Case Ref: IC27/2004

THE INDUSTRIAL COURT

THE TRADE UNION AND LABOUR RELATIONS (NORTHERN IRELAND) ORDER 1995 (AS INSERTED BY ARTICLE 3 OF THE EMPLOYMENT RELATIONS (NORTHERN IERALAND) ORDER 1999)

SCHEDULE 1A – COLLECTIVE BARGAINING – RECOGNITION

DETERMINATION OF THE BARGAINING UNIT

The Parties:

Amicus

and

Atlas Communications NI Limited

INTRODUCTION:

1. Amicus (the Union) submitted an application to the Industrial Court (the Court) dated 4 November 2004 that it should be recognised for collective bargaining purposes by Atlas Communications NI Limited (the Company) for "All engineers and stores employees working in Atlas Communication (NI) Ltd excluding managers in both stores and engineering departments". The Court gave both Parties notice of receipt of the application on 11 November 2004 and copied the application form to the Company. The Company submitted their response to the Court on 17 November, and this was copied to the Union.

2. In accordance with Article 92(A) of the Industrial Relations (Northern Ireland) Order 1992, the IC Chairman established a Panel of the Court to deal with the case. The Panel consisted of Mr Richard Steele, Chairman, and, as Members, Mr Jim McCusker and Mr Maurice Moroney. The Case Manager appointed to support the Court was Mrs Joanna Calixto.

3. By a decision dated 22 November 2004, the Court accepted the Union's application. The Parties were unable to reach an agreement on the appropriate bargaining unit during the statutory period. By a letter dated 22 December 2004, both parties were informed that the Court had decided to extend the period in which to make a decision on the appropriate bargaining unit, due to Christmas holidays, other commitments of Panel members and in order to facilitate the gathering of additional information by the Case Manager. The Case Manager visited the site at Westbank Close where she met with Chris Smyth and Cathy Stewart of the Company, and HR consultants Nicola Powderly and Judith Hewitt. The information obtained by the Case Manager

was presented to both Parties on 21 January 2005 in the form of a Case Manager's report, and both Parties were given the opportunity to comment on its content. The Court invited both Parties to attend a Hearing and to provide the Court with, and exchange, written submissions in advance of the Hearing relating to the question of the determination of the appropriate bargaining unit. A Hearing was held on 26 January 2005 and the names of those who attended are appended to this decision. The Company's preference for a bargaining unit was all non-management employees in the Netcom Group, or if the Court failed to agree with that submission, all non management employees within 'central services', who are based in Northern Ireland.

Summary of the Union's Case

4. The Union's submission outlined that the proposed Bargaining Unit above was chosen because this was the group of workers they historically represented in a previous voluntary agreement with Eircom NI. The Union put forward a letter from the Chief Executive of Eircom (now Atlas Communications NI Ltd), in which she formally thanks the Amicus employee representative, in contestation of the view put forward by the Company that it was the inappropriate behaviour of Union representatives which led to the Company terminating the agreement. The Union also states that at no time prior to the termination of the voluntary agreement by the Company had the Union been made aware that the Company felt the bargaining unit was inappropriate or a reason for the termination of the agreement.

5. Mr Williamson elaborated on the above points on behalf of the Union at the Hearing. He reminded the Court that Paragraph 19 (3)(a) and (b) of the Schedule requires the Court to take into account the need for the bargaining unit to be compatible with effective management – compatible meaning 'consistent or able to co-exist with' (a definition accepted by the Court of Appeal in The Queen on the Application of Kwik-Fit Limited v Central Arbitration Committee [2002] FWCA Civ 512). The Union asserted that the proposed bargaining unit was clearly compatible, as it was the same unit as covered by the old agreement, which had previously been appropriate in Eircom and in Atlas Communications, and that the structure of the Company had not changed so much as to render the bargaining unit inappropriate. Mr Williamson emphasised that the Netcom Group (the Group) consists of two separate legal companies, and stated that the Union only sought recognition by Atlas Communications NI Ltd. He pointed out that there would be two jurisdictional issues with a bargaining unit being decided which encompassed all non-management employees in the Group. First, the bargaining unit would cover two different legal entities. Secondly, some of the people employed by Netcom worked in England, Scotland and Republic of Ireland and were therefore outside the jurisdiction of the Industrial Court.

6. Under 19 (4) (a) the Court must take into account the views of the employer and the union. In relation to this point, the Mr Williamson pointed out that the termination of the previous agreement was due to a breakdown in industrial relations, not because, as the Company submission asserted, the bargaining

unit was inappropriate. Concerning 19(4)(b), he pointed out that there are no existing national or local bargaining arrangements within the Netcom Group.

7. Furthermore, under paragraph 19(4)(c), the Court must take into account the need to avoid small fragmented bargaining units within an undertaking. Mr Williamson noted two points in this area: Firstly, that a bargaining unit encompassing all non-management employees in the Group would not be possible because the Court would not have jurisdiction to award recognition for employees based outside of Northern Ireland. Also, that Netcom and Atlas are two separate legal entities and therefore he believed the Court could not decide a bargaining unit covering employees of both companies. Secondly, that the bargaining unit proposed by the union was not small or fragmented, as it consisted of approximately 50% of all Atlas employees in Northern Ireland.

8. Concerning 19(4)(d), the Characteristics of the workers, he pointed out that there was a differentiation between the number of hours of work, that Engineering employees work 39 hours per week as opposed to the 37.5 hours specified in other contracts. Atlas employees only were eligible for call out payments and company cars. He further stated that concerning the location of the workers (para 19(4)(e)), workers in the proposed bargaining unit, while based in NI, worked throughout the Group.

Summary of the Company's case

9. In its written submission, the Company stated that the bargaining unit proposed by the union was not appropriate given the Company's revised structure and the need for the bargaining unit to be compatible with effective management. The revised structure means that there is one composite set of terms and conditions for all employees in the Group. All employees are salaried and paid monthly, all employees are entitled to the same amount of annual leave, the sick pay scheme is the same for all employees in the Group and pension arrangements are the same for all employees in the Group under Group Personal Pension Schemes. The Company further submitted that employees of both companies work side by side in each of the Company's locations, and pointed out that in addition to the list of employees within the union's proposed bargaining unit, there are another 8 employees at the same level in Netcom Communications Ltd. It was further stated that the Company felt that the proposed bargaining unit would result in inappropriate fragmentation of the workforce.

10. Ms Powderly for the Company elaborated on the above submission at the hearing, emphasising that the terms and conditions of all employees are equal within the group, and that there is now a 'single culture' as opposed to a 'them and us' culture. This is highlighted by the introduction of one employee handbook for all employees. Employees of both companies work physically side by side in the same jobs, and therefore the Company believes the proposed bargaining unit to be wholly inappropriate as it consists of only Atlas employees.

11. Mr Smyth briefed the Court on the relevant history of Atlas Communications and briefed the panel on the present structure of the Company. Following a drive to make the sales part of the Group more efficient, Atlas now looks after 'direct sales' and has direct contact with customers, while Netcom deals with indirect sales, i.e. trade retail. It was subsequently decided that all the resources of the group should be pulled to avoid duplication. However, as it is primarily a sales driven organisation, the two separate legal identities of the Company have been kept. Despite this, there is a central pool of work which is allocated regardless of the separation between the two companies, on the basis of who happens to be the best person for the job. The Court was informed that at the moment there is no financial transfers between the companies for the services of the other.

12. After questions from the Panel, Mr Smith explained that both Atlas and Netcom are NI registered companies and that there is no holding company – Netcom Group is only an identity. Further, that The Chief Executive of the Group has sole ownership of the two companies.

13. The Company submitted that they saw non-management grades as those who are not responsible for managing staff, although there were other employees who had the title of manager without having any staffing responsibilities.

14. The Court was informed that the pay of engineers only was calculated on a grading system, which is based on the competency framework and years of loyalty to the company amongst other things. It was confirmed that salaries were spot salaries for each grade of engineer, and indeed for everybody in the group.

15. Mr Williamson's initial points were contested by the company: In relation to hours of work, all engineers work 39 hours. All engineers and IT gain a call out fee. The posts of engineers and stores employees attract overtime. All of the following jobs are eligible for company cars: sales, engineers, quality, customer care, IT and warehousing.

Considerations

16. Para 19(3)(a) and (b) of the Schedule requires the Court to decide the appropriate bargaining unit and in making that decision to take in to account the need for the bargaining unit to be compatible with effective management and the matters listed in para. 19(4) of the Schedule, in so far as they do not conflict with that need.

17. The Court listened carefully to the oral submissions of both parties, studied their written submissions and questioned them closely on aspects of their cases. However, the Court was of the opinion that the Company itself, on the evidence heard before the Court, saw engineers as a distinct group, as they were the only group to have in place a grading system, and the hours worked were different to that of other employees. The Court was of the opinion that

there seems to be a clear separation concerning engineers and stores employees, as both types of employees are eligible for overtime.

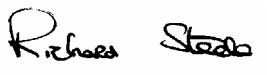
18. Furthermore, the Court is of the opinion that nothing in the Company's submissions indicated that the proposed bargaining unit was incompatible with effective management. The existence of an employee handbook for all employees within the group is not unusual, and does not necessarily indicate that the only appropriate bargaining unit is at Group level. The Court considers that the Company, despite the assertion that there are one set of terms and conditions for all employees, sees certain types of job as being materially different. The Court accepted the union's argument that nothing in the company structure has changed so significantly as to render inappropriate the bargaining unit covered by the previous agreement.

19. Concerning the desirability to avoid small fragmented bargaining units, the Court is of the view that a bargaining unit which consists of approximately 50% of the total number of non-management workers employed by the Company in Northern Ireland does not constitute a small, fragmented bargaining unit.

20. Drawing on the knowledge and experience of the Panel Members, the Court agreed with the union that the bargaining unit proposed by the union was an appropriate one.

Decision

The Court's decision is that the appropriate bargaining unit is that proposed by the Union, as described at paragraph 1 above.



Mr Richard Steele
Mr Jim McCusker
Mr Maurice Moroney

Date of decision: 26 January 2005
Date issued to Parties: 03 February 2005

Appendix

Names of those who attended the hearing:

Representing the Trade Union

Mr Peter Williamson	Regional Secretary
Mr Gerry Hannah	Regional Coordinator
Mr Terry Collins	Regional Officer

Representing the Company

Mr Chris Smyth	Operations Manager
Ms Cathy Stewart	HR administrator
Ms Nicola Powderly	HR consultant
Ms Judith Hewitt	HR consultant