# Case Ref No: IC-76/2018

**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

Veolia

# Background

# 1. The Industrial Court (the Court) received an application on 14th November 2018, for recognition at Veolia, North Down & Ards WWTW, 2 Rocklyn Way, Ballywilliam, Donaghadee, and three other sites at Duncrue, Armagh and Ballynacor. The proposed bargaining unit was described as ‘All Employees including Team Leaders, excluding Office Staff and Management’ working for Veolia at their four sites. The application was copied to the Employer on 19th November 2018. The Employer Response Form was issued to the Employer on 19th November 2018 with a deadline of 22nd November 2018.

# Application Form

# 2. In its application, the Union stated that the total number of workers employed by the Employer was 61, the number of workers in the bargaining unit was 41 and the number of Union Members in the bargaining unit was 41. The Union also produced a letter to the Court from the Union to the Employer, making a formal request for recognition. The Employer acknowledged receipt of this letter on 24th October 2018. This letter described the proposed bargaining unit as ‘All Employees including Team Leaders’. The proposed bargaining groups excluded ‘Office Staff and Management’.

# Employer Response to Union Application

# 3. The Employer Response was received on 22nd November 2018. In its response the Employer stated that the Union’s written request for recognition under Schedule 1A was received on 15th February 2018. The Employer stated that the bargaining unit had not been agreed prior to receiving the Application Form. The Employer stated that it employs a total of 70 workers and that the application indicates 41 members in the Bargaining Unit; however this was the first time they had been made aware of this. The Employer stated that they had no way of confirming the accuracy of the numbers as defined in the Union’s application.

# Membership Check Requested

# 4. In order to assist in the completion of the determination of the remaining tests in the Schedule, the Chairman, with approval from the Panel, instructed the Case Manager to conduct a membership and ‘majority likely to’ check. The following information was requested from the parties:

# The Union was asked to provide:

# the names and addresses of all Union members currently within the proposed bargaining unit on Friday 23 November 2018;

# the Union’s 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 was asked to provide:

# a list of the names and addresses of the workers in the proposed bargaining unit on Friday 23rd November; and

# job titles for each of these workers.

# 5. The Parties were asked to supply the information to the Case Manager no later than noon on Monday 3rd December 2018.

# Information provided by the Parties

# 6. On Friday 30th November 2018, the Union provided:

# A membership list containing 43 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.

# 7. On Wednesday 5th December 2018, the Employer provided a response to the Court with the following:

# A list of 21 workers including names, addresses and job titles.

# Membership and ‘Majority Likely to’ Checks

# 8. 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:

|  |  |
| --- | --- |
| Number of workers on list supplied by the Employer | 21 |
| Number of Union Members relevant to this application on list supplied by the Union | 18 |
| Number of Union Members with dues paid | 43 |
| Number of Union Members whose names and addresses match with those provided by the Employer | 18 (85.7%) |

# It should be noted that the Employer uses the job titles of ‘Operator, Shift Team Leader, Sludge Operator, Sludge Reception Team Leader and Senior Engineering Process Operator’ for all 21 workers on its list whilst the Union used a variety of understood job titles and unknown job titles for the 43 workers on its list.

**Case Manager’s Report**

9. The Case Manager’s Report was issued on 7th December 2018. No response was received from the Union. The Employer made a response on the morning of 11h December 2018, the date of the Panel Meeting, reporting the omission of names from their membership check list. A second list was provided on 12th December 2018 but had no bearings on this Decision.

# Panel Meetings

# 10. The Panel held a meeting on Tuesday 11th December 2018 to consider acceptance of the application.

# Considerations

11. 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.”*

# 12. The Court has to apply these tests on the basis of evidence available at the time of its meeting. The Employer had provided an initial response to the membership/‘majority likely to’ checks and had until close of play on Monday 10th January to respond to the Case Manager’s Report. While there is a wide disparity between the number of workers in the proposed bargaining unit provided initially by both Parties, the Panel is satisfied that the level of Union membership in the bargaining unit was such that both admissibility tests have been fulfilled.

13. In reaching these conclusions, the Panel is aware that the acceptance stage involves consideration of the Union’s proposed bargaining unit. At the next stage, the Court must determine whether or not that proposed bargaining unit is an appropriate one or whether another bargaining unit, including any suggested by the Employer, is appropriate. In these circumstances, the Parties can clarify, at the Bargaining Unit stage, precisely which workers are in the proposed bargaining unit and any alternative bargaining unit.

# 14. The Court is therefore satisfied that the 10% Union membership test is satisfied. The Court also concluded that the ‘majority likely to’ test has also been satisfied.

# DECISION

15. For the reasons to be outlined above, the Industrial Court is satisfied that:

members of the Union constitute at least 10% of the workers constituting the proposed bargaining unit;

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

the application meets the remaining admissibility and validity criteria.

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



Mr Barry Fitzpatrick

Mr Robin Bell

Ms Patricia O’Callaghan

Decision Date: 11th December 2018

Date Issued to Parties: 28th December 2018