

**Case Ref: IC42/2009**

**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**

**DECLARATION THAT THE UNION IS ENTITLED TO BE RECOGNISED**

**Unite the Union  
and  
Willowbrook Foods Ltd**

**Introduction**

1. Unite the Union (the Union) submitted an application to the Industrial Court (the Court) dated 7th July 2009 for recognition at Willowbrook Foods Ltd (the Employer). The bargaining unit description was '*All hourly paid operatives at the Killinchy and Newtownards plants of the company*'.
2. In accordance with Article 92(A) of the Industrial Relations (Northern Ireland) Order 1992, the Court Chairman established a panel to deal with the case. The panel consisted of Mr Eugene O'Loan, Chairman and, as members, Mr Maurice Moroney and Mr Bob Gourley. The Case Manager appointed to support the Court was Mr Paul Cassidy.
3. By a decision dated 24 July 2009 the panel accepted the Union's application.
4. A hearing was arranged for 1 December 2009 to decide among other matters whether there was a majority of Union members in the bargaining unit and whether the Union should be ordered to be recognised. On that day the parties jointly requested an adjournment to negotiate regarding a voluntary agreement. The hearing was adjourned and the parties were asked to inform the Court of the status of negotiations on or before 12 January 2010. Shortly before that date the Union advised the Court that the Employer had informed them that an agreement would not be realised. The hearing was ordered to be reconvened on 26 January 2010.
5. At the hearing on 26 January 2010 the Union was represented by Mr Jim Quinn and the Employer by Ms Lynn Sheridan.

### **The Union's submissions**

6. It was alleged by Mr Quinn that the Employer had acted in bad faith in that it had not attended meetings and, after indicating that an agreement would be made, had failed to complete the agreement. Mr Quinn said that management had told workers there would not be a recognised union.
7. Mr Quinn clarified that the bargaining unit would not include farm workers (as they did not work at either of the plants) nor supervisors, managers or administrative staff (as they are not hourly paid). The Employer did not dispute this.
8. Mr Quinn said that the Employer had taken on larger numbers of agency staff in order to reduce the size of the bargaining unit. It now consisted of 74 workers of whom 38 were Union members. The Employer did not dispute this. Mr Quinn referred to a petition in favour of Union recognition at the time of the Case Manager's report.

### **The Employer's submissions**

9. Ms Sheridan said the Union had accused the Employer of poor practices and breaches of the base code which governed the relationship with the Co-op, the Employer's largest customer. The union had threatened the Employer's position with the Co-op which could have closed the business.
10. A meeting between the Employer and the Union on 29 June 2009 had not been amicable. Ms Sheridan referred to clandestine Union meetings. The Employer believed that a minority in the workforce was trying to make decisions for the majority. The Employer wished to go with the wishes of the majority. A number of employees had expressed a wish not to have a recognised trade union. The employer had not canvassed staff or solicited information so she was unable to say the number that had expressed this wish. The production manager Mr Somerton put the figure at 10 - 12. Ms Sheridan queried the validity of the petition. Relations between the Employer and the Union were not good.
11. Ms Sheridan advised that as the business is seasonal staff requirements can change from day to day and the number of agency workers fluctuates. There had not been a deliberate attempt to manipulate the size of the bargaining unit.
12. In the period after 1 December 2009 Ms Sheridan had been absent on leave between 18 December 2009 and 5 January 2010, as the Union was aware. She had not avoided meetings but had tried to meet the Union. She had contacted the Labour Relations Agency and time and effort had been spent on negotiating an agreement by email. The agreement had been ready to sign but the Employer then had concerns whether staff wanted the Union to be recognised.

13. Mr McCann, the owner of the business, described the company's history, the difficulties that could be encountered in dealing with large customers like the Co-op, the danger posed to his business by the Union's threat to report matters to the Co-op and a record of taking a considerate attitude to employees. Mr McCann said that he had known nothing about trade unions until recently

### **The Union's Response**

14. Mr Quinn said that the Union had made no threats against the Employer but had highlighted issues brought to it by workers. There had been no clandestine meetings - meetings were open to all and indeed a meeting had been arranged at a leisure centre for all union members, who were asked to invite other workers. He advised that the Union worked with hundreds of food processors on a positive basis and could help if employers talked to them. The Union had intervened in Europe in support of food processors.

### **Findings of fact**

The Court finds as facts that:

15. The Employer had held discussions with the union, after 21 December 2009 to the point of having a finished recognition agreement but had found itself unable to take the final step of recognising the Union.
16. The hiring of Agency workers to meet business needs has no impact on our decision since they are not included in the bargaining unit.
17. The Union had not intended to threaten the Employer's business, although the Employer perceived that to be the case. The Union had raised genuine concerns. There had been no clandestine Union meetings although again that seemed to be the case to the Employer. Some staff had expressed a wish for the Union not to be recognised but that was a small percentage of the workers in the bargaining unit.
18. Relations between the Employer and the Union need to be improved. The Employer's attitude to the Union is due to a lack of knowledge about trade unions and their role in industrial relations. The employer should seek appropriate advice and support so that a positive attitude can be forged between the parties that can benefit both.
19. The bargaining unit consists of 74 workers of whom 38 are Union members, a majority. In the panel's experience more workers will become Union members if the Union is recognised. The bargaining unit is all hourly paid operatives at the Killinchy and Newtownards plants of the Employer, which group excludes farm workers, supervisors, managers and administrative staff.

## Declaration of Recognition

20. The facts establish that the majority of the workers in the bargaining unit are Union members. This satisfies the conditions under which the Court may issue a declaration in favour of recognition in accordance with Paragraph 22(2) of Schedule 1A to the Order.
21. However the Court must instead order a ballot to take place if it is satisfied that any of the three conditions in Paragraph 22(4) of the Schedule is satisfied. In that regard:
  - (a) the Court is not satisfied that a ballot should be held in the interests of good industrial relations. Further delay in this process would merely give time for more misconceptions to arise when relations are already poor;
  - (b) there is no evidence from a significant number of Union members in the bargaining that they do not want the Union to conduct collective bargaining on their behalf;
  - (c) there is no membership evidence which leads the Court to conclude that there are doubts whether a significant number of the Union members within the bargaining unit want the Union to conduct collective bargaining on their behalf.
22. The Court consequently declares that the Union be recognised by the Employer as entitled to conduct collective bargaining on behalf of all hourly paid operatives at the Killinchy and Newtownards plants of the Employer, which group excludes farm workers, supervisors, managers and administrative staff.



Eugene O'Loan, Chairman  
Maurice Moroney  
Bob Gourley

Date of Decision: 1 February 2010  
Date issued to Parties: 10 February 2010