

Case Ref No: IC-22/2003

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

DETERMINATION OF THE BARGAINING UNIT

The Parties:

ATGWU

and

J E McCabes Ltd

Introduction

1. The ATGWU (the Union) submitted an application to the Industrial Court (the Court) dated 30 July 2003 that it should be recognised for collective bargaining by J E McCabes Ltd (the Company) in respect of a bargaining unit comprising “All hourly paid/weekly paid employees including warehouse operatives, drivers and helpers operating in and from Carn Distribution Centre, in Carn Industrial Estate, Portadown. The Bargaining Unit does not include supervisory and admin staff or those who fulfil a senior management role”. The Court gave both parties notice of the receipt of the application on 4 August 2003. The Company submitted a response to the Court on 14 August 2003, which was copied to the Union.
2. In accordance with Article 92(A) of the Industrial Relations (Northern Ireland) Order 1992, the IC Chairman established a Panel of the Court to deal with the case. The Court consisted of Professor Barry Fitzpatrick, Chairman, and, as Members, Mr Bob Gourley and Ms Caroline Whiteside. The Case Manager appointed to support the Court was Mrs Patricia McIlroy who was replaced by Ms Anne-Marie O’Kane.
3. By a decision dated 14 August 2003, the Panel accepted the Union’s application. An application for leave to apply for a Judicial Review was then lodged by the Company and once granted it was agreed to stay the proceedings until the outcome of the Judicial Review. The Judicial Review Hearing took place on 11 and 12 November 2003 and on 19

December 2003 judgement was delivered. The Court decided not to interfere with the Industrial Court's decision.

4. The Parties were unable to reach an agreement on the appropriate bargaining unit. The Panel invited both Parties to attend a Hearing and to provide the Panel with, and exchange, written submissions relating to the question of the determination of the appropriate bargaining unit. A Hearing was held on 26 January 2004 and re-convened on 31 March 2004. The names of those who attended the Hearing are appended to this decision.

Preliminary points raised at Hearing

5. At the outset of the Hearing, the Company raised concerns at the procedure to be adopted at Hearing and asked if this procedure had been set out in any documentation. The Court adjourned and the Company were provided with an extract from 'Industrial Court – Guide for Parties' which detailed procedures at Hearing. The Company then asked if a Case Manager's Report had been prepared for the Hearing and if so requested disclosure. It was agreed by the Panel to provide both Parties with a copy of the Case Manager's Report.

Summary of the Union's Case

6. The Union in its written submission and amplified at Hearing stated that it considered the Company had the necessary resources for dealing with collective bargaining. It was the Union's belief that management currently deal with employees on two different sets of Terms and Conditions ie. Staff/Admin and Warehouse/Distribution. Therefore separate negotiations would not impact on effective management.
7. The Terms and Conditions of the workers are broadly similar eg. Start and finish times, holiday entitlement, contracts of employment etc, whereas Staff/Admin/Supervisory/Management would be monthly paid, some of whom would be entitled to Company Sick Pay and would have different start/finish times. The Union later accepted that all workers are paid on a weekly basis. However this did not change their proposed bargaining unit. The characteristics of the workers were similar. If drivers finish their run early they will return to the warehouse and set up a run. There are three permanent drivers helpers and the warehouse staff act as drivers' helpers on a rota basis.
8. In addressing the location of workers, the Union stated that the workers were all based at the same site and, although drivers would be away from site, it would be common practice throughout industry to include transport in a bargaining unit.
9. It was submitted by the Union that their proposed bargaining unit was unified and there was no evidence of any fragmentation which would

create difficulty for the employer. However the Company's proposal of a minimised bargaining unit would lead to it being fragmented.

10. The Union disputed the Company's classification of two workers in the proposed bargaining unit as supervisors. One of the workers was in attendance at the Hearing and he explained his role within the Company and his belief that he was not a supervisor.
11. The Union were unaware of any existing national or local bargaining arrangements and submitted that there was no evidence that their proposed bargaining unit compromised effective management and believed that the Company had produced no evidence to counter this assertion.

Summary of the Company's case

12. The Company in its written submissions amplified at Hearing submitted that the Union's definition is inadequate and referred to Industrial Court guidance which states that '... it is essential that it is clear to both parties and to the Court which posts are included in the bargaining unit and which are not. ...'. Lack of definition would inevitably give rise to problems in the future. It was the Company's submission that it would be incorrect to ignore the lack of definition of the bargaining unit. Reference was made to the Court's general duty, set out in paragraph 171 of the Schedule, and how the lack of definition would not lead to fair and efficient practices and arrangements in the workplace.
13. The Company contended that the Union's proposed bargaining unit purports to exclude supervisory and administrative staff and those who fulfil a senior management role. Thus some present and future categories of employees will not be excluded and gave an example of R Toland who is a cook/cleaner working 30 hours per week. The term 'senior management' also leads to uncertainty as to those employees who are not senior management but fulfil a management role.
14. Arguments were put forward by the Company as to whether employees who carried out manual duties should be included in the bargaining unit. Examples were given of Stock-takers, Marketing, Sales and Technical Services who all performed manual duties. The Company went on to outline a number of manual duties performed by specific employees who fell within their classification of Marketing and Sales.
15. The Company stated the reason why drivers should not be included in the bargaining unit was that drivers were responsible for supervising their helpers while carrying out deliveries and were responsible for the Health & Safety of the helper. Drivers have very different skills from warehouse staff, had responsibility for their vehicles and their loads and generally work away from site.

16. The Company stated that the exclusion clause in the Union's definition of the bargaining unit does not use job titles or grades that are in fact in existence in the Company and defines supervisors in a way which is in fact not recognised by the Company. The Company's proposed bargaining unit was 'non supervisory warehouse operatives (who predominantly perform manual work) and lorry drivers' helpers operating in and from Carn Distribution Centre, Annagh Drive, Carn, Portadown'.
17. It was also proposed by the Company that the bargaining unit should not include temporary or casual staff as by the nature of their jobs they do not have a long-term commitment to the employer or their colleagues.
18. The Court was referred to paragraph 20(2) of the Schedule 'Within the decision period the Court must decide whether the application is invalid within the terms of paragraphs 43 to 50', to the effect that validity tests would have to be applied to an appropriate bargaining unit other than that proposed by the Union.

Considerations

19. The Order requires the Court to decide the appropriate bargaining unit and, in making that decision to take into account the need for the unit to be compatible with effective management and the matters listed in para 19(4) of the Schedule, in so far as they do not conflict with that need. These are: the views of the employer and of the union; existing national and local bargaining arrangements; the desirability of avoiding small fragmented bargaining units within an undertaking; the characteristics of workers falling within the proposed bargaining unit and of any other employees of the employer whom the Court considers relevant; and the location of workers.
20. During the course of the Hearing a number of areas of contention arose between the Parties. Differences existed between the Parties in respect of definition of admin workers and whether Sales, Marketing, Technical Services and Stock-Takers fell within this definition. The Company also claimed that two employees were supervisors, while the Union contended that this was not the case. The Company also claimed that the role and responsibilities of the Drivers should exclude them from the bargaining unit.
21. The Court benefited from an explanation of the structure of the Company, Terms and Conditions, Company Pay Scheme and benefits relating to Company cars from both Mr Coleman an employee of the Company and Mr O'Hare, Managing Director. Mr Stevenson, for the Company outlined the disciplinary procedures relating to employees within the bargaining unit.

22. The Court's decision has been taken after full and detailed consideration of the Parties' views as expressed in their written submissions and amplified at the Hearing and in light of the evidence placed before it and the Court's own industrial relations experience.
23. In addressing the general submission from the Company that the proposed bargaining unit was too imprecise, the Court accepts the formulation used by the Union does allow for the inclusion of all hourly/weekly paid workers other than those explicitly excluded. Nonetheless, it is open to the Court to give an authoritative interpretation of those falling within the proposed bargaining unit, in order to bring clarity to the proposal and to judge its appropriateness. The Court, in view of the industrial relations experience of the Panel, is satisfied that those employees classified as Sales and Marketing do fall within the category of Admin and therefore should not be included in the bargaining unit. The Court is satisfied that the term 'Admin' can be used to denote workers such as those in Sales and Marketing and that, although there may be 'manual' aspects to the performance of their tasks, their jobs are predominantly performed within the broad understanding of the term 'Admin'.
24. The Court is also satisfied that the term 'Senior Management' denotes management above the level of 'supervisory and admin staff' and that there is not any 'middle management' category which might otherwise have been included in the bargaining unit. On the basis of the evidence presented to the Court, the Court is satisfied that two employees who performed the role of Checkers are not supervisory for the purposes of the proposed bargaining unit. On the other hand, the Court accepts that the Technical Services employee and the caterer (Payroll Numbers 9991179 and 9991324) do fall within the Union's proposed bargaining unit.
25. On this basis, the Court is satisfied that the proposed bargaining unit, as interpreted by the Court, is sufficiently clear in its definition to be an appropriate bargaining unit within the meaning of paragraph 19.
26. In addressing Para 19(4)(a) of the Schedule, the Court accepted the Union's contention that its proposed Bargaining Unit would be compatible with effective management. The description was somewhat imprecise. However as interpreted by the Court it was a workable unit. The Court was satisfied that the inclusion of the Drivers within the proposal was compatible with effective management and that the inclusion of two workers who might not have been anticipated by the Union did not detract from this conclusion.
27. Para 19(4)(b) requires the Court to take into account existing national and local bargaining arrangements. No submissions were made on this point. However the Union did assert that it would be normal practice within industry to include transport in such a bargaining unit.

28. Para 19(4)(c) requires the Court to take into account the desirability of avoiding small fragmented bargaining units within an undertaking. The Panel concludes that the Union's description of the bargaining unit does not fall into this category.
29. In addressing 19(4)(d) which concerns the characteristics of workers falling within the proposed bargaining unit and of any other employees whom the Court considers relevant. The Court is satisfied on the basis of its conclusions in paragraph 23 and 24 that there is relative consistency between the work undertaken by 'warehouse operatives, drivers and helpers'. The inclusion of a small number of workers who are not within these categories but are not specifically excluded by the Union's definition is not sufficient to call into question the appropriateness of the proposed bargaining unit.
30. In relation to Para 19(4)(e), which concerned the location of workers, the Court is satisfied that it is appropriate that both 'working in and from Carn Distribution Centre' should be included.

On the balance of the evidence before it the Court concluded that it is satisfied that the Union's proposed bargaining unit is an appropriate bargaining unit for the purposes of paragraph 19.

Decision

28. The Court's decision is that the appropriate Bargaining Unit is that proposed by the Union, that is, 'All hourly paid/weekly paid employees including warehouse operatives, drivers and helpers operating in and from Carn Distribution Centre, in Carn Industrial Estate, Portadown. The Bargaining Unit does not include supervisory and admin staff or those who fulfil a senior management role'.

Barry Fitzpatrick

Professor Barry Fitzpatrick
Mr Bob Gourley
Ms Caroline Whiteside

Date of Decision: 31 March 2004
Decision issued to Parties: 9 April 2004

Appendix

Attending on behalf of the Union

Mr George Conlon - ATGWU
Mr Dessie Henderson - ATGWU
Mr Terry Coleman

Attending on behalf of the Employer

Mr Ben Stevens QC
Mr Eugene O'Loan – Tughans Solicitors
Ms Catherine Morrison – Tughans Solicitor
Mr John O'Hare
Mr Charlie Stevenson