

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

Dunbia (Northern Ireland)

Introduction

1. Unite the Union (the Union) submitted an application to the Industrial Court (the Court) dated 3rd November 2008 for recognition at Dunbia (Northern Ireland) (the Employer), Granville Industrial Estate, Dungannon, County Tyrone, BT70 1NJ, for a bargaining unit consisting of “*Hourly paid employees at Dunbia sites in Dungannon*”. The Court gave both parties notice of the receipt of the application on 6th November 2008 and the Employer submitted a response to the Court on 14th November 2008, which was copied to the Union.
2. In accordance with Article 92(A) of the Industrial Relations (Northern Ireland) Order 1992, the Industrial Court Chairman established a Panel of the Court to deal with the case. The Court consisted of Mr Eugene O’Loan, Chairman, and, as Members, Mr Irvine McKay and Mr Bob Gourley. The Case Manager appointed to support the Court was Mr Paul Lyons.
3. The Panel has extended the acceptance period in this case on two occasions. The initial period expired on 20th November 2008. The acceptance period was extended until 4th December 2008 at the request of the Union to allow both parties to continue with voluntary discussions. It was further extended until 11th December 2008 at the request of the employer to allow adequate time to respond to the Case Manager’s Report.

Issues

4. The Panel is required by the Trade Union and Labour Relations (Northern Ireland) Order 1995 to decide whether the Union’s application to the Court is valid within the terms of Schedule 1A, paragraphs 5 – 8; is made in accordance with paragraphs 11 or 12; and is admissible within the terms of paragraph 33 to 42 of Schedule 1A to the Order, and therefore should be accepted.

Views of the Union

5. In its application the Union stated that it had made its request for recognition by a letter dated 14th October 2008 and sent by recorded delivery on the same date and that an identical copy of the application had been sent to the Employer on 3rd November 2008.
6. The Union declared on the application that there were 420-430 workers in the proposed bargaining unit (BU), of which 214 were union members. The Union also stated that a Union membership list and petition from non-members was attached with the application but this information was not provided with the original documentation.

Views of the Employer

7. In its response to the Union's application, the Employer stated that the letter of request from the Union was received on 15th October 2008, and a copy of the application form was received on 5th November 2008. The Employer pointed out that the membership list and petition referred to in the application were not attached.
8. The Employer declared that the definition of the proposed BU in the application differed from that set out in the original letter of request from the Union and therefore it could not agree with the definition in the application.

Further Information Requested

9. To assist in the determination of whether a majority of the workers in the proposed BU are likely to support recognition of the Union as entitled to conduct collective bargaining on behalf of the BU (paragraph 36(1)(b) of the Schedule) the Panel requested that the Union provide the Court with the membership list and petition referred to in the application.

The Court subsequently received both a union membership list and a petition from non-members prepared to join the Union if recognition was granted on 1st December 2008. These two documents state that there are currently 203 members in the proposed bargaining unit, and 42 non-members who would be prepared to join the Union if recognition was granted. This provides a total figure of 245 employees, according to the Union, who are either Union members or would like the Union to be recognised.

10. The Court contacted the Union by email on 3rd December 2008 asking for clarification on the definition of the proposed BU. The Union responded by email on the same date and declared that it was content with the definition in the original letter of request, which stated that the BU consisted of all hourly paid operatives in the Dunbia plants based in Dungannon, but did not include clerical administration, supervisory staff and management grades. The Union has confirmed to the Case Manager that the application is intended to be in respect of that agreed bargaining unit
11. A Case Manager's report was produced based on all relevant information available on 3rd December 2008 and was issued to both parties for their comments on that date.

Comments from Parties

12. The Union responded by email on 3rd December 2008 advising that it had no further comment to make on the Case Manager's Report.
13. The Employer responded through its solicitor by telephone and email on 3rd December 2008 requesting an extension to allow adequate time to respond to the Case Manager's Report. An

extension was granted by the Court until 11th December 2008. The Employer's solicitor stated by email on 5th December 2008 that a response would not be provided until the Employer had received copies of both the Union membership list and the petition from non-members, which it felt should have been included with the application and therefore should have been made available to the Employer. The Court advised the Employer by email on 5th December 2008 that as the supporting documents supplied by the Union consisted of a members' list and a petition, neither of which had been sent with the application, they would be treated in confidence and therefore would not be copied to the Employer. There was no further correspondence from the Employer prior to the Court's Panel Meeting on 11th December 2008.

Considerations

14. In relation to membership and support, the Panel is required to decide whether under paragraph 36(1)(b) a majority of the workers constituting the proposed BU would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the BU.
15. The Employer declared in its response to the application that an LRA exercise had shown that 44.4% of the proposed BU were Union members.
16. The Case Manager's check of the Union petition of non-members showed that 42 non-union employees were prepared to join the Union if it was recognised. Based on the Employer's figure of 439 employees in the BU, as stated in its initial response, this equates to approximately 9.5% of the proposed BU. It should be noted that if this calculation were to be based on the Union's estimate of employee figures provided in its application, this percentage would be higher.
17. Given the level of Union membership and support demonstrated by the petition, and in full consideration of the evidence made available, the Panel was of the opinion that the majority of the workers would be likely to favour recognition of the Union for the purposes of collective bargaining, and concluded that the test required by paragraph 36(1)(b) of the Schedule had been met.
18. The Panel was also satisfied, after full consideration of all the documentation submitted by the Parties, that the Union's application fulfilled the requirements of the remaining statutory tests.

Decision

19. For the reasons given above, the Court is satisfied that the application is valid within the terms of paragraphs 5 to 8, was made in accordance with paragraph 12 and is admissible within the terms of paragraphs 33 to 42 of Schedule 1A.
20. The Industrial Court's decision is therefore that the application is accepted.

Review of Decision

21. The panel met on 11th December 2008 and decided that the application was accepted. Later on the same day, and because of confusion over dates, the observations of the employer on the Case Manager's report were received from its solicitor. Given the wording of the standard letter (which will be reviewed) that confusion is understandable. The panel has therefore

decided that in the interests of fairness and justice, its decision should be reviewed in its entirety.

22. The issue is the percentage of those likely to support Union membership. This is not required to be assessed in relation to a particular day. It is accepted that the numbers of employees in a BU and in a trade union may fluctuate. The difficulty in establishing these matters is indicated by the difficulties encountered even when a third party (the LRA) was assisting in counting the numbers.
23. Even ignoring the trade union's figures and accepting those in the employer's response, a final count with the assistance of the LRA indicated 439 in the BU of which 44.4% were Union members. Taking into account an additional 42 who signed a petition (9.5% of the BU), a majority in favour of Union recognition is demonstrated.
24. The employer's solicitor submits that the number in the BU is 462 at 3rd December 2008 and that union membership is 178. It states that the figure of 178 was indicated in work carried out by the LRA. That is at odds with the employer's own submission. The panel believes that it would in any event be unfair to compare a current figure for workers in the BU against an earlier figure for Union members, since the comparison must be of contemporaneous figures. It remains accepted by the panel that when both figures were assessed by a third party contemporaneously, 44.4% Union membership was demonstrated, with a further 9.5% in support. Even if the figure of 178 is correct, that added to the 42 gives a figure in support of 220. That is more than 50% of the number in the BU which the employer suggested had earlier been established with LRA assistance. The panel is not required in any event to engage in a purely mathematical assessment. The panel will take a common sense view of whether there is likely to be majority support for recognition. It is the panel's opinion that support would likely increase if the Union was recognised and therefore the application would be accepted even if the current level of support was slightly less than 50%.
25. The panel therefore confirms its decision to accept the application.



Mr Eugene O'Loan
Mr Irvine McKay
Mr Bob Gourley

Decision Date: 11th December 2008
Decision Reviewed: 12th December 2008
Date Issued to Parties: 9th January 2009