

Case Ref No: IC87/23

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

VALIDITY DECISION

The Parties:

Financial Services Union

And

Allied Irish Bank (AIB Group) plc

Background

1. The Industrial Court (the Court) received an application from The Financial Services Union (FSU) on 22nd May 2023, for recognition at Allied Irish Bank (AIB). The Employer is a commercial bank operating in Northern Ireland as part of the UK subsidiary of Allied Irish Banks plc. The proposed bargaining unit was described as **‘All managers at Level 4 and above in Northern Ireland ’**
2. The Panel appointed in this case consists of Mrs. Sarah Havlin, Chairman of the Industrial Court of Northern Ireland, Ms. Barbara Martin, Member of the Industrial Court of Northern Ireland with experience of acting on behalf of Employees, and Mr. Patrick Masterson, Member of the Industrial Court of Northern Ireland with experience of acting on behalf of Employers. By way of a Decision on 6th July 2023, the Panel decided that the Application met the requirements for acceptance
3. The proposed bargaining unit, upon which the Acceptance Decision was based, was expressed as **‘All managers at Level 4 and above in Northern Ireland ’**.
4. In absence of agreement of the proposed bargaining unit as an ‘appropriate bargaining unit’, the Panel held a hearing and issued a decision determining the appropriate bargaining unit in this case. The decision was issued on 3rd October 2023 and the appropriate bargaining unit was declared as **‘All Staff at Level 4 and Level 5 in Northern Ireland’**. This unit excludes a group of workers which were originally part of the proposed bargaining unit.

5. Accordingly, the bargaining unit as proposed by the Union at Acceptance Stage is not the same as the unit which was determined as the appropriate bargaining unit, and as a consequence the Industrial Court is now required by paragraph 20 of the Schedule to consider whether the application continues to be valid

Applicable Law

6. Paragraph 20

20. - (1) *This paragraph applies if –*

(a) the Court accepts an application under paragraph 11(2) or 12(2),

(b) the parties have agreed an appropriate bargaining unit at the end of the appropriate period (defined by paragraph 18), or the Court has decided an appropriate bargaining unit, and

(c) that bargaining unit differs from the proposed bargaining unit.

(2) Within the decision period the Court must decide whether the application is invalid within the terms of paragraphs 43 to 50.

(3) In deciding whether the application is invalid, the Court must consider any evidence which it has been given by the employer or the union (or unions).

(4) If the Court decides that the application is invalid - (a) the Court must give notice of its decision to the parties,

(b) the Court must not proceed with the application, and

(c) no further steps are to be taken under this Part.

(5) If the Court decides that the application is not invalid it must - (a) proceed with the application, and (b) give notice to the parties that it is so proceeding.

7. Paragraphs 43 to 50

43. - (1) *Paragraphs 44 to 50 apply if the Court has to decide under paragraph 20 whether an application is valid.*

(2) In those paragraphs -

(a) references to the application in question are to that application, and

(b) references to the relevant bargaining unit are to the bargaining unit agreed by the parties or decided by the Court.

44. - (1) *The application in question is invalid if the Court is satisfied that there is already in force a collective agreement under which a union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of any workers falling within the relevant bargaining*

unit.

(2) But sub-paragraph (1) does not apply to the application in question if -

(a) the union (or unions) recognised under the collective agreement and the union (or unions) making the application in question are the same, and

(b) the matters in respect of which the union is (or unions are) entitled to conduct collective bargaining do not include all of the following: pay, hours and holidays ("the core topics").

(3) A declaration of recognition which is the subject of a declaration under paragraph 83(2) must for the purposes of sub-paragraph (1) be treated as ceasing to have effect to the extent specified in paragraph 83(2) on the making of the declaration under paragraph 83(2).

(4) In applying sub-paragraph (1) an agreement for recognition (the agreement in question) must be ignored if -

(a) the union does not have (or none of the unions has) a certificate under Article 6 of the 1992 Order that it is independent,

(b) at some time there was an agreement (the old agreement) between the employer and the union under which the union (whether alone or with other unions) was recognised as entitled to conduct collective bargaining on behalf of a group of workers which was the same or substantially the same as the group covered by the agreement in question, and
(c) the old agreement ceased to have effect in the period of three years ending with the date of the agreement in question.

(5) It is for the Court to decide whether one group of workers is the same or substantially the same as another, but in deciding the Court may take account of the views of any person it believes has an interest in the matter.

45. The application in question is invalid unless the Court decides that -

(a) members of the union (or unions) constitute at least 10 per cent of the workers constituting the relevant bargaining unit, and

(b) a majority of the workers constituting the relevant bargaining unit would be likely to favour recognition of the union (or unions) as entitled to conduct collective bargaining on behalf of the bargaining unit.

46. - (1) This paragraph applies if -

(a) the Court accepts an application under paragraph 11 or 12 relating to a bargaining unit or proceeds under paragraph 20 with an application relating to a bargaining unit,
(b) the application has not been withdrawn,
(c) no notice has been given under paragraph 17(2),
(d) the Court has not issued a declaration under paragraph 19F(5) 22(2), 27(2), 27D(3), 27D(4), 29(3) or 29(4) in relation to that bargaining unit, and
(e) no notification has been made under paragraph 24(2).

(2) The application in question is invalid if -

(a) at least one worker falling within the relevant bargaining unit also falls within the bargaining unit referred to in sub-paragraph (1), and
(b) the application in question is made by a union (or unions) other than the union(or unions) which made the application referred to in sub-paragraph (1).

47. - (1) This paragraph applies if the Court accepts an application under paragraph 11 or 12 relating to a bargaining unit or proceeds under paragraph 20 with an application relating to a bargaining unit.

(2) The application in question is invalid if -

(a) the application is made within the period of 3 years starting with the day after that on which the Court gave notice of acceptance of the application mentioned in subparagraph (1),
(b) the relevant bargaining unit is the same or substantially the same as the bargaining unit mentioned in sub-paragraph (1), and
(c) the application is made by the union (or unions) which made the application mentioned in sub-paragraph (1).

(3) This paragraph does not apply if paragraph 48 or 49 applies.

48. - (1) This paragraph applies if the Court issues a declaration under paragraph 27D(4) or

29(4) that a union is (or unions are) not entitled to be recognised as entitled to conduct collective bargaining on behalf of a bargaining unit; and this is so whether the ballot concerned is arranged under this Part or Part III.

(2) The application in question is invalid if -

(a) the application is made within the period of 3 years starting with the date of the declaration,

(b) the relevant bargaining unit is the same or substantially the same as the bargaining unit mentioned in sub-paragraph (1), and

(c) the application is made by the union (or unions) which made the application leading to the declaration.

49. - (1) This paragraph applies if the Court issues a declaration under paragraph 119D(4), 119H(5) or 121(3) that bargaining arrangements are to cease to have effect; and this is so whether the ballot concerned is arranged under Part IV or Part V.

(2) The application in question is invalid if -

(a) the application is made within the period of 3 years starting with the day after that on which the declaration was issued,

(b) the relevant bargaining unit is the same or substantially the same as the bargaining unit to which the bargaining arrangements mentioned in sub-paragraph (1) relate, and

(c) the application is made by the union which was a party (or unions which were parties) to the proceedings leading to the declaration.

50. - (1) This paragraph applies for the purposes of paragraphs 47 to 49.

(2) It is for the Court to decide whether one bargaining unit is the same or substantially the same as another, but in deciding the Court may take account of the views of any person it believes has an interest in the matter.

Considerations

8. To assist in the application of the validity tests set out in paragraph 45 of Schedule A1 to the 1992 Act, the Panel directed refreshed confidential independent checks of the level of Union membership in the agreed bargaining unit. The Union had provided a list of Union members in the proposed agreed bargaining unit on 20TH June 2023. This list included Level 4 Level 5 and Level 6 workers in Northern Ireland. The Employer had provided a list of workers in the proposed bargaining unit on 20th June 2023. This list included Level 4 Level 5 and Level 6 workers. These lists had been used to conduct checks at Acceptance stage. Following the issuing of the bargaining unit decision which excluded Level 6 workers from the bargaining unit, the Case Manager requested from the Employer a list of names of Level 6 workers. These names were removed from the Employer's List and a fresh cross referencing check was conducted against the lists of names provided, as updated by the Employer's list of Level 6 workers.

9. According to the Case Manager's report on the bargaining unit numbers, the number of Union members in the proposed bargaining unit was 51, a membership level of 68%. A report

of the result of the membership check was issued to the parties on 3rd October 2023 and the parties' comments invited.

10. In its response dated 10 October, the Union made points only in relation to the next stage of the process, which is recognition with or without a ballot. These matters will be considered at the next stage of the process by the Panel in due course.

11. In its response dated 10 October, the Employer made points only in relation to the next stage of the process, which is recognition with or without a ballot. These matters will be considered at the next stage of the process by the Panel in due course.

12. At this stage, it is only necessary for the Panel to decide whether the Union's application is valid within the terms of paragraphs 43 to 50 of the Schedule in consideration of the change to the bargaining unit. In reaching its decision the Panel has considered the parties' submissions and the other evidence before it. The following matters are not disputed:

- * there is no existing recognition agreement covering any of the workers within the agreed bargaining unit;
- * there is no competing application from another union; and
- * there has been no previous application in respect of the agreed bargaining unit.

13. The remaining issues for the Panel to decide are whether the validity criteria contained in paragraphs 45(a) and (b) are met.

14. Paragraph 45(a):

Under paragraph 45(a) of the Schedule an application is invalid unless the Panel decides that members of the union constitute at least 10% of the workers in the agreed bargaining unit. The Panel finds that this test is satisfied.

15. Paragraph 45(b):

Under paragraph 45(b) of the Schedule, an application is invalid unless the Panel decides that a majority of the workers constituting the agreed bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit. The Panel finds that this condition continues to be met despite the change to the bargaining unit. This conclusion is based on the fact that Union members make up 68% of the bargaining unit. In the absence of evidence to the contrary, union membership is taken as a strong indicator of likelihood for support of the Union to conduct collective bargaining.

Decision

16. The decision of the Panel is that the application is valid for the purposes of paragraph 20 of the Schedule and the application must proceed.

Panel

Sarah Havlin (Chairman)

Patrick Masterson (Employer Rep)

Barbara Martin (Union Rep)

Date: 11th October 2023