

**THE INDUSTRIAL COURT**

**THE TRADE UNION AND LABOUR RELATIONS  
(NORTHERN IRELAND) ORDER 1995**

**SCHEDULE 1A – COLLECTIVE BARGAINING: RECOGNITION**

**DECLARATION OF RECOGNITION – WITHOUT A BALLOT**

**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 23<sup>rd</sup> 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 25<sup>th</sup> May 2007 and the Employer submitted a response to the Court on 31<sup>st</sup> May 2007, which was copied to the Union.
2. In accordance with Article 92A 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.
3. By decision dated 19<sup>th</sup> July 2007 the Panel accepted the Union’s application and the parties then entered into a period of negotiation to attempt to reach agreement on the appropriate bargaining unit. The Panel extended the negotiation period in this case on two occasions. The initial period expired on 16<sup>th</sup> August 2007. This period was extended until 14<sup>th</sup> September 2007 to enable both parties to attend a meeting arranged on 13<sup>th</sup> September 2007. It was further extended until 8<sup>th</sup> October 2007 due to the unavoidable absence of the Union officer involved in the discussions with the Employer. The parties agreed the appropriate bargaining unit to be confined to the Administration Department, Sales Department and Production Department, which covered the same employees and departments as that originally proposed by the Union.

**Issues**

4. Paragraph 22(2) of Schedule 1A to the Order (the Schedule) requires the Industrial Court to issue a declaration that a union is recognised as entitled to conduct collective bargaining on behalf of a group of workers constituting the bargaining unit if it is satisfied that a majority of the workers constituting the bargaining unit are members of the union, unless any of the three qualifying conditions set out in Paragraph 22(4) are fulfilled. If any of these conditions are met, or the Industrial Court is not satisfied that a majority of workers in the bargaining unit are members of

the union, the Court must give notice to the parties that it intends to arrange for a secret ballot to be held. The qualifying conditions in paragraph 22(4) are as follows:-

- (a) the Industrial Court is satisfied there should be a ballot in the interests of good industrial relations;
  - (b) that the Industrial Court has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union (or unions) to conduct collective bargaining on their behalf;
  - (c) membership evidence is produced which leads the Industrial Court to conclude that there are doubts whether a significant number of union members within the bargaining unit want the union to conduct collective bargaining on their behalf.
5. In order to be satisfied that a majority of workers constituting the bargaining unit were members of the Union and to assist in deciding whether to arrange for a secret ballot under Schedule 1A to 1995 Order, the Panel proposed a fresh check of the level of union membership within the bargaining unit. The information was received by the Court from the Union on 12<sup>th</sup> & 16<sup>th</sup> October 2007 and from the Employer on 15<sup>th</sup> October 2007. The Case Manager's letter dated 9<sup>th</sup> October 2007 confirmed that this information would not be copied to the other party or the panel.
  6. The Employer provided a list which contained 20 names, addresses, job titles, national insurance numbers and start dates. Three of these were Editors and 3 were Reporters. As these categories of workers did not form part of the bargaining unit they were not included as part of the check. The remaining 14 names on the list were included. The Union provided a list with 17 names, addresses, membership number, payment type, contributions, frequency and date of last payment.
  7. The membership check showed that although the Union provided a list of 17 Union members in the bargaining unit, eight of these names did not appear on the Employer's list. The Case Manager verbally sought clarification from the Union in relation to these eight individuals and was subsequently advised by the Union that upon further investigation 5 had recently left the company and 3 were from the Republic of Ireland and not employed in Derry News and were not therefore included in the bargaining unit. The list the Union provided showed that the remaining 9 members paid their contributions by direct debit on a monthly basis with the date of last payment for 6 of these members being 26/9/07, two being 5/10/07 and 19/9/07 respectively, with the description given for the remaining member being '*New Member*'.
  8. Out of the 14 workers in the bargaining unit, 9 were common to both the Union's and the Employer's lists and it was therefore established that the level of Union membership in the bargaining unit was 64%.

#### **The Parties' Submissions in Relation to Form of Ballot**

9. In view of the possibility that a ballot might be necessary submissions were requested as to the type of ballot which should be held.

The Employer responded to the Court on 15<sup>th</sup> October 2007 stating that it would prefer a postal ballot but gave no reason as to why it chose this option.

The Union responded to the Court by e-mail on 16<sup>th</sup> October 2007 stating that it had no preference as to whether the ballot was workplace based or postal. By way of a second e-mail of the same date the Union advised that it would like an opportunity to submit a paper in response to the question of a ballot once it had received the new figures for membership within the

bargaining unit as it felt that based on the figures that came out of this check it would submit that it believed that a ballot would not be necessary.

### **Information Requested in Relation to Paragraph 22(4) of Schedule 1A:**

10. By letter dated 17<sup>th</sup> October 2007 from the Court the parties received the result of the membership check and were asked to provide written submissions in relation to the three qualifying conditions, as specified in paragraph 22(4) of Schedule 1A.

The Employer responded to the Court by e-mail dated 17<sup>th</sup> October 2007 stating it agreed with the figures presented by the Court, it had no reason to query the figures and that it did not have any evidence that Union members did not wish the Union to conduct collective bargaining. A further e-mail was received by the Court from the Employer on 19<sup>th</sup> October 2007 advising that it felt that none of the qualifying conditions had been fulfilled and that it had no issue to raise regarding any of the 3 conditions.

The Union responded to the Court by e-mail on 19<sup>th</sup> October 2007 stating the level of union membership was 64% and the level of support for union recognition (expressed in the earlier petition) was 85% and therefore Unite should be recognised to conduct collective bargaining on its members' behalf.

It further stated that the holding of a formal ballot could be detrimental to good industrial relations and divisive between employees, as well as delaying the opportunity for Unite and the Company to begin to build a constructive relationship. The Union claimed that good industrial relations will come about as a result of the union negotiating with the company in the longer term.

The Union stated that it is highly unlikely that any of its members would inform the Court that they did not want the union to conduct collective bargaining on their behalf. It claimed that the right to be represented by Unite is the reason its members joined the union and that given the number of members who signed the petition (their understanding being that the petition was an aid to further the Union's claim to represent them) it is an indication of how clear members' wishes were by not only joining Unite but also by signing the petition.

Finally, the Union stated that as a significant number of its members, and other colleagues working at Derry News, have expressed their wishes by joining the union and signing the petition, this being indicated by the significant numbers which are far over and above the 50%+1 requirement of a ballot, the Court should declare recognition to Unite at Derry News without the need for a ballot. It claimed that this would ensure that any detrimental effect that such a ballot would have on industrial relations within the company would be avoided.

11. A Case Manager's Report was produced in relation to the findings of the membership check and the submissions received in relation to Paragraph 22(4) and to the form of ballot to be held. This Report was issued to both parties on 24<sup>th</sup> October 2007 inviting any comments either party may have in relation to this. The Employer, via e-mail dated 26<sup>th</sup> October 2007, stated that it had no further comment to make. The Union did not respond and telephone contact from the Case Manager established that it also had no further comment to make.

### **Considerations**

12. The Order requires the Panel to consider whether it is satisfied that the majority of the workers in the bargaining unit are Union members. If the Panel is satisfied that the majority of the bargaining unit are Union members, it must then decide if any of the three conditions in

paragraph 22(4) are fulfilled. If the Panel considers any of the conditions to be fulfilled it must give notice to the parties that it intends to arrange for the holding of a secret ballot.

13. The Panel considered carefully the submissions of the parties in this matter and the Case Manager's Report on the level of membership within the bargaining unit and was satisfied that at 64% the Union has a majority of the bargaining unit in its membership. Having satisfied themselves on that front the Panel turned to the question of whether a ballot should be ordered, despite the existence of majority membership, as set out within the terms of paragraphs 22(3) and 22(4) of the Schedule.
14. Paragraphs 22(4)(a) of the Schedule requires the Court to order a secret ballot even when there is majority Union membership in the bargaining unit where it is satisfied that to do so would be in the interest of good industrial relations. The Panel considered the submissions of both parties on this matter and in particular noted that the Employer felt that none of the qualifying conditions, including this one, had been fulfilled. In this particular case, the Panel is therefore not satisfied that this qualifying condition is met.
15. Paragraph 22(4)(b) requires the Court to order a ballot when it has received evidence, which it considers to be credible, that a significant number of Union members within the bargaining unit do not want the Union to conduct collective bargaining on their behalf. No evidence has been put before the Panel to demonstrate that the Union members within the bargaining unit do not want the Union to conduct collective bargaining on their behalf and it is therefore satisfied that this condition is not met.
16. Paragraph 22(4)(c) requires the Court to order a secret ballot where membership evidence is produced 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; membership evidence being evidence about the circumstances in which the Union members became members and evidence about the length of time for which Union members have been members. No such membership evidence has been produced. The Panel is therefore satisfied that this condition is not met.

## **Declaration**

17. The Panel is satisfied in accordance with paragraph 22(2) of the Schedule that the majority of the workers in the bargaining unit are members of the Union. Additionally, the Panel is satisfied that none of the conditions in paragraph 22(4) of the Schedule is met. The Industrial Court accordingly declares that the Union is recognised by Derry News as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit; the bargaining unit being that as set out in paragraph 3 of this decision.

*Barry Fitzpatrick*

Mr Barry Fitzpatrick  
Mr Maurice Moroney  
Mr Bob Gourley

Decision Date: 30<sup>th</sup> October 2007  
Date Issued to Parties: 7<sup>th</sup> November 2007