

Case Ref No: IC-88/2023

THE INDUSTRIAL COURT

**THE TRADE UNION AND LABOUR RELATIONS (NORTHERN IRELAND)
ORDER 1995 (AS INSERTED BY ARTICLE 3 OF THE EMPLOYMENT
RELATIONS (NORTHERN IRELAND) ORDER 1999)**

SCHEDULE 1A – COLLECTIVE BARGAINING: RECOGNITION

DECISION ON WHETHER TO ACCEPT THE APPLICATION

The Parties:

Unite the Union

And

Lynas Foodservice

ACCEPTANCE DECISION (Long Decision)

1. Unite (the Union) submitted an application to the Industrial Court pursuant to Part 1A of Schedule 1 of the Trade Union and Labour Relations (Northern Ireland) Order 1995 (“The Schedule”), dated 13th September 2023, that it should be recognised for collective bargaining purposes by Lynas Foodservice (the Employer) in respect of a bargaining unit comprising:

‘All directly employed hourly paid workers in the Telesales Department’

2. The location of the bargaining unit was given as “Loughanhill Industrial Estate Gateside Road, Coleraine BT52 2NR.” The application was received by the Industrial Court on 12th September 2023 but was partially complete. A complete application was received on 13th September 2023. The Industrial Court gave both parties notice of receipt of the application by a letter dated 20th September 2023. The Employer submitted its response to the Industrial Court dated 27th September 2023 which was copied to the Union.

3. The Chairman of the Industrial Court established a Panel to deal with the case. The Panel consisted of Mrs Sarah Havlin, Panel Chair, and, as Members, Mr Philip O’Rawe, and Ms Sinead Sharpe. The Case Manager appointed to support the Panel was Tracey Bell.

4. The Panel extended the acceptance period in this case. The initial period expired on 28th September 2023. The acceptance period was extended to 13th October 2023. This was because the Panel formed the view that the information in the application and response was not clear or agreed as to the number of workers which fell into the proposed bargaining unit. The Panel therefore required a membership check to be carried out in order to clarify the required measures for the Acceptance test, which are: (a) the total number of all workers falling within the description of Union’s proposed bargaining unit as compared to (b) the number of claimed Union members/supporters within that unit. The extension was therefore required to allow time for a check to take place, for the parties to comment on the subsequent case manager’s report on the check, and for the Panel to consider the comments before arriving at a decision on Acceptance.

Issues

5. The Panel is required by paragraph 15 of the Schedule to decide whether the Union's application to the Industrial Court is valid within the terms of paragraphs 5 to 9; is made in accordance with paragraphs 11 or 12; is admissible within the terms of paragraphs 33 to 42; and therefore should be accepted.

Summary of the Union's application

6. In its application to the Industrial Court the Union stated that it had made a request for recognition to the Employer by post on 8th June 2023. The Union confirmed that the Employer responded by letter of 23rd August refusing the Union’s request for recognition and there was no willingness indicated to negotiate in this letter. A copy of the Union's letter of request, together with the response in the negative from the Employer was attached to the application.

7. When asked whether the Union had made a previous application under the Schedule for statutory recognition for workers in the proposed bargaining unit or a similar unit the Union answered, “No.”

8. The Union stated that the total number of workers employed by the Employer was 435. The Union stated that there were 30 workers in the proposed bargaining unit, of whom 16 were members of the Union. The Union relied on this number as evidence that the majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining and demonstrates a significant desire for recognition within the proposed bargaining unit.

9. The Union also stated that it had a petition of support for recognition but this was not relied upon to demonstrate additional support over and above membership, but it was stated by the Union that it could be provided to the Court if required.

10. In answer to the question whether the bargaining unit had been agreed with the Employer, the Union said “No”. The Union said that there was no existing recognition agreement of which it was aware which covered any workers in the bargaining unit. The Union confirmed that it held a current certificate of independence. The Union stated that it had copied its application and supporting documents to the Employer on 13th September. (This was subsequently found to be an incomplete copy, and a complete copy was served on the Employer on 18th September 2023).

Summary of the Employer's response to the Union's application

11. In its response to the Union’s application the Employer confirmed that it had received the Union’s written request for recognition on 8th June 2023 and responded by letter on 23rd August 2023. The Employer stated in that letter that it rejected the request as recognition of the Union would be a material change to its Employment Relations and that there was concern that some workers who had signed the petition for recognition felt under pressure to do so or may have been signing up to an issue which had not been explained to them. Further, it was stated that the proposed bargaining unit would cause fragmentation and was not compatible with effective management.

12. The Employer stated that it had not agreed the bargaining unit with the Union. The Employer said that it did not agree the proposed bargaining unit.

13. The Employer stated that, following receipt of the Union's formal request, it had not proposed that the Labour Relations Agency (LRA) should be requested to assist the parties. The Employer did not express agreement with the total number of workers in the bargaining unit or provide its own number of workers which fall into the description of the bargaining unit proposed by the Union. The Employer stated that the number of workers in the proposed bargaining unit was not clear because:

The Employer does not have a Telesales Department. It has an Internal Sales Department which has 30 hourly paid workers. Prior to 2019 the Department was known as Telesales. 17 of the 30 are Internal Sales Representatives. 10 are employed doing admin/order processing duties although they will have some element of internal sales duties as well. The remaining 3 are employed mainly doing internal sales work but they also have an element of admin support in their daily work'.

14. The Employer had no evidence to give about Trade Union membership in the bargaining unit. The Employer stated that an unspecified number of workers reported feeling pressurised into signing documents in support of Union recognition.

The Union's comments on the Employer's response

15. The Union was asked by the Panel for comments on the Employer response and to specifically address the point made by the Employer that the number of total workers in the proposed bargaining unit was not clear. The Union stated:

'Given that the Employer has engaged in repeated correspondence and discussions with us about this group of workers, referring to them as the Telesales department throughout, and given that we are in possession of documents, contract amendments and contracts of employment which were issued to the workers within that department referring to "Telesales" long after 2019 and up until 2022, Unite finds it strange that the employer is introducing this

name change at this stage. It is our understanding that the 2 terms are used interchangeably to describe these group of workers. Please see sample of documents attached.

That said, we are confident we are talking about the same group of workers, 30 in number, office based at Loughanhill Industrial Estate and reporting to (Manager's name).'

The membership and support check

16. To clarify and assist in the determination of two of the admissibility criteria specified in the Schedule, namely, whether 10% of the workers in the proposed bargaining unit are members of the union (paragraph 36(1)(a)) and whether a majority of the workers in the proposed bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit (paragraph 36(1)(b)), the Panel proposed an independent check of the claimed level of union membership within the total number of workers in the proposed bargaining unit against the total amount of workers which fall into the description of the bargaining unit as proposed by the Union. The Employer supplied to the Case Manager a list of the names, dates of birth and job titles of workers falling within the description of the proposed bargaining unit, and the Union supplied to the Case Manager a list of its paid up members within that unit including their full names, dates of birth and job roles (where available). To preserve essential confidentiality, the respective lists were not copied to the other party or the Panel.

17. The list supplied by the Employer indicated that there were 30 workers in the Union's proposed bargaining unit.

18. The list of members supplied by the Union contained 16 names of workers also appearing on the Employer's list, a membership level of 53%.

19. A report of the result of the membership and support check was circulated to the Panel and the parties on 18th October 2023 and the parties were invited to comment on the results of that check by 23rd October 2023.

Summary of the parties' comments following the membership and support check

20. In an e mail dated 23rd October 2023 the Employer stated:

'In relation to the Case Manager Report and the conclusions re the number of workers in the PBU who are Unite members, can you please clarify the date which you use for testing union membership? My client has advised me that a number of workers in the PBU had informed them that they had resigned their union membership.'

21. In an email dated 24th October 2023 the Union stated:

'The date we pulled that membership list was October 10th.'

Considerations

22. In determining whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 5 above are satisfied. The Panel has considered the submissions of both parties and all the evidence in reaching its decision.

23. The Panel is satisfied that the Union made a valid request to the Employer within the terms of paragraphs 5 to 9 of the Schedule. The Panel is also satisfied that the application was made in accordance with paragraph 11(2) of the Schedule. Paragraph 11(2) applies if

- (a) before the end of the first period the employer fails to respond to the request, or
- (b) before the end of the first period the employer informs the union ... that the employer does not accept the request (without indicating a willingness to negotiate).

Paragraph 36(1)(a)

24. Under paragraph 36(1)(a) of the Schedule an application is not admissible unless the Panel decides that members of the union constitute at least 10% of the workers in the proposed bargaining unit.

25. The membership check conducted by the Case Manager showed that the total number in the bargaining unit as proposed is in fact 30 as claimed by the Union in its application. On best information available to the Industrial Court it would appear that 53% of the workers in the proposed bargaining unit are members of the Union. The Panel has therefore formed the view that members of the union constitute at least 10% of the workers in the proposed bargaining unit as required by paragraph 36(1)(a) of the Schedule.

Paragraph 36(1)(b)

26. Under paragraph 36(1)(b) of the Schedule an application is not admissible unless the Panel decides that a majority of the workers constituting the proposed bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit.

27. The Panel has concluded, on the balance of probabilities and in the absence of any evidence to the contrary, that the level of union membership within the proposed bargaining unit currently stands at 53%. The Panel works under the principle that, in the absence of evidence to the contrary, union membership provides a legitimate indicator of the views of the workers in the proposed bargaining unit as to their likely support of recognition of the Union.

28. The Panel, at this stage, is merely testing the likelihood of majority support and the information as presented by the Union is deemed to be sufficient to support the finding that it is more likely than not that a majority of the workers in the proposed bargaining unit would be likely to favour recognition of the Union to conduct collective bargaining on behalf of the bargaining unit, as required by paragraph 36(1)(b) of the Schedule.

Decision

29. For the reasons given above the Panel's decision is that the application is accepted.

Mrs Sarah Havlin (Chairman)
Mr Philip O'Rawe
Mrs Sinead Sharpe

Decision Date: 26th October 2023

Date Issued to Parties: 16th November 2023