

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 RECOGNITION/BALLOT

The Parties:

Unite the Union

And

Kestrel Foods Ltd.

DECISION

Background

1. The Industrial Court (the Court) received an application on 13th March 2018, for recognition at Kestrel Foods Ltd, Unit 8, Carn Drive, Carn Industrial Estate, Portadown BT63 5WJ. This address is the location of the proposed bargaining unit. The bargaining unit was described as “production operatives.” The Court accepted the application by way of a short Decision dated 16th April 2018 and a Long Decision, issued on 2nd May 2018.
2. The Court decided that the proposed bargaining unit was the agreed bargaining unit, described as “production operatives”, by way of a Short Decision of 22nd May 2018 and issued on 2nd July 2018.

Provisions on recognition or holding of a ballot

3. The next stage of the process is set out in paragraphs 22 and 23 which provide:-

“22.—(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.

(4) These are the three qualifying conditions—

(a) the Court is satisfied that a ballot should be held in the interests of good industrial relations;

(b) the Court has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union (or unions) to conduct collective bargaining on their behalf;

(c) membership evidence is produced which leads the Court to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the union (or unions) to conduct collective bargaining on their behalf.

23.—(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.”

4. In order to apply paragraphs 22 and 23, the Chairman, with approval from the Panel, instructed the Case Manager to conduct a membership (and likely support) check. This will 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. This will determine the exact number of workers within the bargaining unit as at 22 May 2018. The following information was requested from the parties:

From the Union:

- A list of the names and addresses of all Union Members currently within the proposed bargaining unit on 22nd May 2018;
- your understanding of the job titles of each of these Union Members;
- details of how Union subscriptions are paid by members, amount paid, and date of last payment.

The Employer has been asked to provide:

- a list of the names and addresses of the workers in the proposed bargaining unit on 22nd May 2018;
- job titles for each of these workers; and
- payroll print-out for each worker.

The Parties were asked to supply the information to the Case Manager no later than noon on 30th May 2018.

Recognition/Ballot Membership Check

5. A comparison of the names and addresses on the Union Membership list, with the list of workers in the proposed bargaining unit supplied by the Employer showed the following:

Result of the checks of the level of Union Membership and likely support

Number of workers on list supplied by the Employer	58
Number of Union Members on list supplied by the Union	25
Number of Union Members with dues paid	25
Number of Union Members whose names match with those provided by the Employer One person listed on both lists has a different first name – but surname & address all match – hence the reason for a drop by one in the number of Union Members matched with the list provided by the Employer.	24
Number of Union Members whose names match but addresses do not	0
Number of Union Members appearing on the Employer list with no match issues	24 (41.38%)
Further to the query above – if this is not an issue – and all names match – then the list contains 25 names with no match issues	25 (43.10%)
No petition of support provided by the Union	-
Number of workers who would be likely to favour recognition of the Union	24 (41.38%)
Number of workers who would be likely to favour recognition of the Union – with possible match issue	25 (43.10%)

6. The Report noted that the Employer used the job title of 'Production Operative' for all 58 workers on its list whilst the Union used a variety of understood job titles for the 25 workers on its list. At the hearing - both Parties agreed that the job title 'Production Operative' was appropriate and had been agreed. It was also noted that the Union had not provided evidence of likely support for collective bargaining should the 'qualifying conditions' set out in paragraph 22(4) come into play.

Panel meeting on 6th June

7. The Panel had expressed concern at earlier stages of the process about discrepancies between the number of workers identified by the Employer as constituting the Bargaining Unit. In paragraph 7 of the Acceptance Decision, the Court stated, "The Panel also noted that there was a degree of uncertainty over which workers constituted the proposed bargaining unit. In particular, there was a discrepancy between the number of workers perceived to be in the proposed bargaining unit by each Party. There was also a discrepancy between the job titles provided by the Employer and the Union."

8. In paragraph 13 of its Bargaining Unit Decision, the Court stated, "The original uncertainty identified by the Court in its Acceptance Decision had, in the Panel's view, been exacerbated by a further discrepancy between the number of workers provided by the Employer in the acceptance checks, namely 59 workers, and those provided under the paragraph 18A duty, namely 49 workers. The Chairman came to the view that a hearing was necessary to clarify precisely which workers were included in the agreed bargaining unit and whether the agreed bargaining unit differed from the proposed bargaining unit."

9. In light of agreement between the Parties at the Hearing on 22nd May, the Court concluded, at paragraph 29 of its Decision, "The Panel concluded, in light of the remarks made by both Parties at the Hearing, that the 49 workers constituting the agreed bargaining unit were made up of the category of workers with contractual job titles of 'Production Operatives' and that the agreed bargaining unit did not differ from the proposed bargaining unit."

10. The Panel, at its meeting of 6th June 2018, was therefore further concerned that the Employer had presented 58 names, addresses and job titles in the Recognition/Ballot check in comparison with the 49 names, addresses and job titles provided under the Employer's paragraph 18A duty and which were treated as the basis for the Court's Bargaining Unit Decision.

Conclusions

11. After considering various permutations within the available evidence before it, the Court came to the view that, in accordance with paragraph 23, it was not satisfied that a majority of the workers constituting the bargaining unit were members of the union.

In his letters of 6th June 2018, the Case Manager informed the Parties of the Court's Decision and to treat that letter as notice that the Court intended to arrange a ballot, in accordance with paragraph 23(2) of the Schedule.

DECISION

30. The Decision of the Industrial Court is that it is not satisfied that a majority of the workers constituting the bargaining unit were members of the union. In consequence, the parties have been notified of the Court's intention to hold a ballot.

Barry Fitzpatrick

Mr Barry Fitzpatrick
Mr Patrick Masterson
Mr Robin Bell

Date of decision – 6th June 2018

Date decision issued to Parties – 6th July 2018