Case Ref No: IC-38/2008

THE INDUSTRIAL COURT
THE TRADE UNION AND LABOUR RELATIONS (NORTHERN IRELAND) ORDER 1995 (AS AMENDED 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

Flybe

Introduction:

1. Unite the Union submitted an application to the Industrial Court (the Court) dated 9th January 2008 that it should be recognised for collective bargaining by Flybe (the Employer) at George Best Belfast City Airport. The bargaining unit is described in the following terms: "All Flybe Engineers, including the Engineering Store Person at George Best Belfast City Airport. The Bargaining Unit does not incorporate the Engineering Station Manager". The Court gave both parties notice of receipt of the application on 14th January 2008. The Employer submitted a response to the Court on 24th January 2008 which was copied to the Union.

2. In accordance with Article 92A 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 Barry Fitzpatrick, Chairman, and, as Members, Mr George McGrath and Mr Bob Gourley. The Case Manager appointed to support the Court was Ms Brenda Slowey.

3. The Industrial Court extended the acceptance period in this case on one occasion. The initial period expired on 28th January 2008. The period was extended until 4th February 2008 in order to enable the Employer to lodge its response with the Court and for the Court to carry out any further checks which might be required.

Issues:

4. With regard to the above matters, two main issues were raised in the Union's application and the Employer's response to that application. Firstly, the question arose as to whether there was already in force a collective agreement under which a union is recognised as entitled to conduct collective bargaining on behalf of workers in the Union's proposed bargaining unit, in accordance with paragraph 35 of the Schedule.

Secondly, there was a question as to whether the Union had the required level of membership and support in order for its application to be admissible in accordance with paragraph 36 of the Schedule.

Existing Agreement for Collective Bargaining

5. In its response to the Union's application the Employer submitted that the Union's application was inadmissible as the Employer already recognised the Association of Licensed Aircraft Engineers (ALAE) for collective bargaining purposes in respect of all Engineers employed by Flybe at their bases in the UK, including Belfast, Jersey, Guernsey and the Isle of Man. This agreement was dated 10th December 2007 and a copy was provided to the Court. The Employer stated this agreement came into effect following a national ballot process of Flybe Engineers on 19th November 2007.

6. Following the Employer's response to the application, the Panel requested the Union's comment on the Employer's claim that a voluntary recognition agreement was already in place covering workers in the proposed bargaining unit.

Submissions of the Union:

7. By letter dated 30th January 2008 the Union responded stating that it had signed a recognition agreement with the Employer in relation to Cabin Crew in November 2006 and following this the Engineering staff at George Best Belfast City Airport approached it seeking recognition.

8. By letter dated 13th February 2007 the Union approached the Employer seeking to enter into discussions with a view to reaching a recognition agreement for Engineers similar to that reached in relation to Cabin Crew. The Union subsequently approached the Employer formally in a letter dated 25th May 2007.

9. Following the Union's approach to the Employer for recognition it stated that representation was made at national level through its national officers to recognise Flybe Engineering employees at their bases throughout the UK. Although discussions were ongoing the Union stated that at all times it reserved the right to pursue recognition at Belfast City Airport if agreement was not reached and provided correspondence issued between both parties during this period. The Union felt that an interim agreement had been reached in August 2007 but no formal agreement transpired. It was when agreement could not be reached that the Union claims that ALAE emerged as a second Union in contention for recognition.

10. Consequently, the Union (Unite) requested a postponement of a balloting process, which the Employer was organising, to allow for further dialogue on the points of contention. The Union submits that the Employer refused this request and that it (the Union) advised the Employer that it would not be bound by the outcome of this workplace ballot.

11. The workplace ballot took place and the Union disputed the Employer's figures which showed that 77% of those voting voted in favour of ALAE in a turnout of 44%.

12. The Union claimed that the Employer did not take the views of the Belfast Engineering staff into consideration and believes that the Employer could only deal with the Union's application within the framework of the legislative process pertaining to this jurisdiction.

13. A Case Manager's report was produced and issued to both parties for their comments on 31st January 2008.

Comments from Parties:

14. The Union responded by e-mail on 31st January 2008 advising that it felt the Case Manager's Report fairly reflected the position of both parties but felt that the Employer had entered into an agreement with ALAE in spite of its claim that over two thirds of the expanded bargaining unit did not vote in favour. The Union described this outcome as a deliberate attempt to prevent Unite from organising further. The Union further stated that the Employer is imposing an agreement on its Belfast employees which they do not want and does not afford them effective representation.

15. The Employer responded via e-mail on 1st February 2008 stating that discussions regarding the possibility of voluntary recognition for all Engineers on a national basis were held between the Employer and the Union commencing on 19th April 2007 and that these had continued until the point that the Union decided to withdraw from the ballot process. The Employer stated that during this period both parties consistently agreed on a national bargaining unit, with the only areas of disagreement being the inclusion of administrative staff and ground handling staff in Guernsey.

16. During the course of discussions the Employer stated that it was approached by its own staff committee members of the bargaining unit and ALAE. ALAE could show a level of membership comparable to that of Unite and requested the opportunity to be recognised on a national basis, indicating that it would seek recognition through the Central Arbitration Committee if the Employer did not consider its representations. Subsequently the Employer arranged access for both unions to all engineering staff and a ballot to allow Engineers to voice their views on whether they wanted recognition and if so by which union. It claimed that both Unite and ALAE agreed to this ballot and were given access to all relevant Engineers' work locations. At the Union's (Unite's) request the Employer extended the access period by an additional 2 weeks but Unite subsequently withdrew from the ballot.

17. A copy of the MORI ballot notice was attached which confirmed the ballot result as follows: 71% voted in favour of ALAE being recognised and 29% voted against, with a response rate of 44%. The Employer submitted that it was on the strength of this ballot result, which included Belfast workers, that recognition was granted to ALAE.

18. The Employer stated that its decision to enter into a collective agreement with ALAE was not taken lightly and it had agreed with both Unite and ALAE that for operational purposes it wanted to recognise one union for Engineers across all sites within the United Kingdom.

Level of Membership/Support:

19. In its application the Union stated there were 20 workers in its proposed bargaining unit and that 17 of those workers were members of the Union. The Union indicated that it

could provide a petition in support of its application for recognition to the Court and stated that the petition showed 19 out of the 20 in the proposed bargaining unit supported union recognition.

20. In response to the Union's application the Employer did not dispute the number of workers declared by the Union to be in its proposed bargaining unit but stated that it did not have any firm data confirming how many workers in the proposed bargaining unit were members of the Union.

21. The Chairman advised that a membership/likely to support check could only be conducted once the test in paragraph 35 had been satisfied.

Considerations:

22. 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 and that its application was made in accordance with paragraphs 11 or 12. Furthermore, the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 34 and paragraphs 37 to 42 of the Schedule.

23. Paragraph 35 of the Schedule requires the Panel to decide whether there is already in force a collective agreement under which a union is recognised as entitled to conduct collective bargaining on behalf of any of the workers falling within the Union's proposed bargaining unit.

24. The Panel has taken account of all of the evidence to date received in this application and in light of all submissions received did not feel that any further submissions were required in order for it to reach its decision.

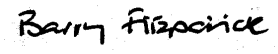
25. The Panel noted and accepted that neither the Employer nor the Union disputed that a voluntary collective recognition agreement was already in place between the Employer and ALAE in relation to Engineers employed by Flybe at their bases in the UK, including Belfast, Jersey, Guernsey and the Isle of Man.

26. Having accepted that there was a collective agreement in force the Panel was mindful of the Union's argument pertaining to the jurisdictional issue, and in particular noted that the Belfast location was always included in ongoing discussions and negotiations between the Union and the Employer. The Panel also noted that the Union was at all times aware of the Employer's intention to enter into discussions regarding Engineers across all sites within the United Kingdom, which included Belfast. The Panel considered that it had to satisfy itself, under regulation 35, that the collective agreement was 'in force' in Northern Ireland but that there was nothing in regulation 35 which precluded an agreement being UK-wide. There was nothing on the facts to suggest that this agreement was not in force in Northern Ireland on the date of the Panel meeting. With this in mind, the Panel concluded that the union's application was deemed inadmissible in accordance with paragraph 35 of Schedule 1A.

27. In relation to paragraphs 36(1)(a) and (b) of Schedule 1A, the Panel decided that as it had come to the conclusion that the application was inadmissible under paragraph 35 of the Schedule, no further tests were required.

Decision:

28. For the reasons given in paragraphs 25 and 26 above, the Panel is satisfied that, for the purposes of paragraph 35 of Schedule 1A, there is in force a collective agreement under which a union is recognised as entitled to conduct collective bargaining on behalf of workers falling within the Union's proposed bargaining unit. Accordingly paragraph 35 renders the Union's application inadmissible.



Mr Barry Fitzpatrick
Mr George McGrath
Mr Bob Gourley

Date of Decision: 4th February 2008
Date Issued to Parties: 14th February 2008