

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 (Amicus Section)

And

Derry News

Introduction

1. Unite the Union (Amicus Section) (the Union) submitted an application to the Industrial Court (the Court) dated 23rd May 2007 for recognition at Derry News (the Employer), 26 Ballinaska Road, Springtown Industrial Estate, Derry BT48 0LY, for a bargaining unit consisting of “*All departments except editorial, casual workers, senior managers and directors*”. The Court gave both parties notice of the receipt of the application on 25th May 2007 and the Employer submitted a response to the Court on 31st May 2007, which was copied to the Union.
2. In accordance with Article 92(A) of the Industrial Relations (Northern Ireland) Order 1992, the Industrial Court Chairman established a Panel of the Court to deal with the case. The Court consisted of Mr Barry Fitzpatrick, Chairman, and, as Members, Mr Maurice Moroney and Mr Bob Gourley. The Case Manager appointed to support the Court was Ms Brenda Slowey.

Issues

3. The Panel is required by the Trade Union and Labour Relations (Northern Ireland) Order 1995 to decide whether the Union’s application to the Court is valid within the terms of Schedule 1A, paragraphs 5 – 8; is made in accordance with paragraphs 11 or 12; and is admissible within the terms of paragraph 33 to 42 of Schedule 1A to the Order, and therefore should be accepted.
4. The Panel has extended the acceptance period in this case on three occasions. The initial period expired on 11th June 2007. The acceptance period was extended until 25th June 2007 to enable the Court to clarify any uncertainty as to the number of workers employed at Derry News and any associated employer. It was further extended until 10th July 2007 to allow the Court to continue to explore the issue of the number of workers in Derry News and any associated companies. The final extension was given to 19th July 2007 in order to allow the Court to carry out a membership check.

Views of the Union

5. In its application the Union stated that it had made its request for recognition by a letter dated 30th April 2007 sent by recorded delivery and that an identical copy of the application and attached correspondence had been sent to the Employer, also via recorded delivery.
6. The Union declared that the number of workers employed by Derry News was 25, with the proposed bargaining unit consisting of 18 employees, 11 of whom were union members. The Union further stated that it could furnish the Court with a membership list and petition to show that the majority of workers in the proposed bargaining unit were likely to support recognition for collective bargaining purposes.

Views of the Employer

7. In its response to the Union's application, the Employer stated that the letter of request from the Union was "apparently delivered on 30/4/07". It stated that this had been misdirected due to internal reorganisation as the company had recently been taken over by River Newspapers. It further stated that the first time it had sight of the application was when this was reissued by the Court on 30th May 2007.
8. The Employer did not agree the proposed bargaining unit, stating Derry News employed less than 21 workers and therefore the application could not be accepted as it did not meet the statutory criteria.
9. The Employer did not respond to the Union's estimate of membership in the proposed bargaining unit nor did it comment on whether it felt that a majority of the workers in the proposed bargaining unit were likely to support recognition.

Further Information Requested

10. To assist in the determination of the admissibility & validity criteria specified by paragraph 5 and paragraph 34 of the Schedule the Panel requested that the Union provide copies of the recorded delivery slips in relation to the postage of the Union's initial letter of request and the application form to the Employer.

By fax dated the Union 8th June 2007 the Union provided the Court with copies of two recorded posting receipts dated 30/4/07 and 23/5/07, which both showed that the said documents had been sent to the Managing Director of Derry News.

The Panel examined this evidence and felt that, as the recorded posting receipt established that the Union had posted the letter of request on Monday, 30th April 2007, it was considered reasonable to assume that this had been received by the Employer on the 2nd May 2007 and decided that the date of 2nd May 2007 was the date of receipt.

11. To assist in the determination of the validity criteria specified by paragraph 7 of the Schedule the Panel requested that the Employer provide details of the corporate structure of the Derry News and advise if there were any associated employers and if so, provide full details of those associated employers.

The Employer responded by e-mail dated 11th June 2007 stating that Derry News Ltd is a wholly owned subsidiary of River Newspapers (NI) Ltd (RNNI) which has three shareholders: The Irish News (through their investment company, JA Trading Ltd: 50%), Pdraig O'Dwyer:

25% and Tim Collins: 25%. It went on further to detail another company which RNNI owns and a sister holding company with broadly similar shareholding called River Newspapers Holdings Ltd (RNH).

The Panel considered the information received from the Employer and felt that a preliminary issue had arisen in that the Irish News appeared to have a 50% shareholding in River Newspapers (NI) Ltd and in order to clarify this issue requested submissions from both parties. The Employer was asked to make submissions on whether or not it considered the Irish News to be an associated employer of the Derry News and also provide the Court with the names and job titles of the 19 workers whom it stated to be workers employed by Derry News; details of the names, job titles and employer of any workers employed by any of the companies in Rivers Newspapers (NI) Ltd and River Newspapers Holdings Ltd who had worked in Northern Ireland in the past 52 weeks and the periods of time during that period they had worked in Northern Ireland. The Union was also asked to provide written submissions in relation to this issue and define the make-up of the 25 workers it claimed were employed in Derry News.

Both the Employer and Union provided written submissions in relation to the issue of the Irish News having a 50% shareholding in RNNI and the Union provided a list of 29 names and job titles of who it claimed to be the workers employed in Derry News. The Employer provided a list of 21 names and titles of workers employed at Derry News Ltd at the time the Union made its request for recognition in April and advised that the number of employees fluctuated from time to time and on 30th April the number of workers was 20 full time plus one part time. The Secretariat contacted the Employer by telephone on 4th July 2007, who verbally advised that the number of workers employed in Derry News on 2nd May 2007 was 20 full time workers and 1 part time worker; 2nd May 2007 being the date decided by the Panel to be the date when the Union's letter of request was received by the Employer. This was subsequently confirmed in an e-mail received from the Employer on 4th July 2007.

Membership and Support Check

12. To assist the determination of two of the admissibility criteria specified in the Schedule, namely, whether 10% of the workers in the proposed bargaining unit are members of the union (paragraph 36(1)(a)) and whether a majority of the workers in the proposed bargaining unit are likely to support recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit (paragraph 36(1)(b)), the Panel proposed a check to be undertaken by the Case Manager of the level of union membership and support for recognition within the proposed bargaining unit.
13. It was agreed with the parties that the Employer would supply to the Case Manager a list of the names and addresses and job titles for each worker within the proposed bargaining unit, and that the Union would supply to the Case Manager a list of the names and addresses of all Union members currently within the proposed bargaining unit; details of how subscriptions are paid, amount paid and date of last payment, and a copy of the petition signed by workers in the bargaining unit in favour of recognition, to enable comparisons to be undertaken. It was explicitly agreed with the parties that, to preserve confidentiality, the respective lists would not be copied to the other party. These arrangements were confirmed in a letter dated 5th July 2007 from the Case Manager to both parties. The Employer provided a list of 13 workers within the Union's proposed bargaining unit and the Union provided a list of 13 union members within its proposed bargaining unit, and a copy of its petition.

14. The membership check showed that, although the Union had provided a list of 13 Union members it claimed were in the proposed bargaining unit, 3 did not appear on the Employer's list. Therefore out of the 10 Union members who were common to both the Union's and Employer's list it was established that the membership level was 77% of the proposed bargaining unit. The check of the Union's petition showed that although there were 18 workers from within the proposed bargaining unit who had signed the petition, 7 did not appear on the list provided by the Employer. From the remaining 11 names appearing it was established that 85% of workers in the proposed bargaining unit had signed the Union's petition. 10 were Union members (77%) and one was a non member (8%).
15. By e-mail dated 11th July 2007 the Union advised that one member, who had appeared on the membership check list provided to the Court, had now left the company.
16. A Case Manager's report was produced and issued to both parties for their comments on 17th July 2007.

Comments from Parties

17. Both parties responded by e-mail on 18th July 2007, with the Union advising that it had no further comment to make at this stage. The Employer was content with the Case Manager's report and wished to add two comments. Firstly it claimed that it was not contesting the point made by the union that it had delivered the application on the date it said it had, but pointed out that the first sighting of the application by the person responsible for dealing with it was when it was forwarded by the Court. It stated that the fault lay with the Employer and not with the Union. The second comment was to express surprise at the number of workers who signed the petition given the good working relationship it felt the management team has with all the workers and the excellent quality of work produced by all the team. It felt that if there have been issues in the proposed bargaining unit in the past it did not believe there were any significant industrial relations/human resources issues now.

Considerations

18. In relation to paragraph 7(1) of Schedule 1A, which provides that the request is not valid unless the employer, taken with any associated employer or employers, employs (a) at least 21 workers on the day the employer receives the request or (b) an average of at least 21 workers in the 13 weeks ending with that day, the Panel considered all the evidence submitted by the Employer and the Union in reaching its decision and in particular the Employer's list which showed that there were 21 workers employed at Derry News on 2nd May 2007, which was the date established to be the date the Employer received the Union's letter of request. The Panel concludes at least 21 workers were employed at Derry News on the day the Employer received the Union's letter of request for recognition, as required by paragraph 7(1)(a).
19. Paragraph 34 provides that an application under paragraph 11 or 12 is not admissible unless the union (or unions give) to the employer (a) notice of the application and (b) a copy of the application and any documents supporting it. The Panel considered the Employer's comments on this issue and evidence provided by the Union in the form of copies of the recorded posting receipts and considered it reasonable to assume that the Union's letter of request was received by the Employer on 2nd May 2007 and a copy of the application was received by the Employer on 25th May 2007. The Panel is therefore satisfied that the provisions as set out in paragraph 34(a) and (b) have been met.

20. In relation to membership and support, the Panel is required to decide, firstly, whether under paragraph 36(1)(a) of the Schedule, members of the union constitute at least 10% of the workers in the proposed bargaining unit and, secondly, whether under paragraph 36(1)(b) a majority of the 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. The Panel has considered carefully the submissions of both parties and evidence from the supporting documentation.

Paragraph 36(1)(a)

21. The Case Manager's check of the Union's level of membership established that 10 of the 13 workers in the proposed bargaining unit were members of the Union (77%) and with one member now left the company the level of Union membership would stand at 69%. The Employer has not disputed that the members of the Union constitute at least 10% of the proposed bargaining unit. The Panel is therefore satisfied that in accordance with paragraph 36(1)(a), the 10% test is met.

Paragraph 36(1)(b)

22. The Case Manager's check of the Union's petition against the list of 13 workers provided by the Employer indicated that 11 of the petition signatories were workers from within the proposed bargaining unit, a support level of 85%. Given the level of union membership and support demonstrated by the petition, and in full consideration of the evidence made available, the Panel finds that the majority of the workers would be likely to favour recognition of the Union for the purposes of collective bargaining. The Panel is therefore satisfied that the test required by paragraph 36(1)(b) of the Schedule has been met.
23. The Panel is also satisfied, after full consideration of all the documentation submitted by the Parties, the Union's application does meet the remaining statutory tests.

Decision

24. For the reasons given above, the Court is satisfied that the application is valid within the terms of paragraphs 5 to 8, was made in accordance with paragraph 11 and is admissible within the terms of paragraphs 33 to 42 of Schedule 1A.
25. The Industrial Court's decision is therefore that the application is accepted.

Barry Fitzpatrick

Mr Barry Fitzpatrick
Mr Maurice Moroney
Mr Bob Gourley

Decision Date: 19th July 2007
Date Issued to Parties: 3rd August 2007