# Case Ref No: IC-80/2019

**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 WHETHER TO ACCEPT THE APPLICATION**

**The Parties:**

Unite the Union

And

Thompson Aero Seating Ltd

**Background**

1. The Industrial Court (the Court) received an application, dated 17th May 2019, on 20th May 2019 for recognition at Thompson Aero Seating Ltd, 57 Seagoe Industrial Estate, Portadown. The bargaining unit was described as ‘All Hourly paid permanent Employees of Thompson Aero Seating Limited in Northern Ireland up to and including Supervisors employed in the following roles, Production Operatives, CNS machinist, Quality Inspectors, Stores, Dispatch and Technicians in the following Departments, Production (F1, F2, F3) Plastics, Finishing, Machining, Upholstery, Composites, Quality, Research and Development and After Sales’.

2. The application was copied to the Employer on 22 May 2019. The Employer Response Form was issued to the Employer on 22nd May 2019 with a deadline of 28th May 2019.

**Application Form**

3. In its application, the Union stated that the total number of workers employed by the employer was 1050, the number of workers in the bargaining unit was 800 and the number of Union members in the bargaining unit was 263. The Union referred to an ongoing Petition which would support its application. The Union also produced to the Court a letter from the Union to the Employer, dated 26th April 2019, requesting recognition in accordance with the Schedule.

4. This letter described the bargaining unit as:- “All hourly paid permanent employees of Thompson Aero Seating Limited in Northern Ireland up to and including Supervisors employed in the following roles, Production Operatives, CNS machinist, Quality Inspectors, Stores, Dispatch and Technicians in the following Departments, Production (F1, F2, F3) Plastics, Finishing, Machining, Upholstery, Composites, Quality, Research and Development and After Sales”.

**Employer Response to Union Application**

5. The Employer Response was received on 28th May 2019. In its response the Employer stated that the Union’s earlier written request for recognition under Schedule 1A was received on 26th March 2019. The Employer did not formally acknowledge that it had received the Union’s Letter of Request, dated 26th April 2019, which was the relevant Letter of Request appended to the Application Form. On the answer to the question about receipt of application, the Employer stated it had received the application on 22nd May 2019 and that the bargaining unit had not been agreed prior to receiving the Application Form. The Employer stated that it employed a total of 1266 workers.

6. The Employer did not agree with the number of workers in the proposed bargaining unit as defined in the Union’s Application and provided the following reason:-

“The Union has referred to departments, roles and characterisation of workers that, it stated, did not exist. The Employer had concerns regarding the bona fides and accuracy of the information provided by the Union. Despite requests for clarification and evidence underpinning these assumptions, the Union failed to provide same either to the Employer or in support of its application to the Industrial Court. Accordingly, the employer did not accept the number of workers in the proposed bargaining unit as depicted by the Union nor was it able to do so based on the information provided to date.”

7. The Employer stated that it could provide supporting evidence to the Industrial Court on worker numbers, and other relevant matters, on a confidential basis in due course.

8. The Acting Chairman of the Court invited Mr Robin Bell and Mr Patrick Masterson to comprise the Court Panel with him for this Application. Ms Tracey Bell was appointed as Case Manager.

**Panel Meetings on Acceptance**

9. The Panel met on 3rd June 2019 to consider the Union’s application as there appeared to be some discrepancies between the information supplied by both Parties. As a result of this, and as agreed by the Panel, both Parties were required to attend an informal discussion. The Employer was asked to provide the following by noon on 10th June 2019:

1. Organisational Chart including departmental structure and the Employer’s understood job titles.
2. Site Maps of all Northern Ireland Sites.
3. Any other information the Employer regards as useful to understand the composition of the company, and particularly that of the Union’s proposed bargaining unit, including the number of workers per category of worker/job title.

10. On 7th June 2019 this deadline was extended until noon on 13th June 2019 and the Union was requested to make submissions by noon on 17th June 2019. The Employer was further required, by noon on 13th June 2019, to provide a list of all contractual job titles employed in the undertaking, indicating how many workers with that job title were employed by department and by site.

**Informal meeting of 18th June 2019**

11. The Court Panel (in the absence of Mr Robin Bell) convened an informal meeting with the Parties on 18th June 2019 in order to clarify which categories of workers were intended by the Union to be included in its proposed bargaining unit. As set out above, the proposed bargaining unit was described in the Letter of Request, dated 26th April 2019, as being, “All hourly paid permanent employees of Thompson Aero Seating Ltd in Northern Ireland up to and including supervisors employed in the following roles: Production Operative, CNC Machinists, Quality Inspectors, Stores, Dispatch and Technicians. In the following departments Production (F1, F2, F3) Plastics, Finishing, Machining, Upholstery, Composites, Quality Research and Development and After Sales.”

12. In light of the discussions with the Parties, the Panel determined that it was necessary to make two implications into the description of the proposed bargaining unit in order to reflect the Union’s intentions, within the limits of the extent to which such implications could be made.

13. In these circumstances, the Parties agreed with the Panel that the description of the proposed bargaining unit should be rephrased as follows:-

“All hourly paid permanent employees of Thompson Aero Seating Ltd in Northern Ireland up to and including supervisors*, including those* employed in the following roles: Production Operative, CNC Machinists, Quality Inspectors, Stores, Dispatch and Technicians*, including those employed in* the following departments Production (F1, F2, F3) Plastics, Finishing, Machining, Upholstery, Composites, Quality Research and Development and After Sales.” (emphasis added)

14. In light of the Employer’s expression of uncertainty as to the composition of the proposed bargaining unit, the Panel also sought to establish an approximate number of the workers constituting the proposed bargaining unit. The Employer had provided a list of job titles of 856 hourly paid workers. It was also established that some workers, identified as salaried, were hourly paid and were intended by the Union to be included in the proposed bargaining unit. It appeared to the Panel, from these discussions, that there were some 890 workers constituting the proposed bargaining unit.

**Membership Check Requested**

15. In order to assist in the completion of the determination of the tests in the Schedule, the Chairman, with approval from the Panel, instructed the Case Manager to conduct membership and ‘majority likely to’ checks. The following information was required from the Parties:

From the Union:

* the names and addresses of all Union members currently within the proposed bargaining unit on Tuesday 18th June 2019;
* its 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; and
* further evidence of support for collective bargaining within the proposed bargaining unit.

The Employer was asked to provide:

* a list of the names and addresses of the workers in the proposed bargaining unit on Tuesday 18th June 2019; and
* job titles for each of these workers.

The Parties were required to supply the information to the Case Manager no later than noon on Monday 24th June 2019.

**Information provided by the Parties**

16. On Monday 24th June 2019 the Union provided:

* A membership list containing 262 names, with membership numbers, union fees paid, date of last union fee payment, addresses and understood job titles for those within the proposed bargaining unit.
* A petition containing 619 signatures.

On Monday 24th June 2019 the Employer provided a response to the Court with the following:

* A list of 727 workers including names, addresses and job titles.

**Membership Check**

17. 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 ‘majority likely to’**

|  |  |
| --- | --- |
| Number of workers on list supplied by the Employer | 727 |
| Number of Union Members relevant to this application on list supplied by the Union | 262 |
| Number of Union Members with dues paid | 262 |
| Number of Union Members whose names and addresses match with those provided by the Employer | 237 |
| Number of workers who would be likely to favour recognition of the Union (Union members only) | 237 (32.6%) |
| Number on petition of support provided by the Union | 619 |
| Number of Union members who had signed petition | 193 |
| Potential number of non-Union members who had signed petition | 426 |
| Of those, number who did not appear on Employer’s list |  93 |
| Of those, number who provided duplicate signatures |  46 |
| Of those, number of ineligible signatures |  6 |
| Total number of invalid signatures | 145 |
| Number of non-Union members validly signing the petition(s) | 281 (38.7%) |
| Number of workers who would be likely to favour recognition of the Union (with petition) | 518 (71.2%) |

**Considerations**

18. The Panel met on 28th June 2019 to consider the outcome of the membership/’majority likely to’ checks. At that meeting, the Panel confirmed with the Case Manager that a range of admissibility and validity tests, set out in paragraphs 5–9, 11 and 12 and 33–42 of the Schedule, were satisfied. In particular, the Court considered the issues of Union membership and ‘majority likely to’ in the proposed bargaining unit.The relevant admissibility tests are set out in paragraph 36 of the Schedule, which provides:-

*“(1) An application under paragraph 11 or 12 is not admissible 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.”*

19. The Panel noted that the number of hourly paid workers provided by the Employer (727 workers) was not as large as the number that was indicated in the information provided at the informal discussion (856 plus the hourly paid employees identified in the salaried payroll). For example, there were 23 Union members who did appear not on the Employer’s list and 93 non-Union members who had signed the petition but not on the Employer’s list.

20. The Panel considered whether further investigation was required into these discrepancies, including the number of Union members and non-Union members not appearing on the Employer’s list. In terms of the admissibility test in paragraph 36(1)(a), the Union membership stood at 32.6%. Even without further investigation, the number of non-Union members validly signing the petitions stood at 38.7%. In terms of the admissibility test in paragraph 36(1)(b), the ‘majority likely to’ check therefore indicated support for recognition standing at 71.2%.

20. The Panel wishes to put on record its continuing concern at these above-mentioned discrepancies and would wish to have them resolved at the Bargaining Unit stage.

21. Nonetheless, the Panel concluded that the figures provided are decisive in relation to the two admissibility tests and therefore that they had been satisfied at this Acceptance stage.

**DECISION**

For the reasons outlined above, the Industrial Court is satisfied that:

1. members of the Union constitute at least 10% of the workers constituting the proposed bargaining unit;
2. a majority of workers constituting the proposed bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit; and
3. the application meets the remaining admissibility and validity criteria.

The Industrial Court’s decision is therefore that the application is accepted.



Mr Barry Fitzpatrick

Mr Robin Bell

Mr Patrick Masterson

Decision Date: 28 June 2019

Date Issued to Parties: 22 August 2019