# Case Ref No: IC-79/2019

**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

Hampton Conservatories Limited

# Background

# 1. The Industrial Court (the Court) received an application on 8th March 2019, for recognition at Hampton Conservatories Limited, 218 Ballybogey Road, Portrush. The proposed bargaining unit was described as ‘All Employees excluding Supervisors, Office Staff and Management Grades. The application was copied to the Employer on 11th March 2019. The Employer Response Form was issued to the Employer on 11th March 2019 with a deadline of 15th March 2019.

# Application Form

# 2. In its application, the Union stated that the total number of workers employed by the Employer was 40, the number of workers in the bargaining unit was 27 and the number of Union Members in the bargaining unit was 17. The Union also produced a letter to the Court from the Union to the Employer, making a formal request for recognition, dated 10th September 2018. The Employer acknowledged receipt of this letter on 11th September 2018. This letter described the proposed bargaining unit as ‘All Employees’. The proposed bargaining groups excluded were ‘Supervisors, Office Staff and Management Grades’.

# Employer Response to Union Application

3. The Employer Response was received on 15th March 2019. In its response the Employer stated that the Union’s written request for recognition under Schedule 1A was received on 11th September 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 45 workers but it did not agree with the numbers of workers in the bargaining unit as defined in the Union’s application and provided the following statement:

“As the Union has not provided any details of who it considers to be in the BU (nor any evidence to demonstrate the numbers of Union members therein), the Employer cannot at this stage provide a reason for the difference in numbers. The Employer notes, however, that since the Union’s last application to the Court, within the proposed BU, one employee has retired and one employee has changed role”

**Panel Meeting on Tuesday 19th March 2019**

4. The Court Panel met on Tuesday 19th March to review the papers in this Application. Note was made of previous Applications in this matter but were, at this stage of the statutory process, largely disregarded by the Panel. The Panel concluded that the range of matters in relation to admissibility and validity tests appeared to be satisfied.

# Membership Check Requested

# 5. 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 Wednesday 20th March 2019;

# 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 Wednesday 20th March 2019; and

# job titles for each of these workers.

# 6. The Parties were asked to supply the information to the Case Manager no later than 5pm on Friday 22nd March 2019.

# Information provided by the Parties

# 7. On Friday 22nd March 2019, the Union provided:

# A membership list containing 17 names, with membership numbers, method of payment, date of last union fee payment, addresses and understood job titles for those within the proposed bargaining unit.

# 8. On Monday 25th March 2019, the Employer provided a response to the Court with the following:

# A list of 24 workers including names, addresses and job titles.

# Membership and ‘Majority Likely to’ Checks

# 9. 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 | 24 |
| Number of Union Members relevant to this application on list supplied by the Union | 17 |
| Number of Union Members with dues paid | 17 |
| Number of Union Members whose names and addresses match with those provided by the Employer | 11  |
| Number of workers who would be likely to favour recognition of the Union. | 11 (45.8%) |

It should be noted that the Employer used various job titles (Semi-skilled Labourer, Handy Person, Painter, Fitter, CNC Operator, Joiner, Glazier, Labourer, Driver, Machinist, Skills for Work Trainee) for all 24 workers on its list, rather than those set out by the Union in its Letter of Request and Application Form. The Union also used a variety of understood job titles for the 17 workers on its list.

There appeared to be a significant disparity between the descriptions of the workers in the proposed Bargaining Unit set out by the Union, namely 17 workers, and both the descriptions of the workers in the proposed bargaining unit submitted by the Employer, namely 24 workers, and a further disparity between the identity of workers in the proposed bargaining unit supplied by the Union and the Employer. As such, it appeared necessary that the Case Manager should investigate further these significant disparities.

**Case Manager’s Report**

10. The Case Manager’s Report was issued on 26th March 2019. The Employer representative made a response on 28th March 2019 stating:

“With regards to the three options for the Panel that you have outlined, our client Hampton maintains its view (now apparently supported by the membership checks) that the Union does not meet the threshold of support for statutory recognition. However, given the disparities in numbers and job titles, our client agrees that in the circumstances and in the interest of good industrial relations, the best course of action is for the Industrial Court to conduct further investigations, with which Hampton will co-operate.”

11. The Union made a response on 29th March 2019 stating:

“The bargaining unit consists of all the manual grades who work in the factory, excluding supervisors, office staff and management and the fitters who work outside the factory.”

# Panel Meetings

# 12. The Court Panel held a meeting on Friday 29th March 2018 to consider the disparities between the description of the workers in the proposed Bargaining Unit put forward by the Employer and the Union.

To that end the Case Manager was instructed to seek the following further information from the employer:

1. Skills for Work Trainee – Is this trainee an employee of the company? Please provide details of this employment relationship.
2. Names, addresses and job titles of all employees excluded from the proposed Bargaining Unit.
3. Names and addresses of those who work away from the work premises deemed as fitters.
4. Job Description for the CNC Operator/Programmer.

The Employer was asked to provide this information by 5pm on Wednesday 3rd April.

# 13. The Court Panel met again on Thursday 4th April to consider the response and to decide on acceptance of the application.

# Considerations

14. 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.”*

15. The Court has to apply these tests on the basis of evidence available at the time of its meeting. The Employer provided a response on 3rd April 2019 to the additional information request.The Panel considered this disparity between the number of workers in the proposed bargaining unit provided initially by both Parties. The Panel was 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 Panel noted that the Parties can clarify, at the Bargaining Unit stage, precisely which workers are in the proposed bargaining unit and any alternative bargaining unit.

# 16. The Panel noted that the Employer had excluded a category of workers who did not have the job title, Supervisor, presumably on the basis that this category of workers performed supervisory functions. At this stage of the process, the Panel was satisfied that the Union, in composing its proposed bargaining unit, intended that only those with the job title, Supervisor, should be excluded. On that basis, Union membership rose to the figure of 50%.

# 17. The Panel recalled that, in the Court’s Long Acceptance Decision in IC72/2017, SIPTU & Debenhams plc, the Panel had relied on a CAC Decision, UNISON & Woodbridge Practice (Case Number TUR1/922/2015) in which the CAC Panel concluded:

# *“24. The check undertaken by the Case Manager shows 44% of the bargaining unit are Union members. They are likely to support recognition for collective bargaining. It would require another three people to be in support of recognition for there to be majority support in the bargaining unit. It is not uncommon in cases before the CAC for there to be people who while not currently members of the Union would nonetheless be supportive of recognition. Although this may prove not to be the case in any subsequent ballot the Panel’s experience is that it is likely. Taking full account of the evidence before us we are satisfied that, on balance, and in the absence of any evidence to the contrary, a majority of the workers in the bargaining unit would be likely to support recognition of the Union and the test set out in paragraph 36(1)(b) is therefore met.”*

18. On the basis of the figures in the Case Manager’s Report, the Union would have required two further workers to be members of the Union to reach a majority likely to support recognition. However, based on the conclusion that only those with the job title, Supervisor, should be excluded, the Union enjoyed 50% membership amongst the workers constituting the proposed bargaining unit.

# 19. In Debenhams, the ‘majority likely to’ figure was 86 out of 170 workers and the number of workers for which there was already verified evidence of likelihood of support was 82 workers. The Panel decided to apply the Woodbridge principle to this application also.

# 20. The decision to be made, on the basis of paragraph 36(1)(b), is essentially hypothetical, albeit on the basis of verified evidence, namely whether “*a majority of the workers constituting the relevant bargaining unit would be likely to favour recognition of the union”* (emphasis added).

21. The Panel decided, in the particular circumstances of this application, taking into account its industrial relations experience and on the balance of probabilities, that it was appropriate to conclude that a majority of the workers constituting the proposed bargaining unit would be likely to favour recognition of the Union.

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

# DECISION

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.

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



Mr Barry Fitzpatrick

Mr Robin Bell

Ms Patricia O’Callaghan

Decision Date: 8th April 2019

Date Issued to Parties: 3rd June 2019