

Case Ref No: IC-31/2006

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:

Bakers, Food and Allied Workers Union

and

Doherty & Gray

Introduction

1. The Bakers, Food and Allied Workers Union (the Union) submitted an application to the Industrial Court (the Court) dated 5th April 2006 for recognition at Doherty & Gray, Woodside Industrial Estate East, Woodside Road, Ballymena BT42 4HX, for a bargaining unit consisting of *“All hourly paid production workers in the Boning Hall”*. The Court gave both parties notice of the receipt of the application on 5th April 2006. The Employer submitted a response to the Court on 12th April 2006, which was copied to the Union.
2. The Union had previously submitted an application to the Court dated 15th March 2006 (IC-30/2006) in respect of the same bargaining unit. This application was not accepted by the Court as it concluded that the application was not made in accordance with paragraphs 11 or 12 of the Schedule in that the application had been submitted to the Court prematurely. Both the Union and the Employer were notified of this decision on 4th April 2006.
3. 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 Mervyn Simpson and Mr Joe Bowers. The Case Manager appointed to support the Court was Ms Brenda Slowey.

Issues

4. 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 – 9; 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.

5. In its application the Union indicated that the number of workers in its proposed bargaining unit was 17 and that 10 of those were union members. The Union further stated that *“these workers approached us for representation and have shown a commitment by joining the union”*.
6. In its response to the Union’s application, the Employer did not agree with the Union’s proposed bargaining unit stating *“(a) I do not accept there is 10% Union Membership (b) I do not believe the majority of workers are likely to favour recognition”*. The Employer refutes the Union’s estimate of membership in the proposed bargaining unit as it states that the number of workers in the proposed bargaining unit is 22. It further refutes that a majority of workers in the bargaining unit are likely to support recognition stating *“My information is that a majority of the work force would not support recognition. A large majority are non nationals and I understand their culture and back ground would not have involved union collective bargaining and in addition their English is poor and any alleged consent to union collective bargaining would be an uninformed one”*.
7. The Employer further states that they did not receive a written request in respect of this application.
8. The Union separately submitted a petition to the Court. The Employer submitted a first petition to the Court on 25th April 2006 and a second petition submitted on the day of the Panel meeting.

Membership and petition check

9. To assist the determination of two of the admissibility criteria specified in the Schedule, i.e:
 - a) whether members of the union (or unions) constitute at least 10 per cent of the workers constituting the relevant bargaining unit (paragraph 36(1)(a); and
 - b) where 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 (paragraph 36(1)(b)

the Panel proposed a confidential check be undertaken by the Case Manager. In letters to both parties dated 13th April 2006, the Case Manager requested that the Employer provide:-

- a) the names and addresses of the workers in the proposed bargaining unit;
- b) job title for each work;
- c) a copy of a petition signed by members of the bargaining unit who do not favour recognition.

and the Union was asked to provide:-

- a) the names and addresses of all Union members currently within their proposed Bargaining Unit;
- b) details of how Union Subscriptions were paid by members, amount paid, and date of last payment; and
- c) a copy of a petition signed by workers in the bargaining unit in favour of recognition.

The Case Manager's letter confirmed that neither the lists nor the petitions would be copied to the other party or the Panel.

10. The Employer provided a list which contained the names, addresses and job titles of 22 workers it stated were within the Union's proposed bargaining unit. The Employer also provided a copy of its petition. The petition was 1 A4 sheet in length; contained 6 signatures which were put to the following statement at the head of the page: *"We the undersigned do not wish the Bakers Food and Allied Workers Union to be recognised for the purposes of conducting collective bargaining on our behalf"*. A further statement was added beneath this in a foreign language which the Employer subsequently confirmed was the above sentence translated into Ukrainian. This petition was undated.
11. The Union provided a list of 7 union members' names and addresses it stated were within its proposed bargaining unit; a table headed Direct Debit Payments 2006 detailing the names of the 7 union members, the months January to April and indicating amount paid by each member during those months. The Union also provided a copy of its petition. The petition was 1 A4 sheet in length; contained three columns entitled Name in Block Capitals, Signature and Date and signatures were put to the following statement at the head of the page: *"The Bakers Food and Allied Workers Union, is asking your employer to recognise it for collective bargaining. We have to show the Industrial court that a majority of workers in the "bargaining unit" support our application. If you do support us, please sign the petition. I support recognition of the Bakers Food and Allied Workers Union as entitled to conduct collective bargaining on pay, hours and holidays"*. Thirteen signatures were dated 23/2/06 and one was dated 24/2/06.
12. In a letter accompanying their documents the Union stated they wished to revise the original number they had submitted as their proposed bargaining unit from 17 to 19. They further stated that all information regarding the Union and its background is provided in all EU languages.
13. The membership check showed that all 7 union member names appeared on the Employer's list and it was established that the membership level was 32% of the proposed bargaining unit. The check of the Union's petition evidence established that although there were 14 signatures on the petition, 2 did not appear on the Employer's list. From the remaining 12 names appearing it was established that 55% of workers in the proposed bargaining unit had signed the Union's petition in favour of recognition for the purposes of collective bargaining. 5 were non union members. In relation to subscriptions paid by union members this check showed that 4 members had paid subscriptions in January, February, March and April

2006; one had paid in April 2006 only; one had paid a double subscription in January, missed February and paid in March and April 2006 and one member had paid in January, March and April 2006 but not in February 2006.

14. The check of the Employer's petition evidence established that out of the 6 signatures appearing, 4 of these did not appear on the Employer's list of names and addresses of those workers they considered to be within the proposed bargaining unit. Therefore, from the remaining 2 names appearing it was established that 9% of workers in the proposed unit had signed the petition objecting to recognition of the Union for the purposes of collective bargaining.
15. A report of the result of the check of the membership level and the check of the petition was circulated to the parties on 26th April 2006.

Views of the Employer

16. By letter dated 27th April 2006 the Employer stated that as some union members had failed to pay subscription fees they did not believe they were fully paid up members of the Union. It also queried the wording of the Union's petition and felt that as all the foreign nationals in the bargaining unit were non English speaking (or very restricted) there would have been no possibility that they could have understood what they were signing and refuted the Union's claim that they provided all information regarding the Union and its background in all EU languages.
17. Regarding their petition the Employer did not accept that there were 4 names on their petition which did not appear on their list and felt that this could have been caused by a difficulty in interpreting the signatures and names of the employees. A further petition was submitted by the Employer. This petition was 1 A4 sheet in length; contained 11 signatures which were put to the following statement at the head of the page: "*We the undersigned do not wish the Bakers Food and Allied Workers Union to be recognised for the purposes of conducting collective bargaining on our behalf*". A further statement was added beneath this in a foreign language which the Employer again confirmed was the above sentence translated into Ukrainian. This petition had a typed date of 27/4/06 at the top of the A4 page and contained three columns entitled Employee, Title, Forenames-First. Under each of these headings all names were typed and beside each name was a signature. None of the signatures were dated.
18. When the Employer's first and second petitions were combined it was established that out of the 17 signatures appearing, 2 signatures did not appear on the Employer's list and 4 were unreadable/duplicated. Therefore, from the remaining 11 names appearing it was established that 50% of workers in the proposed bargaining unit had signed the petition opposing recognition of the Union for the purposes of collective bargaining. Four names/signatures were common to both the Union's and the Employer's petitions.

Views of the Union

19. The Union, in its letter dated 27th April 2006, responded to the Employer's claim that they did not receive a written request in respect of the second application by stating that they felt their first request to the company was sufficient to give notice of their intention to submit an application to the Court. They further contested the number of employees in the bargaining unit, as supplied by the Employer and noted that the Employer's petition appeared to have gone outside the bargaining unit in acquiring names.

Considerations

20. In deciding whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 4 of this decision are satisfied.

21. The Employer has stated, in its response to the Court dated 11th April 2006, that it did not receive an original request for recognition from the Union in respect of this application. However, the Union argue that the letter of request issued to the Employer on 3rd March 2006 was sufficient. The Panel considered this argument, taking both parties' views into account, and concluded that, although it was open to the Union to issue a fresh letter of request for recognition, the Schedule did not require this. The Panel is therefore satisfied that the Union made a valid request to the Employer within the terms of paragraphs 5 to 9 of the Schedule and that its application was made in accordance with paragraph 11. Furthermore, on the evidence before it, the Panel is satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 35 and paragraphs 37 to 42 of the Schedule. The remaining questions before the Panel are whether 10% of the workers in the Union's proposed bargaining unit are members of the Union, and whether the majority of the workers in the Union's proposed bargaining unit would be likely to favour recognition of the Union for collective bargaining.

Paragraph 36(1)(a)

22. The Case Manager's check of the Union's membership indicated that 32% of the workers in the proposed bargaining unit were members of the Union. The Employer questioned this as they stated some union members had failed to pay subscription fees and therefore they did not believe they were fully paid up members of the Union. The Panel considered this argument and felt that as all 7 Union members were common to both the Union's and Employer's lists of workers in the proposed bargaining unit, and as it appeared that only one member had missed a payment that, with or without that member included, the Union still passed the 10% test. The Panel, in accordance with paragraph 36(1)(a) is satisfied that the 10% test is met with regard to the application.

Paragraph 36(1)(b)

23. The Case Manager's check of the Union's petition against the list of 22 workers provided by the Employer indicated that 12 of the petition signatories were workers from within the proposed bargaining unit, a support level of 55%. The Panel noted that the Employer's second petition had been submitted on the day of the Panel meeting. The Case Manager had been requested to prepare a revised Case Manager's Report, without prejudice to the Panel's consideration of the acceptability of the second petition. The check of the Employer's combined petitions indicated that 11 of the petition signatories were workers from within the proposed bargaining unit, a level of 50% objecting to recognition of the Union. However, the panel took into account that 4 names/signatures were common to both the Union's and the Employer's petitions. The Panel appreciated that, if reliance was to be placed on the second petition, the revised Case Manager's Report would have to be circulated to both parties and that a Decision could not be taken at that time. The Panel also considered further investigation into the petitions submitted to the Court. The Panel concluded that, even if the second petition was taken into account, there was a significant difference of opinion within the bargaining unit and therefore it was open to the Court to conclude, for the purposes of paragraph 36(1)(b), that a majority of the workers would favour recognition of the Union. The Panel, in accordance with paragraph 36(1)(b), is satisfied that the majority of the workers constituting the relevant bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit.

Decision

24. For the reasons given above, the Court is satisfied that the application is valid within the terms of paragraphs 5 to 9, was made in accordance with paragraph 11 and is admissible within the terms of paragraphs 33 to 42 of Schedule 1A.

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

Barry Fitzpatrick

Mr Barry Fitzpatrick
Mr Mervyn Simpson
Mr Joe Bowers

Decision Date: 27th April 2006
Date Issued to Parties: 8th May 2006