

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

DECISION ON FORM OF BALLOT

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 Communications (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 Court 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. The Panel appointed to consider the application decided on 22 November 2004 that the application was admissible. The appropriate bargaining unit was determined at a Hearing on 17 January. The Parties were notified of the decision on 1 February 2005.
4. By letter dated 1 February 2005 the Parties were asked to participate in a confidential membership check, the results of which were circulated to the Parties. The results of this check showed union membership within the bargaining unit at 47%. However, following a query by the union further investigations were conducted and a revised membership check was issued to the Parties on 24 February 2005, showing union membership within the bargaining unit to be 50%. The Parties were subsequently informed that a

secret ballot would be arranged, and submissions were invited on the form of a ballot and whether an extension to the balloting period was required. The Court also advised the Parties that it would wait until the end of the notification period of ten working days, as specified in paragraph 24(5) of Schedule 1A of the Trade Union and Labour Relations Order 1995, before arranging a secret ballot.

5. The notification period under paragraph 24(5) of the Schedule has now elapsed. The Court has not been notified by the Union or by both Parties jointly that they do not want the ballot to be held, as per paragraph 24(2) of the Schedule.
6. The Court has convened to decide on the form of ballot and whether an extension is necessary to the 20 day period during which the ballot is to be conducted.

Considerations

7. In deciding the type of ballot to be conducted (i.e. postal, workplace or combined), the Court must take into account the following considerations under paragraph 25(5) 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 practicability;
 - (c) such other matters as the Court considers appropriate.

Submissions

8. The Company submitted that a postal ballot should be held, explaining that the majority of workers in the bargaining unit are not located on site but are 'on the road' at customers' premises. They further submitted that a postal ballot was the only way to ensure that individuals could vote in privacy. In support of this view they referred to a previous ballot held by the Union, in which they assert that employees who were union members were required to complete a form in full view of their colleagues, and that some employees expressed their concern to the Company about being required to do this. The Company submitted that no extension to the 20 day balloting period is necessary.
9. The union had previously asked for a secret workplace ballot and did not elaborate further on this submission. They made no comment on an extension.

Determinations

10. The Court, having considered the submissions from the Parties, paragraph 25(6) of the Schedule and taking into account the industrial relations experience of the Panel, decided that a postal ballot would ensure the highest possible return, due to the fact that the majority of workers in the bargaining unit are mobile, working at customer's premises and not headquarters. The Court did not consider it likely that the ballot would be affected by unfairness

or malpractice if it were conducted at the workplace, as the Qualified Independent Person would ensure secrecy, and methods used in the previous union ballot would therefore not recur. However, the fact that the majority of workers in the bargaining unit work 'on the road' means it would not be practicable to hold the ballot at the workplace, and the Court is of the opinion that a postal vote is likely to ensure a higher return.

11. 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, along with the arrangements for the postal voting.
12. The Court will of course take into consideration the question of costs when appointing a QIP.

Decision

13. The Court's decision is that a secret ballot should be conducted by postal voting, and that an extension to the 20 day period in which to conduct the ballot is not required.