

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

SCHEDULE 1A – COLLECTIVE BARGAINING – RECOGNITION

DETERMINATION OF THE BARGAINING UNIT

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. 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.
3. By a decision dated 27th April 2006 the Court accepted the Union’s application and the parties then entered a period of negotiation.
4. By letter dated 28th April 2006 the Court notified both parties of the next stage of the statutory process and indicated three options which were available to them during the 20 day negotiation period; ie that the Court panel can help the parties directly; the Labour Relations Agency can be asked to assist; or the parties may prefer to start direct negotiations themselves.

Employer's view

5. By letter dated 8th May 2006 the Employer complied with its statutory duties under paragraph 18A and provided the Union and the Court with:-
 - A list of categories of worker in the proposed unit
 - A list of the workplaces at which they worked
 - The number of workers it reasonably believed to be in each of the categories

The employer stated the categories of worker to be "*Supervisor, Boner and Operative*"; the workplace at which they worked to be "*The Boning Hall at the employers premises at Woodside Industrial Estate, Woodside Road, Ballymena*" and the number of workers in each of the categories to be "*1 Supervisor, 4 Boners and 17 Operatives*". Although the employer initially indicated that it may wish to meet informally with the Court it never confirmed this request. It subsequently advised that it was seeking legal advice from Counsel and did not express a desire to explore any of the other options available to it, as set out in the Court's letter dated 28th April 2006.

Union's View

6. By letter dated 10th May 2006 the Union responded to the Employer's letter of 8th May 2006 contending the number of workers in the bargaining unit supplied by the employer. The union state the numbers within the proposed bargaining unit should be:- "*Supervisor 1, Boners 6 and Operatives 12*".

The Union further advised that it was agreeable to let the LRA intercede on this matter or would be willing to meet informally with the Court and the Employer to try to reach agreement on the bargaining unit.

Submissions by Parties Following Receipt of Case Manager's Report

7. Both parties were informed that following the expiry of the 20 day negotiation period the Panel would meet on 31st May 2006 to decide whether to:
 - accept the Union's proposed bargaining unit as the appropriate bargaining unit;
 - accept any bargaining unit suggested by the Employer as the appropriate bargaining unit;
 - investigate further the numbers/categories or workers within the proposed bargaining unit; or
 - call a hearing to determine the appropriate bargaining unit.

A Case Manager's report was issued to both parties prior to this meeting inviting either party to make comments on the report or any other issues they would like the Panel to take into consideration.

8. In response to the Case Manager's report the Employer advised the Court (by letter dated 30th May 2006) that it did not agree the proposed bargaining unit stating it was the *“employer's view that the majority of the work force in the bargaining unit would not support recognition as a large majority are non nationals and they understand their culture and background would not have involved union collective bargaining and in addition their English is poor and any alleged consent to union collection bargaining would be an uninformed one”*. It further reiterated that the number of workers in the proposed bargaining unit was 22.

In a telephone conversation dated 30th May 2006, the Employer's solicitor verbally clarified with the Case Manager that, although they did not agree the Union's description of the bargaining unit, it was not offering an alternative.

9. The Union verbally advised the Case Manager, in a telephone conversation dated 30th May 2006, that it did not wish to make any written comment on the Case Manager's report and would await the Panel's decision.

Considerations

10. The Panel is required, by paragraph 19(2) of the Schedule, to decide whether the proposed bargaining unit is appropriate. If it decides that the proposed bargaining unit is not appropriate, it must then, under paragraph 19(3), decide a bargaining unit which is appropriate. Paragraph 19B(2) states that in making that decision, the Panel must take into account the need of the unit to be compatible with effective management and the matters listed in paragraph 19B(3) of the Schedule so far as they do not conflict with that need. The matters listed in paragraph 19B(3) are:

- the views of the employer and of the union;
- existing national and local bargaining arrangements;
- the desirability of avoiding small fragmented bargaining units within an undertaking;
- the characteristics of workers falling within the proposed bargaining unit under consideration and of any other employees of the employer whom the Court considers relevant; and
- the location of workers.

Paragraph 19B(4) states that, in taking an employer's views into account for the purpose of deciding whether the proposed bargaining unit is appropriate, the Court must take into account any view the employer has about any other bargaining unit that it considers would be appropriate.

11. The Panel's first responsibility is to decide, in accordance with paragraph 19B(2)(a) of the Schedule, whether the Union's proposed bargaining unit, described in paragraph 1 above, is compatible with

effective management. The Panel's decision has been taken after a full and detailed consideration of the view of the Union. The Panel has also had regard to the Employer's response of 30th May 2006, but was not presented by the Employer with any subsequent evidence to support the reasons given in that response for objecting to the Union's proposed bargaining unit. The Panel further noted that the Employer did not offer an alternative bargaining unit. In the absence of any evidence to the contrary, the Panel considers that the bargaining unit proposed by the Union is compatible with effective management of the Employer.

12. The Panel further considered the other matters listed in the Schedule (as set out in paragraph 10 above), so far as they do not conflict with the need for the bargaining unit to be compatible with effective management. It noted that, although the figures given by the Employer and the Union differed, the categories were the same and the Panel felt that these figures could be clarified during a membership check prior to a decision upon the holding of a ballot. The Panel did not consider it necessary to call a hearing to determine the appropriate bargaining unit and therefore concluded that the Union's proposed bargaining unit is an appropriate bargaining unit for the purposes of paragraph 19.

Decision

13. The Panel's decision is that the appropriate bargaining unit is that specified by the Union in its application, namely "All hourly paid production workers in the Boning Hall".

Barry Fitzpatrick

Mr Barry Fitzpatrick
Mr Mervyn Simpson
Mr Joe Bowers

Decision Date: 31st May 2006
Date Issued to Parties: 13th June 2006