

explicitly considered by the governing body of the Union. He says he therefore raised the issue at various levels within the Union. Both Mr Duncan and Mr Ryall obtained legal opinions regarding whether or not the rules allowed one individual to occupy both positions at the same time but this did not, in Mr Duncan's mind, resolve the issue.

[3] As required by the Union's rules an election for the position of Central Regional Secretary was held at the central regional conference on 28 April 2009. Mr Duncan and Mr Ryall were the only candidates. Mr Ryall won the election by 52% to Mr Duncan's 48%. As he was entitled to do in terms of the Union rules Mr Duncan requested that the matter be subject to a postal ballot of all of the Union's members in the central region. Mr Duncan again sought advice from the National Executive as to whether or not the two positions could be held at the same time by the same person. He was advised by e-mail on the 22 June 2009 that the National Executive had considered his submissions and had passed the following resolution:

In accordance with Rule 23.8 the National Executive of the SFWU Nga Ringa Tota, having considered the two legal opinions provided, and noting our union rules do not prevent the holding of two positions simultaneously, (including the National Secretary also being a Regional Secretary), it is the decision of the National Executive that the Central Region ballot to determine the Regional Secretary should proceed.

[4] On 24 June 2009 Mr Duncan filed an application in the Authority asking the Authority to determine *whether the concurrent holding of the two elected positions (National Secretary and Central Regional Secretary) by one person would constitute a breach of the rules of the Union.*

Jurisdiction

[5] Section 161 of the Employment Relations Act 2000 (the Act) provides that the Authority has *...jurisdiction to make determinations about employment relationship problems generally, including.....*

(k) matters related to a failure by a union to comply with its rules.

[6] Given the Union Executive's position as expressed in its e-mail to Mr Duncan of 22 June 2009 that *the union rules do not prevent the holding of the two positions simultaneously* it is clear that, should Mr Ryall win the election for Regional Secretary, the Union would allow him to occupy both positions. It is Mr Duncan's contention that, should the Union allow Mr Ryall to conjointly hold positions of National Secretary and Regional Secretary this would be in breach of the Union rules. It seems clear that the Authority has jurisdiction in terms of section 161 (k) of the Act to determine whether or not such a joint appointment would breach the Union rules.

The respective submissions

[7] Ms Hubble, for Mr Duncan, argues that, while there is nothing specific in the Union rules to prohibit one person holding both the National and Regional Secretary's positions simultaneously, it is necessary to interpret the rules looking at the overall structure of representation and governance provided for in the rules and the interrelationship of rules and offices. Her main submission is that the concurrent holding by the same person of the elected National Secretary position and any elected Regional Secretary position(s) is fundamentally incompatible with the overall structure of representation and governance. She asks, by way of example, how the Union would propose that the National Secretary could hold himself to account as Regional Secretary; or how the National Executive meetings would function i.e. would the National Secretary be considered also to be a Regional Secretary for the purposes of forming a quorum? She also argues that there would be a loss of transparency with the convergence of the roles in one person. She suggests that the role of Regional Secretary would effectively become subsumed into that of the National Secretary and that this would be contrary to the intention of the rules.

[8] Mr Tizard, for the Union, argues that the proper starting point is not whether a person is qualified to stand for and serve in a particular office but whether that person is disqualified. He accepts that when construing the rules it is appropriate to consider not only the specific rules but the whole of the rules of the Union and the rules relating to individual officers are to be seen in the context of the structure of the Union as set out in the rules. Mr Tizard addresses the various parts of the rules and argues that there is nothing in the rules which suggests that a person who holds office at national level is therefore precluded or disqualified from holding office at the

regional level. He points out that there is only one rule regarding eligibility (a rule which precludes a full-time paid staff member or officer of the Union being elected to an honorary position on either the National Executive or Regional Organising Committee). He suggests that if it had been intended that a member could not hold office at both national and regional levels it would have been a simple task to have included that prohibition in the rules. He argues that an examination of the duties of National Secretary and Regional Secretary shows that there is no necessary conflict between the performance of those two duties by one person. He says that in no case does the National Secretary have to perform duties which would be inconsistent with those to be performed by the Regional Secretary.

[9] In response to questions raised by Ms Hubble Mr Tizard says that the National Secretary's power to call a Regional Secretary to account only extends to the period between the National Executive meetings and the National Secretary is, at all times, subject to the Union's objectives and policies and to the decisions of the National Executive. Mr Tizard says that the rules regarding the required quorum for a National Executive meeting are quite clear and the appointment of one person to both the National and Regional Secretary's roles would provide nothing more than minor administrative inconvenience.

[10] Mr Ryall in his submissions argues that National Secretary and Regional Secretaries are responsible for the management of the Union. He suggests that if anything it is the balance of management rather than the balance of governance which is affected by the joint appointment of National Secretary/ Regional Secretary. He points out that the National Secretary is in control of the management and supervision of all Union staff unless he specifically delegates part of this duty to one of the Regional Secretaries (regional managers). Mr Ryall says that Mr Duncan places too much reliance on the National Executive quorum for his submission regarding the governance balance struck in the Union rules. He points out that nearly all of the members of the National Executive are also elected members of the Regional Organising Committees and that there has never been any objections raised to any of these people holding dual (governance) positions in the Union. He also points out that a former National President concurrently held the position of Central Regional President and that other similar joint executive roles have occurred without any issues being raised regarding the National Executive quorum.

The Union Rules

[11] Mr Duncan accepts that the provisions of the various rules regarding the election of the National and Regional Secretary have been complied with. He simply maintains that it is incompatible with the rules of the Union that one person can hold both positions simultaneously.

[12] It is not necessary to set out the Union rules in any detail. Both parties agree that there is nothing specifically in those rules which would preclude one person jointly filling the roles of National Secretary and Regional Secretary. The rules set out the duties of both positions and establish a national and regional structure (a National President, Secretary and Executive and Regional President, Secretary and organising committee). In particular rule 20.6 states:

The National Executive shall be responsible for the overall governance of the Union. The National Secretary and Regional Secretaries shall be responsible for the management of the union and shall meet as required to ensure that effective management and coordination is maintained.

And at rule 20.4:

The supreme policy and decision-making body of the union shall be the membership freely exercising their will through their votes at democratically conducted meetings of members.

Rule 43.1 provides that the National President and National Secretary shall be elected by delegates attending the biennial national delegates conference with a provision that any unsuccessful candidate who has obtained at least 30% of the conference vote may request that the matter be put to a postal ballot of members nationally. Rule 43.2 provides that the Regional President and Regional Secretary shall be elected at the biennial regional delegates conference with a similar provision that an unsuccessful candidate may request a postal ballot of members in that region.

Discussion

[13] I have carefully read and considered both the Union rules and the various submissions. I accept that if one person were to hold the positions of both National Secretary and Regional Secretary simultaneously this may cause some administrative and logistical inconvenience. However section 161 of the Act provides the Authority only with the jurisdiction to make determinations *about the failure of a union to comply with its rules*. The Act makes no provision for the Authority to interfere with internal governance and management of the Union. There is nothing in the Union's rules which prohibit one person from holding both positions nor any administrative or governance requirements in those rules which would preclude such an arrangement.

[14] I am particularly struck by the wording of rule 20.4 which provides that *the supreme policy and decision-making body of the union is the membership exercising their will through their votes*. There can be little doubt that the membership when casting their votes at the central regional conference, and subsequently when casting their postal ballots, knew that Mr Ryall was the National Secretary. Although I have heard no evidence on the point it is safe to assume that it was common knowledge that Mr Ryall intends, should he be elected to the regional position, to occupy both positions. Assuming he is successful it is a matter for the National Executive, who are *responsible for the overall governance of the Union*, (rule 20.6) to determine whether he can fully undertake the duties of both positions, make whatever administrative arrangements are necessary for him to do so and hold him accountable for the performance of those duties.

Determination

[15] Section 161 Of the Act gives the Authority the jurisdiction to make determinations related to *a failure by a union to comply with its rules*. In allowing Mr Ryall to stand for election for the position of Central Regional Secretary the Union has not *fail(ed) to comply with its rules*. Should Mr Ryall be successful there is nothing in the rules of the Union disqualifying him from occupying that position while continuing to occupy the position of National Secretary. It follows that, in answer to the question posed by Mr Duncan, should be National Executive allow Mr Ryall to occupy both positions at the same time the Union will not have *fail(ed) to comply with its rules*.

Costs

[16] Costs are reserved. Under the circumstances I am of the preliminary view that costs should lie where they fall. However if the Union wishes to seek costs they should first attempt to reach agreement with Mr Duncan on this point. If they are unable to do so the Union will have 28 days from the date of this determination in which to file and serve a submission. Mr Duncan will then have 14 days in which to file and serve a response.

James Wilson

Member of the Employment Relations Authority