

**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:**

Financial Services Union

And

Allied Irish Bank

**Background**

1. The Industrial Court (the Court) received an application on 22<sup>nd</sup> May 2023, for recognition at Allied Irish Bank, for various addresses across Northern Ireland.. The proposed bargaining unit was described as ‘Employees at Level 4 and above Working in Northern Ireland’. The application was copied to the Employer on 24<sup>th</sup> May 2023. The Employer Response Form was issued to the Employer on 24<sup>th</sup> May 2023 with a deadline of 31<sup>st</sup> May 2023.

**Application Form**

2. In its application, the Union stated that the total number of workers employed by the Employer was 350, the number of workers in the bargaining unit was 89 and the number of Union Members in the bargaining unit was 45. The Union also produced a letter to the Court from the Union to the Employer, making a formal request for recognition, dated 26<sup>th</sup> April 2023. The Employer acknowledged receipt of this letter on 10<sup>th</sup> May 2023. This letter described the proposed bargaining unit as. ‘Employees at Level 4 and above Working in Northern Ireland’.

**Employer Response to Union Application**

3. The Employer Response was received on 31 May 2023. In its response the Employer stated that the Union’s written request for recognition under Schedule 1A was received on 26<sup>th</sup> April 2023. The Employer stated

1. FSU do not have a 10% membership of Level 4 managers and above, thus the request for collective bargaining does not meet the requirements pursuant to the above Order.
2. FSU do not have a majority support of Level 4 managers and above, thus the request for collective bargaining cannot be granted by the Industrial Court.
3. There is an existing managers' committee in place with the Bank, of which FSU are attendees, which has been in situ since the 1990s. This committee came about as a result of managers' memberships of the IBOA (predecessor of FSU) being terminated and managers being expelled and excluded from the Union by the IBOA. Two meetings have taken place in the last 6 months where both the committee and the employer have discussed ongoing issues pertaining to this group. In addition, we have used and continue to use this committee to provide managers with updates that directly affect their employment. Feedback from this committee has been taken into account in our decision making.
4. Managers at Level 4 & 5 are due to receive a salary increase in July 2023 of on average 3% (depending on performance).
5. The Bank recently introduced Family Leave enhancements & a Domestic Violence Policy which applies Level 4 managers and above.
6. Level 4 & 5 managers received a "cost of living" payment to the value of €1,000 in November 2022.

### **Admissibility Tests**

4. The Court Panel met on Monday 12<sup>th</sup> June to review the papers in this Application. The Panel concluded that the range of requirements pursuant to the Schedule in relation to admissibility and validity tests appeared to be satisfied.

### **Acceptance Test**

5. Pursuant to the Schedule the Panel is required to determine whether to accept the application based on a two limbed test: a) that the Union has a membership of at least 10% in the proposed bargaining unit and b) that a majority of workers in the proposed bargaining unit would likely be in support of recognition of the Union for the purpose of collective bargaining.

6. The Panel noted that the Employer explicitly disputed in its response that the Union's membership within the proposed bargaining unit was 10% or more and that a majority of workers within the proposed bargaining unit were supportive of recognition. Further it had countered the amount of workers in the proposed bargaining unit. This raised questions for the panel and it required further information in order to consider the application against the acceptance test.

7.. In order to assist in the completion of the determination of the test for Acceptance pursuant to the Schedule, the Chairman, with approval from the Panel, instructed the Case Manager to conduct a membership and support check. This check is conducted by the Case Manager as an independent comparison of the names on the Union's list of fully paid up members and any names on any petition or other evidence of support for recognition of the Union against the Employer's list of its named workers who would be included in the description of the Union's proposed bargaining unit. A 'check' is a reconciliation of numbers in the group of workers proposed. is not a test of the veracity of the Union's claimed

membership and support nor does the Industrial Court interrogate the Union's records directly or probe the views of individual workers.

### **Membership and Support Check**

8. 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 26<sup>th</sup> April 2023; and  
the Union's understanding of the job titles of each of these Union members;  
any petition or other information which you wish to submit to demonstrate any wider support for the Union 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 Wednesday 26<sup>th</sup> April 2023; and  
job titles for each of these workers.

9. The Parties were asked to supply the information to the Case Manager no later than 5pm on Wednesday 20<sup>th</sup> June 2023.

### **Information provided by the Parties**

10. On Wednesday 20<sup>th</sup> June, the Union provided:

A membership list containing 58 names, with membership numbers, addresses and understood job titles for those within the proposed bargaining unit.

11. On Wednesday 20<sup>th</sup> June 2023, the Employer provided a response to the Court with the following:

A list of 219 workers including names, addresses and job titles.

12. 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                                 | 219 but only 81 employed in Northern Ireland (81) |
| Number of Union Members relevant to this application on list supplied by the Union | 51 members  |
| Number of names on petition and not on the list of Union members                   | 05 non-members expressing support                 |
| Number of Union Members and Further Names on Petition whose names and              | 51 + 05 = 56                                      |

|   |                                    |
|---|------------------------------------|
| addresses match with those provided by the Employer |                                    |
| Totals expressed as a percentage of the PBU         | <b>51 (63%)</b><br><b>56 (69%)</b> |

13. The Case Manager's Report on this data was issued on 30<sup>th</sup> June 2023. The Union representative made a response on 03/07/2023 stating:

*It would appear that the employer is trying its utmost to frustrate the process in the information that they have supplied. We have been clear that the Bargaining Unit that we are seeking Collective Bargaining for is Level 4 and Above members in Northern Ireland only.*

*The employer seems to have provided you with a list of names of all Level 4 and Above employees working in the UK.*

*I would also point out that in their initial response to the Court, in their first two points they state that the Union does not represent 10% of the Bargaining Unit and then state that we do not have a majority of membership in the Bargaining Unit. Our evidence provided to you would counter both those arguments.*

*We continue to grow our membership in the Bargaining Unit, however we have only provided you with information on members at the time we initiated the claim. The names provided in our mini survey contains some of those new members, this a point that we made to the Court when we forwarded the information. We are not claiming that these individuals should be part of the process and will only include them when and where the Court allows.*

*Finally, our members can also have reporting lines into the ROI or indeed AIB Group and may not appear on the employer's information as they provided information on those reporting into the UK. We can, if required, provide more detailed information on members including their postcodes as this will show that we have members based in NI not included in the employer's information but should be included in the Collective Bargaining process. They work in NI are based in NI but for reporting purposes they can be on the ROI or Group list of employees. We can provide sample member names if required.*

14. The Employer made a response on 04/07/2023 stating:

*In the report it references that a survey / petition was submitted by the union to the Court in addition to the information asked. I note that there are 5 names included in this survey / petition that were in addition to the membership list that was provided to the Court. It strikes me that we don't know who the FSU issued their survey to? Was this open to non members to complete given that there is an additional 5 names on the list? This would support our position that the FSU do not have a majority support of Level 4 managers and above, thus the request for collective bargaining cannot be granted by the Industrial Court.*

*Also to note that the report is describing the bargaining unit as level 4 & above in Northern Ireland. As outlined in my original return to the Court - the Bank is not in agreement with the bargaining unit as set out and disputes this.*

## Considerations

15. In the absence of evidence to the contrary, the Industrial Court works on the principle that a worker's membership of the Union is evidence that the worker is *likely* to support recognition of that Union for the purpose of collective bargaining. The Union's claimed membership levels within the proposed bargaining unit exceeds 50% when using the measure of a total of 81 workers which fall into the proposed bargaining unit within the jurisdiction of Northern Ireland. The Union has also indicated that there may be further support of recognition on the part of some other workers within the bargaining who are not members of the Union, but primarily the Panel has given weight to the declared number of Union members in the proposed bargaining unit when considering the two limbs of the test for Acceptance

16. It is noted by the Panel that the Employer continues to dispute the appropriateness of the proposed bargaining unit as well as the Union's claimed support levels. However, it is important to note that, at this stage, the Panel is testing only the likelihood of support within the Union's proposed bargaining unit and Union membership is a strong indicator of a worker's likelihood of favouring recognition. The Industrial Court expects a certified Trade Union to declare its membership honestly and not to deliberately mislead the Court in its declaration of its fully paid up membership levels.

17. It must be noted that there are further stages of the application after Acceptance stage during which the Employer will have the opportunity to make submissions to the Panel: firstly about the appropriateness of the bargaining unit, and secondly whether the Union can satisfy the conditions for recognition without a ballot.. It remains open to the Employer to contest the bargaining unit as proposed at the next stage of the procedure under the Schedule. Any change to the proposed bargaining unit at later stages of the application (either by agreement or determination by the Industrial Court) will require the reapplication of the admissibility and acceptance tests on the final appropriate bargaining unit as agreed or determined by way of validation.

18. It must also be noted that a Union can be penalised for over claiming its membership and support levels under the operation of the Schedule. If the application is withdrawn at any stage after it has been accepted by the Industrial Court or if any ballot is lost, the Union cannot apply for recognition for this proposed bargaining unit or any similar bargaining unit for a period of 3 years.

19. Therefore, in balancing all of these factors, the Panel is satisfied on the data provided by the parties, that both limbs of the Acceptance test, on the balance of probabilities, are met and it is more likely than not that the Union has both 10% membership within the proposed bargaining unit and that a majority of workers within the proposed bargaining unit are likely to support recognition of the Union.17. 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 factual tests on admissibility and validity criteria.

**DECISION**

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

Ms Sarah Havlin  
Mr Patrick Masterson  
Ms Barbara Martin

Decision Date: 5<sup>th</sup> July 2023  
Date Issued to Parties: 5<sup>th</sup> July 2023