2.72 In previous decisions I have determined that interference meant physical interference by another party. Whilst I accept that interference might be other than physical, I do not believe that the alleged breaches of the Association's constitution and rules or by-laws amounted to

interference with the members at the time they exercised their entitlement to vote in the election. I therefore dismissed this application.

**Complaint Five that contrary to section 24 of the Act the Association had failed to ensure the accuracy of its membership database.**

**The Applicant's Case**

2.73 During correspondence with my office on the first four complaints, the applicant identified this fifth complaint. He argued that given the evidence he had presented concerning members with no addresses that this, at least, posed questions relating to the Association's failure to comply with section 24(1) of the Act.

2.74 In his submission on this complaint the applicant stated that he only had access to a branch database which had not been updated for over a year and which was inaccurate when supplied. He added that although some improvements had been made to the Association's database, it was only very recent and not before February 1999 (the time of the election). Finally, he stated, that changes in personnel at the Association's headquarters would make it difficult to establish what was wrong, what had been corrected and, if so, when. For these reasons, (he commented) his information, on this complaint, was limited.

2.75 He accepted that no membership database will ever be 100% accurate but commented that the history of the Association's membership database was one fraught with difficulties.

- 2.76 He commented that, as he understood it, the problems with the database lay with the terms, or lack of them, in the original contract with the company that supplied the original database. He added that following a dispute with the company, the Association was left with a database which had to be operated without adequate documentation.
- 2.77 Subsequently, the applicant maintains, the system was required to be operated without documentation and became corrupted. The applicant also doubted the Association's assertion that access to the database was confined to those (staff) specifically trained. He added that he was aware that the General Secretary had stated to the executive that, at times of pressure during student recruitment, he himself (the General Secretary) had to lend a hand with data entry.
- 2.78 The applicant concluded that the database does not work effectively and is known not to do so and that the matter had been discussed at practically every executive committee since he (the applicant) had joined in September 1996 and that it was a regular concern at branch secretaries conferences.

### **The Association's Response**

- 2.79 The Association referred me to the comments it had submitted in respect of complaint two. The Association sent me a copy of its current membership application form and stated that on receipt of a completed form the details were entered into the membership database.

- 2.80 The database was, the Association stated, operated by members of the staff of the Association at its headquarters, and that all membership information is corrected and retained at that office.
- 2.81 They informed me that access to the database, allowing amendment, was confined to staff working in the membership department or to those who had been specifically trained to assist at peak times when additional support for the department was required.
- 2.82 The Association stated that it undertakes an annual review of its membership database to delete the names and addresses of members no longer wishing to be members. This review, the Association stated, was undertaken at the end of 1998 and before the commencement of the ballot for the election of the General Secretary.
- 2.83 The Association also referred me to the action it had undertaken at the time of the election to ensure that its membership database was both accurate and up to date (para's 2.23 - 2.34).
- 2.84 The Association therefore submitted that it had compiled and maintained a register of the names and addresses of its members and had, as far as is reasonably practicable, ensured that the entries in the register were accurate and kept up to date.

## **Reasons of my Decision**

- 2.85 The Association in response to complaint two detailed its efforts to ensure the membership database was both accurate and kept up to date.
- 2.86 I have previously noted (para 2.31) that the Association had informed me that, at the time of the election, there were a total of 2094 members who either had given the headquarters address or who fell into the “no mailing suppression” category and that ERBS has decided that mail (voting papers) should not be sent to the 2094 members of the Association who did not have a current registered (mailing) address.
- 2.87 I was satisfied that the Association response to this complaint showed that action taken by the Association to check and amend its register of the names and addresses of its members in the period both before the ballot in question and annually, suggests that the register is being maintained.
- 2.88 The Association admitted that it did not hold current addresses for some 2094 members at the time of the election (other than the Association headquarters address for the majority of these) and that they were excluded from entitlement to vote in the election. This number amounted to some 1.8% of the membership entitled to vote and does not, to me, seem an unreasonable figure in an organisation that depends on individual members to report changes of address. It is for these reasons that I dismissed this application.

## **Observations**

- 3.1 Sections 25(5) and 55(5) of the Act give me powers to make observations on any matter arising from or connected with the proceedings. I do so in this case.
  
- 3.2 The sections of the Act referred to in some of these complaints are largely irrelevant to the matters complained of. The union's response however has not been to seek to have them dismissed on what might seem to the complainant to be "technicalities" but to seek to answer more on the substance of the complaints. In issuing my reasons for declining to make the declarations sought I have also endeavoured to deal with both aspects.

E G WHYBREW

Certification Officer