

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 BALLOT/RECOGNITION

The Parties:

SIPTU

And

Debenhams Plc

(Unit 34, Castlecourt, Royal Avenue, Belfast, BT1 1DD)

Background

1. The Industrial Court (the Court) received an application on 16th March 2017 for recognition at Debenhams Plc, Unit 34 Castlecourt, Royal Avenue, Belfast, BT1 1DD. This address is the location of the proposed bargaining unit. The bargaining unit was described as “consisting full-time and part-time staff consisting of Supervisors, Senior Sales, Sales Advisors, Stock Movement, Food Service and Loss Prevention working for Debenhams Plc at their Belfast site: Unit 34, Castlecourt, Royal Avenue, Belfast, BT1 1DD. For the avoidance of doubt it excludes Store Managers, Deputy Store Managers, Department Managers, temporary workers and casual workers”.

2. A Panel was established made up of Barry Fitzpatrick, Acting Chairman of the Industrial Court and Robin Bell and Patricia O’Callaghan as Panel Members. The Case Manager appointed was Declan McGrady. The Panel accepted the application at a meeting on 18th May 2017 and decided that the proposed bargaining unit was an appropriate bargaining unit at a meeting on 2nd August 2017.

Relevant Statutory Provisions

3. Paragraph 21 of Schedule 1A provides:-

(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 is the same as the proposed bargaining unit.

...

(3) The Court must proceed with the application.

4. Paragraph 22 of the Schedule provides:-

(1) This paragraph applies if—

(a) the Court proceeds with an application in accordance with paragraph 20 or 21 (and makes no declaration under paragraph 19F(5)), and

(b) the Court is satisfied that a majority of the workers constituting the bargaining unit are members of the union (or unions).

(2) The Court must issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit.

(3) But if any of the three qualifying conditions is fulfilled, instead of issuing a declaration under sub-paragraph (2) the Court must give notice to the parties that it intends to arrange for the holding of a secret ballot in which the workers constituting the bargaining unit are asked whether they want the union (or unions) to conduct collective bargaining on their behalf.

5. Paragraph 23 of the Schedule provides:-

“(1) This paragraph applies if—

(a) the Court proceeds with an application in accordance with paragraph 20 or 21 (and makes no declaration under paragraph 19F(5)), and

(b) the Court is not satisfied that a majority of the workers constituting the bargaining unit are members of the union (or unions).

(2) The Court must give notice to the parties that it intends to arrange for the holding of a secret ballot in which the workers constituting the bargaining unit are asked whether they want the union (or unions) to conduct collective bargaining on their behalf.

Further Membership Check on Ballot/Recognition

6. In light of these provisions, the Court had to decide whether a majority of the workers in the bargaining unit were members of the Union. To assist the Court in clarifying the number of workers in each category listed within the bargaining unit and to ascertain the level of union membership, the Panel asked the Case Manager to gather further information. This information was intended to establish the exact number of workers and the level of union membership within the bargaining unit on Wednesday 2nd August 2017 and would determine whether a ballot should be held.

7. The following information was requested from the Parties; from the Union, a list of names, addresses and understood job titles of the workers in the bargaining unit and details of how union subscriptions are paid by members, amount paid, and date of last payment; from the

Employer, a list of the names and addresses and job titles of the workers in the proposed bargaining unit and payroll print-out for each worker.

The Parties were asked to supply the information to the Case Manager no later than close of play on Wednesday 9th August 2017.

8. A comparison of the names and addresses on the Union membership list with the list of workers in the bargaining unit supplied by the Employer showed the following:

Result of the check of the level of union membership:

Number of workers on the list supplied by the Employer	184
Number of Union members on the list supplied by the Union	70
Number of Union members with dues paid	70
Number of Union members whose names match with those provided by the Employer	51
Number of Union members appearing on Employer list with no match issues	51 (27.7%)
Number of Union members appearing on Employer list with and without match issues	70 (38%)

9. In light of the outcome of the check on the level of union membership, the Panel concluded that it would be necessary for it to proceed to arrange for the holding of a ballot.

The Panel noted that there were significant discrepancies between the number of Union members in the bargaining unit provided by the Union and the number of workers identified by the Employer. However, even if all of these discrepancies were resolved in the Union's favour, the percentage of Union membership in the bargaining unit would arise to 38%, less than a majority of the workers in the bargaining unit.

Further relevant statutory provisions

10. Paragraph 24 of the Schedule provides:-

(1) This paragraph applies if the Court gives notice under paragraph 22(3) or 23(2).

(2) Within the notification period—

(a) the union (or unions), or

(b) the union (or unions) and the employer,

may notify the Court that the party making the notification does not (or the parties making the notification do not) want the Court to arrange for the holding of the ballot.

(3) If the Court is so notified—

- (a) it must not arrange for the holding of the ballot,*
- (b) it must inform the parties that it will not arrange for the holding of the ballot, and why, and*
- (c) no further steps are to be taken under this Part.*
- (4) If the Court is not so notified it must arrange for the holding of the ballot.*
- (5) The notification period is, in relation to notification by the union (or unions)—*
 - (a) the period of 10 working days starting with the day on which the union (or last of the unions) receives the Court's notice under paragraph 22(3) or 23(2), or*
 - (b) such longer period so starting as the Court may specify to the parties by notice.*
- (6) The notification period is, in relation to notification by the union (or unions) and the employer—*
 - (a) the period of 10 working days starting with the day on which the last of the parties receives the Court's notice under paragraph 22(3) or 23(2), or*
 - (b) such longer period so starting as the Court may specify to the parties by notice.*

11. Paragraph 25 of the Schedule provides:-

- (1) This paragraph applies if the Court arranges under paragraph 24 for the holding of a ballot.*
- (2) The ballot must be conducted by a qualified independent person appointed by the Court.,*
- (3) The ballot must be conducted within—*
 - (a) the period of 20 working days starting with the day after that on which the qualified independent person is appointed, or*
 - (b) such longer period (so starting) as the Court may decide.*
- (4) The ballot must be conducted—*
 - (a) at a workplace or workplaces decided by the Court,*
 - (b) by post, or*
 - (c) by a combination of the methods described in sub-paragraphs (a) and (b), depending on the Court's preference.*
- (5) In deciding how the ballot is to be conducted the Court must take into account—*
 - (a) the likelihood of the ballot being affected by unfairness or malpractice if it were conducted at a workplace or workplaces;*
 - (b) costs and practicality;*
 - (c) such other matters as the Court considers appropriate.*

(6) The Court may not decide that the ballot is to be conducted as mentioned in sub-paragraph (4)(c) unless there are special factors making such a decision appropriate; and special factors include—

(a) factors arising from the location of workers or the nature of their employment;

(b) factors put to the Court by the employer or the union (or unions).

(6A) If the Court decides that the ballot must (in whole or in part) be conducted at a workplace (or workplaces), it may require arrangements to be made for workers—

(a) who (but for the arrangements) would be prevented by the Court's decision from voting by post, and

(b) who are unable, for reasons relating to those workers as individuals, to cast their votes in the ballot at the workplace (or at any of them),

to be given the opportunity (if they request it far enough in advance of the ballot for this to be practicable) to vote by post; and the Court's imposing such a requirement is not to be treated for the purposes of sub-paragraph (6) as a decision that the ballot be conducted as mentioned in sub-paragraph (4)(c).]

(7) A person is a qualified independent person if—

(a) he satisfies such conditions as may be specified for the purposes of this paragraph by order of the Department or is himself so specified, and

(b) there are no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot otherwise than competently or that his independence in relation to the ballot might reasonably be called into question.

(8) An order under sub-paragraph (7)(a) shall be subject to negative resolution.

(9) As soon as is reasonably practicable after the Court is required under paragraph 24 to arrange for the holding of a ballot it must inform the parties—

(a) that it is so required;

(b) of the nature of the person appointed to conduct the ballot and the date of his appointment;

(c) of the period within which the ballot must be conducted;

(d) whether the ballot is to be conducted by post or at a workplace or workplaces;

(e) of the workplace or workplaces concerned (if the ballot is to be conducted at a workplace or workplaces).

12. Paragraph 26 of the Schedule provides:-

(1) An employer who is informed by the Court under paragraph 25(9) must comply with the following five duties.

(2) The first duty is to co-operate generally, in connection with the ballot, with the union (or unions) and the person appointed to conduct the ballot; and the second and third duties are not to prejudice the generality of this.

(3) The second duty is to give to the union (or unions) such access to the workers constituting the bargaining unit as is reasonable to enable the union (or unions) to inform the workers of the object of the ballot and to seek their support and their opinions on the issues involved.

(4) The third duty is to do the following (so far as it is reasonably to expect the employer to do so)—

(a) to give to the Court, within the period of 10 working days starting with the day after that on which the employer is informed under paragraph 25(9), the names and home addresses of the workers constituting the bargaining unit;

(b) to give to the Court, as soon as is reasonably practicable, the name and home address of any worker who joins the unit after the employer has complied with paragraph (a);

(c) to inform the Court, as soon as is reasonably practicable, of any worker whose name has been given to the Court under paragraph 19D or paragraph (a) or (b) of this sub-paragraph and who ceases to be within the unit.

The arrangements for the holding of a ballot

13. During the notification period set out in paragraph 24(6), the Case Manager, by way of a letter dated 16th August 2017, sought from the Parties submissions on what form of ballot the parties preferred and also a written access agreement between the Parties.

14. The Panel met on 1st September 2017. It was satisfied that a written access agreement had been reached and, after considering submissions from the Parties, that there should be a workplace ballot with some categories of workers entitled to request a postal ballot. The Panel initially considered that a four-day timetable set out by the Employer should be followed. However, a potential Qualified Independent Person (QIP) raised logistical concerns about the arrangements for the workplace ballot. In these circumstances, the Panel met again on 15th September 2017 to review the ballot arrangements in light of further submissions from the Parties.

15. The Case Manager wrote again to the Parties on 20th September informing them that Popularis Ltd had been appointed as the QIP. The Parties were also informed of a revised four-day timetable for the workplace ballot between 12th-15th October 2017 and that the last date for receipt of postal ballots, from those who had requested them, was 17th October. It was also agreed with the Employer that workers in the bargaining unit could enter, or remain, in the workplace outside their normal working hours in order to participate in the workplace ballot.

16. Issues were raised about the eligibility of a number of workers and these were provisionally determined by the Chairman of the Panel and eventually clarified by the Employer.

Outcome of the ballot

17. The QIP reported to the Court on 18th October. Results of the ballot were as follows:

Do you want SIPTU to conduct collective bargaining on your behalf?

Yes	72 (40% of those eligible to vote)
No	94 (52% of those eligible to vote)
Spoilt ballot papers	0
Total ballot papers received	166
Total employees entitled to vote	181

Further relevant statutory provision

18. Paragraph 29 of the Schedule provides:-

“(1) As soon as is reasonably practicable after the Court is informed of the result of a ballot by the person conducting it, the Court must act under this paragraph.

(1A) The duty in sub-paragraph (1) does not apply if the Court gives a notice under paragraph 27C(3)(b).

(2) The Court must inform the employer and the union (or unions) of the result of the ballot.

(3) If the result is that the union is (or unions are) supported by—

(a) a majority of the workers voting, and

(b) at least 40 per cent of the workers constituting the bargaining unit,

the Court must issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the bargaining unit.

(4) If the result is otherwise the Court must issue a declaration that the union is (or unions are) not entitled to be so recognised.”

19. The Case Manager wrote to the Parties on 18th October setting out, and appending, the QIP’s Report. The Parties were informed that they had until close of play on 19th October to raise any objections to the issuing of a Short Decision, including a declaration of non-recognition, on 20th October.

20. A Short Decision issued on 20th October 2017. As such, the Court can confirm that, as a result of the outcome of the ballot, and in accordance with the requirements of paragraph 29(4) of the Schedule, the Union is not recognised for the purposes of collective bargaining in relation to the relevant bargaining unit.

DECISION

38. For the reasons set out above, the Industrial Court declares that SIPTU is not entitled to be recognised to conduct collective bargaining on behalf of the workers described as,

“bargaining unit consisting of full-time and part-time staff consisting of Supervisors, Senior Sales, Sales Advisors, Stock Movement, Food Services and Loss Prevention working for Debenhams Plc at their Belfast site Unit 34, Castlecourt, Royal Avenue, Belfast, BT1 1DD. For the avoidance of doubt it excludes Store Managers, Deputy Store Managers, Department Managers, temporary workers and casual workers.”

Barry Fitzpatrick

Mr Barry Fitzpatrick
Ms Patricia O’Callaghan
Mr Robin Bell

Decision Date: 18th October 2017
Date Issued to Parties: 1st November 2017