

THE INDUSTRIAL COURT

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

SCHEDULE 1A – COLLECTIVE BARGAINING: RECOGNITION

DECISION ON WHETHER THE APPLICATION IS VALID FOLLOWING
AGREEMENT ON THE BARGAINING UNIT

The Parties:

Amicus

and

Sanmina SCI (UK) Ltd

Introduction

1. Amicus (the Union) submitted an application to the Industrial Court (the Court) dated 6th April 2006 for recognition at Sanmina SCI (UK) Limited (the Employer), 19 Ballinderry Road, Lisburn, Co Antrim BT28 2SA, for a bargaining unit consisting of *“Managers and staff working in Sanmina covering Commercial, Operations Management, Engineering, Finishing Engineering, Tool Room Supervisor, Production Supervisors, Purchasing/Materials, Administrators, NPI Manufacturing, Facilities/Maintenance, Planning Training IT, Quality/Test”*. The Court gave both parties notice of the receipt of the application on 10th April 2006. The Employer submitted a response to the Court on 13th 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, Ms Avril Hall-Callaghan and Mr George McGrath. The Case Manager appointed to support the Court was Ms Brenda Slowey.
3. By a decision dated 27th April 2006 the Panel accepted the Union's application.
4. In a joint letter dated 18th May 2006 both the Employer and the Union requested a 2 week extension period to allow for further discussions and by letter dated 22nd May 2006 the Court informed the parties that a 2 week extension to the 20 day negotiation period had been granted until 13th June 2006. In a further joint letter dated 13th June 2006 both parties

again requested a further extension of one week to allow for further discussions and by letter dated 13th June 2006 the Court informed the parties that the 20 day negotiation period had further been extended until 20th June 2006.

5. The Employer and the Union confirmed to the Case Manager, by joint letter dated 19th June 2006, that the bargaining unit had been agreed. It stated that the agreed bargaining unit comprised:

“All staff employees employed at Sanmina-SCI Lisburn, Northern Ireland including Corporate IT employees but with the exclusion of those posts listed below

Exclusions from the bargaining unit

Corporate Finance employees

Corporate HR employees

All Senior Managers and department heads including:-

General Manager

Engineering Manager

Fabrication Manager

Lead Program Manager

Master Scheduler

Materials Manager

NPI Manager

Operations Manager

Paintline Manager

Program Managers

Quality Manager

Finance Controller

Special Projects Manager

Stores Manager”

Issues

6. The agreed bargaining unit differs from that proposed by the Union in its application. The Panel is therefore required by paragraph 20 of Schedule 1A to the Order (the Schedule) to determine whether the Union's application is valid or invalid within the terms of paragraphs 43 to 50 of the Schedule. In order for the Panel to consider this both parties, by letter dated 20th June 2006, were invited to make written submissions on:

- Is there an existing recognition agreement in respect of any workers covered by the new bargaining unit;
- Is there 10% union membership in the new bargaining unit;

- Is the majority of workers in the new bargaining unit likely to favour recognition;
 - Is there a competing application including any workers covered by the new bargaining unit; and
 - Has there been a previous application in respect of the new bargaining unit.
7. In a letter dated 29th June 2006 the Employer made the following submissions:-

“1. There is no existing agreement in respect of any of the workers in the new bargaining unit

2. Our records show that there are 15 members of the union in the proposed bargaining unit. This represents 29.4% of the unit.

3. As stated above our records show only 29.4% of the bargaining unit are members of the union. This clearly does not represent the majority of employees in the unit. We cannot determine if the majority of employees in the new bargaining unit would favour recognition.

4. We are not aware of any competing application including members of the new bargaining unit.

5. There has been no previous application in respect of the new bargaining unit.”

8. In a letter dated 28th June 2006 the Union made the following submissions:-

*“Point 1 The answer is no
Point 2 The answer is yes
Point 3 The answer is yes
Point 4 The answer is no
Point 5 The answer is no”*

Considerations

9. The Panel is required to determine whether the Union’s application is valid or invalid within the terms of paragraphs 43 to 50 of the Schedule. In reaching its decision the Panel has taken into account the submissions of both parties and all the other evidence before it. On the evidence available, the Panel is satisfied that there is no existing recognition agreement covering any of the workers within the agreed bargaining unit; that there is no competing application from another union; and that there has been no previous application in respect of the agreed bargaining unit. The remaining questions before the Panel are

firstly, whether under paragraph 45(a) of the Schedule, members of the union constitute at least 10% of the workers constituting the agreed bargaining unit, and, secondly, whether under paragraph 45(b) a majority of the workers constituting the agreed bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit.

10. In determining these questions the Panel considers it appropriate in this case to have regard to the membership and support check conducted on 25th April 2006, in relation to the bargaining unit originally proposed by the Union, but excluding from the bargaining unit the categories of workers as agreed by the parties, given that the check was conducted relatively recently and there was no evidence to suggest the circumstances within the Employer or the Union have changed since that check was conducted. A Case Manager's report was circulated to both parties on 30th June 2006, prior to the panel meeting to determine these issues, showing revised figures (excluding from the bargaining unit those categories as agreed by both the parties) and inviting comments from both the Employer and the Union. The Employer did not comment on the Case Manager's report and the Union, by e-mail dated 3rd July 2006, stated *"Amicus has in discussions with Sanmina tried to reach accommodation on the appropriate bargaining unit by removing a tier of management that Sanmina had identified gave them problems. We as a Union took on board their comments and have agreed to facilitate this. In doing so I would hope that the panel recognises that we have acted in good faith in trying to reach agreement and would hope that the panel recognise that the Union has tried to reach an amicable agreement that would allow recognition for the employees inside Sanmina"*.
11. The revised membership check showed that 53% of the workers in the proposed bargaining unit were members of the Union. The Union has stated that it has at least 10% membership within the agreed bargaining unit and the Employer has not disputed this. The Panel has therefore decided that members of the union constitute at least 10% of the workers in the agreed bargaining unit as required by paragraph 45(a) of the Schedule.
12. The second issue for the Panel to consider is whether, under paragraph 45(b), a majority of workers constituting the agreed bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit. As stated above, the revised membership check showed that 53% of the workers in the proposed bargaining unit were members of the Union. The Panel also noted that the revised check of the Union's petition, again excluding from the bargaining unit all categories of workers as agreed by both parties, showed that 55% of the workers in the bargaining unit had signed a petition in support of recognition of the Union. The Panel again took into consideration that not all union members (likely to support) had signed the petition and that 11 names on the petition were unreadable/duplication, and as no evidence has been placed before it

that leads it to take a contrary view, were therefore satisfied, on the balance of probabilities, that a majority of workers in the agreed bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit in accordance with the requirement of paragraph 45(b) of the Schedule.

13. For the reasons given above, the Panel's decision is that the application is not invalid and that the Industrial Court should proceed with the application.

Barry Fitzpatrick

Mr Barry Fitzpatrick
Ms Avril Hall Callaghan
Mr George McGrath

Decision Date: 4th July 2006
Date Issued to Parties: 11th July 2006