# 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.’

# Acceptance Stage

2. By way of a Short Decision and Long Decision of 8th April 2019, the Court decided that the Application was accepted.

**Meeting and Hearing**

3. Following acceptance of the Application, a pre-hearing meeting was held on 24th May 2019, in the Portrush Atlantic Hotel. The employer was asked to provide further information as follows:

1. Organisational Chart – who reports to whom?
2. Under the three headings, Management, Supervisor and Office Staff which Job Titles do you consider to be in each category?
3. A further description on the day-to-day workings of the Employer.
4. Descriptions of how the day-to-day working of these categories of workers are carried out in practice.
5. Template redacted contracts of employment, job descriptions for the lowest level of management, supervisors and office staff.
6. Copies of Disciplinary and Grievance procedures.

4. The Employer did produce an Organisational Chart, redacted contracts of employment of some categories of workers and its Disciplinary and Grievance Procedures.

5. This meeting was attended by Michael Keenan, Regional Officer, on behalf of the Union and Kim and Mervyn Montgomery, Co-owners of the Employer and Rachel Penny, Solicitor, Carson McDowell, on behalf of the Employer. At this meeting, the Panel clarified how the Employer is organised and carries out its activities. It was also clarified which categories of workers were intended to be excluded from, and included in, the proposed bargaining unit.

6. In terms of the organisation of the Company, on the basis of a helpful Organisational Chart provided by the Employer, it was explained that the Employer’s business involves the sale, design, manufacture and installation of conservatories, not only in Northern Ireland but more widely including in Great Britain and indeed in other parts of Europe. On the left hand ‘Office’ side of the Chart, the process starts with the work of a Sales Team which negotiates orders and a Design Team which produces a design for each conservatory. In the middle of the Chart are those involved in the manufacturing process, including a CNC Manager, who works with a CNC Team and Supervisors, who work with various teams at that stage of the process.

7. On the far right hand side of the Chart, there are various administrative roles and to the middle right hand side, two teams of Fitters, each including a Head Fitter and a Fitter. These teams of Fitters are peripatetic and rarely visit the Employer’s base in Portrush. It was also mentioned that there is a third team of Fitters but these workers work on a contracted out basis and are not employees of the Employer.

8. A hearing was subsequently held in Killymeal House on 30th May 2019. The hearing was attended by Michael Keenan on behalf of the Union and Kim Montgomery and Rachel Penny on behalf of the Employer. Ken Brown, General Manager, attended to give evidence and assist the Panel

**Legal issues**

9. Paragraph 19 of the Schedule provides:-

*“(1) This paragraph applies if-*

*(a) the Court accepts an application under paragraph 11(2) or 12(2),*

*(b) the parties have not agreed an appropriate bargaining unit at the end of the appropriate period (defined by paragraph 18), and*

*(c) at the end of that period either no request under paragraph 19A(1)(b) has been made or such a request has been made but the condition in paragraph 19A(1)(c) has not been met.*

*(2) Within the decision period, the Court must decide whether the proposed bargaining unit is appropriate.*

*(3) If the Court decides that the proposed bargaining unit is not appropriate, it must also decide within the decision period a bargaining unit which is appropriate.”*

It is well-established that the test is whether the proposed bargaining unit is an appropriate bargaining unit, not a more appropriate or most appropriate bargaining unit.

10. Paragraph 19B provides:-

*“(1) This paragraph applies if the Court has to decide whether a bargaining unit is appropriate for the purposes of paragraph 19(2) or (3) or 19A(2) or (3).****N.I.***

*(2) The Court must take these matters into account—*

*(a) the need for the unit to be compatible with effective management;*

*(b) the matters listed in sub-paragraph (3), so far as they do not conflict with that need.*

*(3) The matters are—*

*(a) the views of the employer and of the union (or unions);*

*(b) existing national and local bargaining arrangements;*

*(c) the desirability of avoiding small fragmented bargaining units within an undertaking;*

*(d) the characteristics of workers falling within the bargaining unit under consideration and of any other employees of the employer whom the Court considers relevant;*

*(e) the location of workers.*

*(4) In taking an employer's views into account for the purpose of deciding whether the proposed bargaining unit is appropriate, the Court must take into account any view the employer has about any other bargaining unit that he considers would be appropriate.*

11. The ‘compatibility with effective management’ test has been interpreted as follows, “We are required to ensure that the unit is compatible with effective management. The union reminded us that `compatible' means `consistent' or `able to co-exist with'”. (On the application of Kwik Fit Ltd v Central Arbitration Committee [2002] EWC Civ 512).

The Court is inclined to treat ‘compatibility with effective management’ on the basis of, first, the ‘core issues’ of pay, hours and holidays, secondly, wider issues appropriate for collective bargaining and human resource management, including supervision and disciplinary matters, and, thirdly, further wider issues of the organisational and management structures of the Employer.

**Issues to be determined**

12. The Panel decided that the issues to be determined were as follows:-

 1) Identify which categories of workers are included in the Union’s proposed bargaining unit;

 2) Once identified, whether the proposed bargaining unit is an appropriate bargaining unit, taking into account the Employer’s views on the proposed bargaining unit and any alternative bargaining unit and

 3) If the proposed bargaining unit is not an appropriate bargaining unit, establish which bargaining unit is an appropriate one.

13. **Description of proposed bargaining unit**: The proposed bargaining unit, upon which the Acceptance Decision was based, is expressed in terms of excluded Job Titles. As noted in paragraph 11 of the Long Acceptance Decision of 8th April 2019, the Union made a response, on 29th March 2019, to the Case Manager’s Report of 26th 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.” It should be noted that it was intended that there should be a comma after ‘management’ so that ‘fitters who work outside the factory’ were intended to be included in the proposed bargaining unit and not excluded.

14. At the pre-hearing meeting on 24th May 2019, the Union clarified that an inclusive description of the proposed bargaining unit could be read as ‘those directly involved in the manufacture and installation of the product’. At the hearing on 30th May 2019, the Union clarified that its description of the proposed bargaining unit was based on how the jobs were performed rather than the titles of those jobs.

15. **Employment status of ‘workers’**: Two preliminary issues considered by the Panel concerned the employment status of two workers. First, there was an issue concerning a Skilled for Work Trainee as to whether he is a ‘worker’ under the Schedule and then an ‘employee’ in accordance with the description of the proposed bargaining unit. The Panel reviewed information provided by the Employer at the Acceptance Stage and confirmed with the Parties at the pre-hearing meeting that the evidence indicated that the Skilled for Work Trainee was both a ‘worker’ for the purposes of the Schedule and an ‘employee’ for the purposes of these proceedings.

16. An issue was also raised by the Employer at Hearing on the employment status of a Head Fitter who had retired in January 2019 and had been retained since then on a ‘project-by-project’ basis. The Case Manager informed the Panel that this individual was still on the payroll of the Employer. The Panel considered whether it should seek evidence on the contractual status and the employment patterns of this individual but concluded, on the balance of probabilities that he was still a ‘worker’ for the purposes of the Schedule and an ‘employee’ for the purposes of the description of the workers constituting the Bargaining Unit. Also, on the balance of probabilities, he retained his ‘employee’ status during periods when he was not directly employed on particular projects.

17. **Interpretation of the description of the proposed bargaining unit**: Paragraph 2(3) of the Schedule provides:-

*“References to the proposed bargaining unit are to the bargaining unit proposed in the request for recognition.”*

18. One task of the Panel is to determine what the Union meant by the description of the proposed bargaining in the Letter of Request and subsequently in the Application Form. In relation to this Application, given the exclusionary nature of the description, it is open to the Panel to take into account the explanation given by the Union as to what it intended by that description in the Panel’s interpretation of that description. It is, however, not open to the Panel to ’rewrite’ the description in light of any such explanation. In these circumstances, the Panel decided to accept the Union’s explanation, as set out in paragraphs 10 and 11 of this Decision, as a basis for its interpretation of the meaning of the relevant description, in seeking to determine which categories of workers are to be included in, as opposed to excluded from, the workers constituting the proposed bargaining unit.

19. **Delineation of excluded categories of workers**: There remained two issues for the Panel to determine, first, the delineation of those workers who were included in the three excluded categories of workers, Supervisors, Office Staff and Management Grades, in the context of the Union’s explanation of those categories of workers which were intended to be included in the proposed bargaining unit. Secondly, it was necessary to identify whether particular workers came within the excluded categories of workers and hence, in consequence, those workers constituting the proposed bargaining unit.

20. At the Acceptance stage, the Panel had worked on the basis of job titles. However, in light of the submissions of the Union on the test of how work was done, the Panel took evidence, in relation to Supervisors, on the extent to which certain categories of workers primarily performed supervisory functions, over and above their job titles. In relation to Office Staff, the Panel clarified, at the pre-hearing meeting, that this descriptor did not seek to distinguish between workers who predominantly or exclusively worked on-site as opposed to off-site but rather distinguished those, other than Supervisors and Management Grades, who were not directly involved in the manufacture and installation of the product’.

21. In the proceedings, less attention was paid to the issue of the extent to which certain categories of workers performed management functions but the same broad approach was taken as with those categories of workers in the excluded category of Supervisors.

22. **Identification of particular categories of workers within the excluded categories**. In light of these distinctions, the focus of the pre-hearing meeting and of the hearing was on whether specific job titles came within the excluded categories of workers or within the categories constituting the proposed bargaining unit.

23. This exercise was not without difficulty. The Employer had provided a set of redacted contracts of employment but, as was admitted by the Employer, some of them were stated to be ‘out-of-date’ and did not necessarily reflect how jobs were done in practice. Nor did the Employer produce Job descriptions of relevant categories of workers, as requested. The Panel therefore took extensive evidence from the Employer, in particular, Ken Brown, General Manager, on how three categories of workers, Supervisors, CNC Managers and Head Fitters, performed their functions, in contrast to how other workers involved in the manufacture and installation of the product performed their functions. In turn, the Union provided its understanding on these relevant matters.

24. The Panel considered evidence on issues such as pay, hours and holiday issues and disciplinary and grievance procedures. The broad submission of the Employer was that the Supervisors, CNC Manager and Head Fitters are on the ‘first level of management’. The Union’s broad submission was that, although the CNC Manager and Head Fitters do perform some supervisory functions, the performance of their jobs primarily concerned direct involvement in the manufacture and installation of the product.

25. The Panel heard evidence that the Supervisors, although occasionally involved in the manufacturing process, are predominantly, but not always exclusively, involved in supervisory functions. The Panel also heard evidence of the extent to which the CNC Manager oversaw the activities of CNC Operators and participated in broadly supervisory or managerial functions as well as being directly involved in the manufacturing process. The Panel also heard evidence of practical elements of the working of the Fitting Teams, given the peripatetic nature of their jobs, and the balance between supervisory functions on the part of the Head Fitters and their direct involvement in the installation process.

26. Bringing to bear its industrial relations experience, the Panel concluded that the CNC Manager, despite having some supervisory, but no ‘management’, functions, in the sense of being within the category of ‘Management Grades’, had predominantly direct involvement in the manufacture of the product.

27. In a similar fashion, the Panel concluded, given the logistical necessities of peripatetic teams of workers, that, although the Head Fitters did have supervisory functions, along with direct contact with the customer, their job titles largely reflected their level of experience of and expertise in the installation of the product. Hence, it concluded that the Head Fitters also had predominantly direct involvement in the installation of the product.

28. The Panel therefore concluded that the two categories of workers around which particular controversy had been identified, namely the CNC Manager and the Head Fitters, should not be treated as categories of workers within the excluded categories of Supervisors, Office Staff and Management Grades and should therefore be included in the categories of workers constituting the proposed bargaining unit.

29. **An appropriate bargaining unit**: The Panel heard further evidence on whether the proposed bargaining unit was an appropriate bargaining unit. The Union stood over its proposed bargaining unit. The Employer submitted, by way of an alternative bargaining unit, that, if the Supervisors were an excluded category of workers, so also should the CNC Manager and the Head Fitters be so treated, if it was concluded that they were to be included in the categories of workers constituting the proposed bargaining unit. Even if they had varying levels of supervisory functions compared to Supervisors, they were still on the ‘first level of management’ of the company and had sufficient complementarity with Supervisors to be excluded from the proposed bargaining unit.

30. The Panel reminded itself that the test to be applied was whether the proposed bargaining unit was an appropriate bargaining unit, not a more, or most, appropriate bargaining unit. In this context, having further reviewed how Supervisors, the CNC Manager and Head Fitters conducted their work in practice, the Panel concluded that it was compatible with effective management for the CNC Manager and Head Fitters to be included in the categories of workers constituting the bargaining unit. In consequence, the Panel concluded that the proposed bargaining unit is an appropriate bargaining unit.

31. The Panel further considered whether an Explanatory Note should be attached to this Decision to the effect, in light of the understanding between the Parties, that ‘For the avoidance of doubt, the categories of workers in the bargaining unit are made up of workers who are directly involved in the manufacture and installation of the product’.

# DECISION

The Decision of the Industrial Court is that the appropriate Bargaining Unit is that proposed by the Union, that is,

“*All Employees, excluding Supervisors, Office Staff and Management Grades.”*



Mr Barry Fitzpatrick

Ms Patricia O’ Callaghan

Mr Robin Bell

Date of decision – 30th May 2019

Date decision issued to Parties – 5th July 2019

Attendees at hearing:-

For The Union

Michael Keenan, Regional Officer

For the Employer

Kim Montgomery, Co-owner

Rachel Penny, Solicitor, Carson McDowell

Ken Brown, General Manager