Case Ref: IC-31/2006

THE INDUSTRIAL COURT

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

SCHEDULE 1A – COLLECTIVE BARGAINING – RECOGNITION

DECISION ON WHOM IS INCLUDED IN BARGAINING UNIT FOR THE PURPOSES OF ARRANGING THE HOLDING OF A BALLOT; WHETHER TO ARRANGE FOR THE HOLDING OF A SECRET BALLOT AND FORM OF BALLOT

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.

4. The Panel, as required by paragraph 19(2) of the Schedule, met on 31st May 2006 to determine whether the proposed bargaining unit was the appropriate bargaining unit. 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 the categories of worker in the proposed

bargaining unit, namely "Supervisor, Boner and Operative"; a list of workplaces at which they work; and the number of workers they reasonably believe to be in each of the categories at which of the workplaces. By letter dated 10th May 2006 the Union responded to this correspondence and contested the number of workers given by the Employer but not the categories of workers identified by the Employer. The Panel give full consideration to both parties' written submissions and noted that, although the figures given by the Employer and the Union differed, the categories were the same. It also noted that the Employer was not suggesting an alternative bargaining unit to that proposed by the Union and therefore concluded that the Union's proposed bargaining unit was an appropriate bargaining unit for the purposes of paragraph 19. This decision was subsequently relayed to both parties.

Issues

5. To assist the Court in making a decision under either paragraph 22 or 23 of Schedule 1A, on the holding of a ballot, the Panel proposed independent checks of the number of workers and level of union membership within the Bargaining Unit. The Union was asked to provide the names and addresses of all Union members currently within the bargaining unit and details of how Union subscriptions were paid by members, amount paid and date of last payment. The Employer was asked to provide a list of the names and addresses of the workers in the bargaining unit; copies of each worker's contract of employment, to include rate of pay, job description and job title for each worker; payroll print-out for each worker; confirmation as to whether there is movement of workers between the Boning Hall and other Departments within the Company and, if so, how frequently did these movements occur? It was explicitly agreed with both Parties that, to preserve confidentiality, the respective lists and petitions would not be copied to the other Party and that agreement was confirmed in a letter from the Case Manager to both Parties dated 9th June 2006.

6. The information for the independent check of the level of Union membership in the determined Bargaining Unit was received from both parties on 20th June 2006.

Employer Submissions

7. The Employer provided a list of 22 names and addresses of employees, giving job titles and rates of pay, with a further column added entitled "Production Bonus". The Employer also provided 21 Contracts of Employment for 4 Boners and 17 Operatives. It did not provide the Court with a copy of the Supervisor's Contract of Employment. The job titles given on the Employer's list were 4 Boners, 17 Operatives and 1 Supervisor. The Rates of Pay on the list showed that both the Operatives and the Supervisor were hourly paid and the Boners was paid *"£…../per quarter".*

8. The Contracts of Employment were analysed and it was apparent that one category of worker within the bargaining unit (ie Boner) did not appear to be hourly paid. In the Boner's Contract of Employment the description of a Boner was given as *"Piece Rate Worker"* and the remuneration showed that *"Wages are paid weekly in arrears on qtrs boned to specification (currently £….. per qtr. per team) by direct transfer ……".* The Case Manager sought further clarification from the Employer in relation to the 4 Boner's rates of pay and was verbally informed by the Employer on 21st May 2006 that Boners were not hourly paid workers. They were actually known as *"per quarter men"* and were paid for every quarter of beef they boned.

9. In its letter dated 21st June 2006 the Employer also advised the Court that there was no movement of workers from the boning hall to other Departments.

Union's Submissions

10. The Union provided a list of 7 names and addresses of Union members within the Bargaining Unit. It further supplied a table headed Direct Debit Payments 2006 containing the same 7 names which showed details of when and how subscriptions had been paid.

11. The result of the check was that the 7 names on the Union's list appeared on the Employer's list; a membership level of 32% if the Boners were included. However, if the Boners were excluded from the Bargaining Unit this showed a membership level of 17%.

Comments Received In Relation to Case Manager's Report

12. A Case Manager's Report was copied to both Parties on 22nd June 2006 inviting comments prior to the Panel meeting. The Union responded to this Report, by letter dated 26th June 2006, stating that the categories of workers in the bargaining unit should include *"all boners and hourly paid operatives in the boning hall"*. It stated that its understanding of the Bargaining Unit was that everyone in the boning hall was hourly paid. It further claimed that the four Boners who were paid on a piece rate basis had the same terms and conditions of employment as the remaining employees within the bargaining unit, with the exception of how they were paid. It felt that by using this Bargaining Unit, with the Boners included would ensure effective management as:

    - all employees formed part of one distinct function within one location;
    - the employees' roles were inter dependent upon each other in delivering the company's products to it customers;
    - one Supervisor oversees all employees;
    - by not treating all employees as one group may lead to a situation where part of the same team is subject to a different process in addressing such matters and not treated consistently with the other part, despite the many common issues all the employees share;

- management could deal with trade union officials in addressing collective bargaining issues for one group rather than having to speak to individual employees, stating that this would be less time consuming, particularly as it claims that management think there may be language difficulties with foreign nationals.

The Union further claimed that, if the Boners were included in the Bargaining Unit, this would avoid the need for another application to be submitted to the Court in respect of these workers.

13. The Employer's Solicitor verbally advised the Court, on 27th June 2006, that it was not submitting a written response to the Case Manager's Report but asked that the Panel refer back to a previous petition (submitted by it on 27th April 2006), in which 11 employees within the Bargaining Unit did not wish the Union to be recognised for the purposes of conducting collective bargaining.

Further Submissions Requested

14. The Panel convened on 28th June 2006 and considered both the Union's and the Employer's submissions and felt that in order for it to proceed with this application it would require further information from both parties regarding the Boners within the Bargaining Unit.

15. By letter dated 5th July 2006 the Employer was asked by the Court whether, in light of the lack of dispute on the status of the Boners within the Bargaining Unit, it was prepared to accept the Boners as hourly paid workers for the purposes of this application; and if not, submissions as to why it considered the Boners should not be treated as hourly paid workers and therefore should be excluded from the Bargaining Unit.

16. The Employer was also asked to make submissions as to how a secret ballot should be conducted if this was deemed necessary as the Union, in its letter dated 20th June 2006, had advised the Court that if a ballot was to be held it would prefer a workplace ballot. It stated this preference was taken in view of the numbers involved and that it takes less time to organise and conduct a workplace ballot.

17. By letter dated 5th July 2006 the Union was asked by the Court for submissions as to why it considered that the Boners should be treated as hourly paid workers and therefore included in the Bargaining Unit. It was further asked that, if it was not prepared to put forward any submissions in relation to the inclusion of the Boners in the Bargaining Unit, whether it wished the Panel to proceed to the next stage of the statutory process (ie determine whether a secret ballot should be held). Finally, the Court asked, if the Union was not prepared to put forward any submissions in relation to the inclusion of the Boners in the Bargaining Unit, did it wish to withdraw its application. The Court advised the Union if it did wish to withdraw its application it should refer to paragraph 39 of Schedule 1A of the Order before doing so.

Employer's Submissions

18. The Employer responded to the Court, by letter dated 24th July 2006 stating that it did not accept that the Boners were hourly paid workers and should not be treated as so for the purposes of this application as they did not fall within the meaning as set out in the Court's decision dated 31st May 2006. They advised that Boners are paid based on quarters boned and there is no fall back rate in the event of no work being available. It further submitted that if a ballot is necessary it would favour a postal ballot in order to minimise disruption in the workplace.

Union's Submissions

19. The Union responded to the Court, by letter dated 24th July 2006 stating that as the Employer had not disagreed with the Union's proposed inclusion of the Boners in the Bargaining Unit that the Boners should be included. It reiterated its previous submission (dated 26th June 2006) regarding the Boners' terms and conditions of employment being broadly the same as the other production workers and that the inclusion of the Boners in the Bargaining Unit would ensure effective management. It further stated that it wished to go to ballot and that a workplace ballot would be preferred form of ballot. The Union asked that both parties meet with the Court in relation to this matter.

Comments Received in Relation to Case Manager's Report

20. Again, a Case Manager's Report was produced and issued to both parties inviting any comments either party may have in relation to this Report prior to the Panel meeting. The Union responded on 31st July 2006 advising that it had since come to its attention that there were two additional Boners who were paid as piece rate workers, bringing the total number of Boners to six and it also was unclear if the Supervisor was an hourly paid worker. It stated that if a ballot were to be arranged and non-hourly paid workers were to be excluded then seven individuals should be excluded. If these workers were to be excluded it would be its intention to submit a fresh application for recognition regarding the Boners. The Union again stated that their preferred way forward was to include all the Boners in the bargaining unit and again requested a hearing be arranged in which this matter could be addressed further.

21. The Case Manager sought further clarification in relation to the Union's claim that there were two additional Boners who were paid as piece rate workers and was verbally advised by the Union that these 2 workers came under the category of Operative and were paid as Piece Rate Workers but revert back to an hourly rate if, for example, they go on holiday.

22. The Employer did not make any comment in relation to the Case Manager's Report.

Further Submissions Requested

23. The Panel reconvened on 2nd August 2006 and having considered both the Union's and the Employer's submissions decided to hold a Hearing to determine:-

- Whether hourly paid production workers in the Boning Hall should include or exclude Piece Rate Workers; and
- Consider further submissions on the nature of a secret ballot in the event that this is proven necessary.

The Panel also felt for it to proceed, further written submissions were required from the Employer and requested the Employer provide:-

- Contract of Employment for the category of Supervisor;
- Copies of pay slips for all category of workers in the Bargaining Unit;
- How Holiday Pay entitlement is calculated;
- How guaranteed payments (where appropriate) for each category of worker is calculated;
- How the National Minimum Wage (where appropriate) for each category of worker is calculated.

The Court also requested the Employer to provide further written submissions prior to the Hearing in response to the Union's claim that there were two additional Boners who were paid as Piece Rate Workers. If it confirmed this to be the case the Court requested it to provide any written agreement which covered the temporary change of status from Operative to Boner and written submissions as to when such situations arise; how often and how the workers involved were paid. In view of the Union's submissions on the 'effective management' of the bargaining unit, the Court also invited the Employer to comment on whether the bargaining unit would be 'compatible with effective management' if the Piece Rate Workers were excluded. This was relayed to the Employer by letter dated 10th August 2006.

The Union was invited to provide any further information it felt was relevant in relation to the above matters.

The Court gave both parties a deadline of close of business on Monday, 28th August 2006 in which to respond to its letter of 10th August 2005.

Union's Submissions

24. The Union responded to the Court's request by letter dated 25th August 2006 referring the Court to its earlier submissions (particularly those dated 24th July 2006) outlining its reasons as to why it felt the Boners should be included and also referred to Paragraph 19(3) of Schedule 1A of the Order which 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" and stated that

this was a definition accepted by the Court of Appeal in the Queen on the Application of Kwik-Fit Limited v Central Arbitration Committee [2002] FWCACiv512. It further stated that inclusion of the Boners would also meet with the desirability of avoiding small, fragmented bargaining units as per paragraph 19(4)(c) of Schedule 1A of the Order. It further referred to paragraph 19(4)(d) of Schedule 1A and stated that by applying this paragraph characteristics of workers in the proposed bargaining unit and the Boners were very similar and that those working in the Boning Hall are inter dependant on each other in producing the product required by the company, are in one location and managed by the same individual.

Employer's Submissions

25. The Employer did not respond by the deadline set out by the Court and the Court subsequently give notice to the Employer, under paragraph 170A of Schedule 1A that the information was required by the Court by close of business on Friday, 1st September 2006.

26. By letter dated 31st August 2006 the Employer provided the Court with:-

- A copy of the Contract of Employment for the "Boning Hall Manager" which showed that the Supervisor worked an average 40 hours per week with the expectation that Managers would manage their own time to meet customer and production requirements. The normal hours of work were given as 7.00am to 3.30pm Monday to Friday with a half hour for lunch. Under the heading "Remuneration" the following statement appeared *"Wages are paid weekly in arrears by direct transfer on Thursday/Friday of the following week. A pay slip is issued each week detailing the preceding weeks earning and statutory deductions".*

- Copies of Pay Slips in respect of 3 Operatives, one Piece Rate Worker and the Supervisor. The five names shown on the payslips matched those used in the Court's most recent membership. The Employer had also previously provided the Court with Contracts of Employment for all workers, with the exception of the Supervisor, and all five names shown on the payslips matched the relevant contract for that individual.

  All pay slips were identical in layout and were dated 18/08/06.

  When the payslips for the Operatives were analysed it was established that two of the three payslips showed the number of hours worked, the rate of pay, total amount, with one showing that a bonus had been paid and the other detailing that an additional 3 hours had been worked at a higher rate of pay. The third payslip for the Operative grade did not provide details of the hours worked, rate of pay or total amount. It described the money paid as a bonus, which it was noted was over twice the amount paid to the other Operatives.

The payslip for the Piece Rate Worker did not provide details of the hours worked, rate of pay or total amount. It showed that a bonus had been paid.

The payslip for the Supervisor showed the number of hours worked, rate of pay, total amount and that a bonus had been paid.

- Written submissions in relation to the Court's question "How Holiday Pay is entitlement is calculated". The Employer advised that holiday pay for employees on boning contracts was calculated by taking the last full 12 weeks pay (if the person is absent for 1 day within this period then go back 13 weeks etc) and taking an average weekly pay. All other employees are paid their hourly rate for holiday pay.

- Written submissions in relation to the Court's question "How guaranteed payments (where appropriate) for each category of worker is calculated". The Employer stated that guaranteed payments are never applicable, however normal statutory payments would apply.

- Written submissions in relation to the Court's question ""How the National Minimum Wage (where appropriate) for each category of work is calculated". The Employer stated that in relation to hourly paid workers, applicable bonus payments ensure their actual rate is more than the minimum wage".

The Employer did not respond to the Court's request that it confirm whether the Union's claim that there were two additional Boners who were paid as Piece Rate Workers; nor did it comment on whether it felt the bargaining unit would be 'compatible with effective management' if the Piece Rate Workers were excluded.

Comments in Relation to Case Manager's Report

27. A Case Manager's Report was produced and issued to both parties on 1st September 2006 inviting any comments either party may have in relation to this Report prior to the Hearing.

28. The Union responded to the Court by letter dated 4th September 2006. In relation to the Employer's response in relation to how holiday pay is calculated with regard to those on Boning contracts the Union posed the question *"Are we to assume that in line with their contract, a full week means 40 hours?"*

    In relation to how guaranteed payments are calculated the Union again posed a question *"Do we assume that every employee is covered by this and in what context would normal statutory payments apply"* in relation to the company's response that guaranteed payments are never applicable, however normal statutory payments would apply.

It also drew the Court's attention to "guidance on new system providing for 'fair' piece rates linked to the National Minimum Wage" document.

29. The Employer did not make any comment in relation to the Case Manager's Report.

Hearing

30. A hearing was held on Wednesday, 6th September 2006 at the Leighinmohr Hotel, Ballymena. The names of those who attended the hearing are appended to this decision.

31. Submissions were made by both parties and issues were raised by the Panel during the course of the hearing. Initial jurisdictional points were made on behalf of the Employer. It was submitted that the Court did not have a review power over its previous Decisions and that it could not use an interpretation power effectively to review a previous Decision. There was some discussion of the implications of Article 92A of the Industrial Relations (Northern Ireland) Order 1992, inserted by Article 25 of the Employment Relations (Northern Ireland) Order 1999, in particular paragraph 9 on correction of decisions and paragraph 10 on interpretation of decisions. It was pointed out that, in order to identify the "workers constituting the bargaining unit" for the purpose of holding a ballot under paragraph 23(2) of Schedule 1A, it was necessary to 'interpret' the description of the appropriate bargaining unit determined by the Court in order to clarify the position of a number of workers who had previously been considered to be in the bargaining unit.

32. The Union made further submissions relying upon the written submissions already made to the Court. It stated that the piece rate workers had always been considered as 'hourly paid' for the purpose of the application. All the other terms and conditions of employment were identical in terms of clocking on times etc. The piece rate workers had a holiday pay calculation as if they were hourly paid. There should be a calculation of minimum wages for each worker. They were effectively paid over and above the 'hourly rate' of the national Minimum Wage according to the skill which they displayed.

33. The Union also argued that its proposed bargaining unit would not have been appropriate if the piece rate workers had been excluded from it. Under further questioning, the Union accepted that it had formed its view on the proper description for the workers in its proposed bargaining unit on the basis of informal discussions with those workers it proposed to include within the proposed unit. There was nothing in those discussions to indicate that any of the workers were anything but 'hourly paid'.

34. The Employer made further submissions on the appropriateness of either 'correction' of a Decision under Article 92A(9) or 'interpretation' under Article 92A(10). It was pointed out that, in the Court's Guidance to the Parties, paragraph A2.25 provides, "Whether the bargaining unit is agreed

between the parties or decided by the Panel there needs to be clarity as to which workers are included in the bargaining unit. This is because, if at a later stage in the process, a ballot is held, both parties need to be quite clear as to which workers are entitled to receive a ballot paper. Since the bargaining unit defined at this stage cannot be modified or re-defined later, the definition must be clearly understood by both parties as well as the Panel." It was submitted that the Union was attempting to 'modify' or 're-define' the bargaining unit which it had originally proposed.

35. The Employer argued that the Union was 'the author of its own misfortune'. The relevant workers were clearly piece rate workers and not hourly paid. Hence they could not be included in the bargaining unit for the purpose of arranging a ballot. It was admitted that the Employer had 'not picked up' on its inclusion of the Boners in the information which it provided to the Court. It was agreed that, when approached by the Court, the Employer had included the boners in the list of workers in the proposed bargaining unit for the purpose of a membership check prior to acceptance of the application and had included the boners amongst the categories of workers to be included in the bargaining unit in response to the Court's request, under paragraph 18A(2) of the Schedule. It was noted that the Employer had replied to the Court's letter of 2nd May on 8th May, prior to the Union's response dated 10th May. Once again, in relation to the second membership check in preparation for a decision on a ballot, the Employer had included these workers in the information provided to the Court.

36. It was established during the Employer's submissions that 2 operatives were paid on piece rates when they were acting as Boners but reverted to an hourly aid rate as Operatives when not boning. There was also discussion of the position of 'piece rate workers' in relation to guarantee payments and payment of the national minimum wage. It was agreed that there was a calculation of guarantee payments for boners but that neither guarantee payments nor the question of the minimum wage had arisen in practice as the piece rate workers were paid well in excess of the minimum wage and a lack of work, triggering guarantee payments, would not occur in practice.

37. It was suggested to the Employer that the piece workers under discussion would be treated as 'time workers' under DTI Guidance on the National Minimum Wage (Revised October 2004, paragraph 124) and that such a conclusion was relevant to consideration of whether the piece rate workers could be considered as 'hourly paid'. The Employer took the view that, whatever their status for the purposes of the National Minimum Wage, these workers were still piece rate workers and not 'hourly paid' for the purposes of this application.

38. The Employer was also asked whether an explanation for this course of events was that the term 'hourly paid' was being used as a shorthand for 'not salaried' and hence that the Employer, in its responses, had understood the piece rate workers to be included in 'hourly paid'. However,

the Employer did not accept this explanation and asserted that it had three categories, ‘salaried’, ‘piece rate’ and ‘hourly paid’.

39. The Court also heard brief submissions on the nature of the ballot. The Union preferred a workplace ballot as set out in earlier submissions. The Employer preferred a postal ballot, as set out in earlier submissions. The Panel indicated that it would reserve its Decision on these matters.

Considerations

40. The Panel reconvened on Friday 8th September to consider the submissions made and to reach conclusions on the outstanding matters necessary in order to arrange for the holding of a ballot under paragraph 22(3) or 23(2) of the Schedule. The Schedule provides that where the Court is satisfied that a majority of the workers constituting the Bargaining Unit are members of the Union, it must issue a declaration of recognition under paragraph 22(2), unless any of three qualifying conditions in paragraph 22(4) applies. Paragraph 22(3) requires the Court to hold a ballot even where is has found there is a majority of union members in the bargaining unit if any of these conditions is fulfilled. The qualifying conditions are set out in paragraph 22(4). They are:-

    (a) the Court is satisfied that a ballot should be held in the interests of good industrial relations;

    (b) the 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 Court to conclude that there are doubts whether a significant number of the Union members within the bargaining unit want the Union (or Unions) to conduct collective bargaining on their behalf.

41. Paragraph 23(2) provides that where the Court is not satisfied that a majority of the workers constituting the Bargaining Unit are members of the Union, it must give notice to the parties that it intends to arrange for the holding of a secret ballot in which the workers constituting the bargaining unit are asked whether they want the Union to conduct collective bargaining on their behalf.

42. When determining the form of the ballot (workplace, postal or a combination of the two methods), the Court must take into account the following consideration specified in paragraphs 25(5) and (6) of the Schedule:

    (a) the likelihood of the ballot being affected by unfairness or malpractice if it were conducted at a workplace;
    (b) costs and practicality;

(c) such other matters as the Court considers appropriate

43. The Panel having considered all written and oral submissions provided by both parties, prior to and at the Hearing held on 6th September 2006, in relation to the issue of "Whether hourly paid production workers in the Boning Hall should include or exclude Piece Rate Workers" decided to issue a provisional decision regarding this matter and subject to confirmation of this decision sought any final submissions and/or comments either party wish to make in relation to this matter.

44. This provisional decision was that as the appropriate bargaining unit, as determined by the Panel on 31st May 2006, contained these three categories of workers, these workers constitute the bargaining unit for the purpose of arranging the holding of a ballot under regulation 23 of the Schedule.

    In making this decision the Panel took into account that the Parties were invited, under paragraph 18A(2)(a) of the Schedule, to identify "a list of the categories of worker in the proposed bargaining unit". By letter dated 8th May 2006, the Employer identified the categories of worker as "Supervisor, Boner and Operative" and also identified the number of workers it reasonably believed to be in each of the categories", as required by paragraph 18A(2)(c). By letter dated 10th May 2006, the union contested the numbers provided by the employer but not the categories of workers. The Panel was satisfied that the issue of which workers ought to be included in the bargaining unit was central to the matters considered at the hearing on 6th September. However the point that the Panel had included these three categories of workers in its determination of the appropriate bargaining unit was not explicitly put to the parties as a basis for the Panel's decision on the identification of the workers constituting the bargaining unit for the purposes of a ballot under paragraph 23. The Panel therefore decided to give the parties a further opportunity to make submissions on this provisional conclusion.

45. This provisional decision was issued to both parties on 11th September 2006 inviting any submissions and/or comments either party wished to make. The Union verbally advised the Court that it was content with the provisional decision the Panel had taken and did not wish to submit any written submissions in relation to this. The Employer, by letter dated 19th September 2006 advised the Court that it was the Union who defined the Bargaining Unit. It referred to paragraph A2.25 of the Court's Statutory Recognition Guidance which states that the bargaining unit cannot be modified or rectified later. It further stated that the Union discovered later, after the bargaining unit had been selected by the Court, that it (the Union) had not properly defined the workers they wanted in the bargaining unit did not entitle them to try to change it. It claimed the duty was on the Union to get it right. It further asked the Court to identify what power it purported have to enable it to review the decision of 31st May 2006 when it determined the appropriate bargaining unit.

46. The Panel met again on 25th September 2006 to consider any final submissions The Panel considered the further representations made by the Employer. It noted that paragraph A2.25 states, "Since the bargaining unit defined at this stage cannot be modified or re-defined later, the definition must be clearly understood by both parties as well as the Panel." However this refers to the stage of determining the appropriate bargaining unit, not the Union's initial definition of the proposed bargaining unit. The Panel is satisfied that, at the time of determining the appropriate bargaining unit, the three specified categories of workers were being included in the unit and hence are the workers constituting the bargaining unit for the purposes of a ballot under paragraph 23. The Panel is further satisfied that, in relation to its powers under Article 92A(9) and (10) of the 1992 Order, it is not in a position to review that decision.

47. Paragraph 23(2) provides that where the Court is not satisfied that a majority of the workers constituting the Bargaining Unit are members of the Union, it must give notice to the parties that it intends to arrange for the holding of a secret ballot in which the workers constituting the bargaining unit are asked whether they want the Union to conduct collective bargaining on their behalf.

48. The membership and support check conducted by the Court on 20th June 2006 demonstrated that there were 22 workers within the bargaining unit and of those 7 were members of the Union; this equated to 32% of the bargaining unit. Neither Party has informed the Court of any substantial change to these numbers, or to the number of union members therein. The Panel is therefore not satisfied that a majority of the workers in the bargaining unit are members of the Union and has decided that a secret ballot should be arranged in which the workers constituting the bargaining unit will be asked whether they want the Union to conduct collective bargaining on their behalf.

49. The Parties have put forward two different types of ballot for the Panel to consider. The Union has argued for a workplace ballot in view of the numbers involved and the fact that it takes less time to organise and conduct. Conversely, the Employer has submitted that the ballot should be a postal ballot in order to minimise disruption in the workplace.

50. The Panel has carefully considered the views of both Parties, the size and location of the bargaining unit and in particular has noted that some of the workers constituting the bargaining unit are foreign nationals who may require the services of an interpreter. It concludes that a combination of a workplace and postal ballot is the most appropriate in this case. The Panel also decided, for the avoidance of doubt, that the notice issued to members of the bargaining unit should indicate that the three categories of workers constituting the bargaining unit are entitled to vote in the ballot.

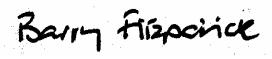
Decisions

51. This decision of the Panel is that as the appropriate bargaining unit, as determined on 31st May 2006, contained the categories of Supervisor, Boner and Operative, these workers constitute the bargaining unit for the purpose of arranging the holding of a ballot.

52. Accordingly the Panel gives notice, pursuant to paragraph 23(2) of the Schedule that it intends to arrange for the holding of a secret ballot in which the workers constituting the bargaining will be asked whether they want the Union to conduct collective bargaining on their behalf.

53. The Panel have further decided that the ballot will take the form of a combination of a workplace and postal ballot.

54. The name of the Qualified Independent Person appointed to conduct the ballot will be notified to the Parties shortly as will the period within which the ballot is to be held.



Mr Barry Fitzpatrick
Mr Mervyn Simpson
Mr Joe Bowers

Decision Date: 25th September 2006
Date Issued to Parties: 13th October 2006

Appendix

Names of those who attended the hearing:

For BFAWU

Mr John Halliday	-	Regional Officer
Mr William Gallagher	-	Regional Organiser

For Doherty & Gray

Mr Pat Ferrity	-	Barrister-at-Law instructed by Anderson, Agnew & Co, Solicitors
Mr Damien Agnew	-	Solicitor, Anderson, Agnew & Co, Solicitors
Mr Brendan Doherty	-	Director – Doherty & Gray
Mr Nigel McAleese	-	Company Accountant
Mr Brian Scullion	-	Boning Hall Supervisor