

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 FORM OF BALLOT

The Parties:

ATGWU

And

J E McCABES LIMITED

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 Card Industrial Estates, 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 receipt of the application on 4 August 2003 and invited a response from the Company in regard to the application.
2. In accordance with Article 92(A) of the Industrial Relations (Northern Ireland) Order 1992, the Industrial Court Chairman established a panel to deal with the case. The Panel 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. The Panel appointed to consider the application decided on 14 August 2004 that the application was admissible. The appropriate bargaining unit was determined at a Hearing on 26 January 2004 and 31 March 2004. The Parties were notified of the decision on 9 April 2004.

4. By letter dated 9 April 2004 the Parties were asked to participate in a confidential membership check, the results of which were circulated to the Parties. The membership check showed Union membership within the bargaining unit at 42.8%. The Parties were subsequently informed that a secret ballot would be conducted and invited submissions on the form of ballot and whether an extension to the balloting period was required. The Court also advised the Parties that it would wait until the end of the notification period of ten working days, as specified in paragraph 24(5) of Schedule 1A of the Employment Relations (Northern Ireland) Order 1999, before arranging a secret ballot.
5. The notification period under paragraph 24(5) of the Schedule has now elapsed. The Court has not been notified by the Union singly or by both Parties jointly that they do not want the ballot be held, as per paragraph 24(2) of the Schedule.
6. The Court has met to decide on the form of ballot and on whether an extension is necessary to the 20 day period in which the ballot is to be conducted.

Considerations

7. In deciding the type of ballot to be held, ie. postal, workplace or combined, the Court must take into account the following considerations under paragraph 25(5) of the Schedule:
 - (a) the likelihood of the ballot being affected by unfairness or malpractice if it were conducted at a workplace;
 - (b) costs and practicability;
 - (c) such other matters as the Court considers appropriate.

Submissions

8. The Company submitted that a postal ballot should be held and cited an example of an employee being approached on a number of occasions asking if she would join the union. The Company further submitted that there was uncertainty among employees as to whether union membership was compulsory and made reference to employees being placed under pressure due to approaches by the Union, which were during working hours and potentially disrupting work. A postal ballot would allow people to make a considered approach without being placed under pressure at work. A workplace ballot would be difficult to organise due to the Technical Services employee and Drivers/Helpers normally being away from the workplace from early morning until near finishing time. A postal ballot would be in the Company's view more efficient, ensuring that all employees had the opportunity to vote. A postal ballot would also be more cost effective due to the small number of workers involved.

9. In its submission the Union stated that it would prefer a workplace ballot as this would allow for full participation from employees. The Union cited historical factual evidence of low returns in postal ballots. The Union referred to the additional costs involved in a workplace ballot, but that employees should not be influenced by family and friends. The Union also stated that there were adequate facilities for a workplace ballot and that disruption would be minimal, if any. The Union refuted the Company's claims in their submission of undue pressure being placed on employees by the Union to join and ambiguity by the Union on whether Union membership was voluntary or compulsory.

Determinations

10. The Court, having considered the submissions from the Parties, paragraph 25(6) of the Schedule and taking into account the industrial relations experience of the Panel, decided that a combination ballot would ensure the highest possible return.

11. The following persons would be entitled automatically to a postal ballot:-

Those Employees on Maternity Leave;
Those Employees on Long-Term Sick Leave; and
Those Employees with Pre-Booked Leave.

The following persons would be entitled to apply for a postal ballot should they be required to be absent from the workplace on the day of the ballot due to the nature of their employment (Arrangements for applying for a postal ballot will be issued in due course):-

Drivers;
Drivers Helpers; and
The Technical Services Employee

12. The Polling Station will be open on the day of the ballot between 7.30 am and 9.30 am and 3.30 pm and 5.30 pm.
13. Neither Party submitted that an extension to the 20 day balloting period was required. The name of the Qualified Independent Person (QIP) appointed to conduct the ballot will be notified to the Parties shortly as will the period within which the ballot is to be held.
14. The Court will as a matter of course take into consideration the question of costs when appointing a QIP.

Decision

15. The Court's decision is that a secret ballot should be conducted by a combination of workplace and postal voting and an extension to the 20 day period in which to conduct the ballot is not required.

Barry Fitzpatrick

Professor Barry Fitzpatrick
Mr Bob Gourley
Ms Caroline Whiteside

Date of Decision: 24 May 2004
Date issued to Parties: 28 May 2004