

THE INDUSTRIAL COURT

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

SCHEDULE 1A- COLLECTIVE BARGAINING: RECOGNITION

DECISION ON WHETHER TO ARRANGE FOR THE HOLDING OF A BALLOT AND THE FORM OF BALLOT

The Parties:

Amicus
And
Diageo Baileys Global Supplies

Introduction:

1. Amicus (the Union) submitted an application to the Industrial Court (the Court) on 14 July 2004 that it should be recognised for the purposes of collective bargaining by Diageo Baileys Global Supplies (the Company) in respect of a bargaining unit comprising “All employees excluding HR Manager, Plant Director and all Supervisors and Charge Hands” working in the Hightown Industrial Estate. The Court gave both parties notice of receipt of the application 20 July 2004. The Company submitted a response to the Court on 28 July 2004, 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 to deal with the case. The Panel consisted of Professor Barry Fitzpatrick as Chairman, and Mr Mervyn Simpson and Ms Fiona Cummins as Members. The Case Manager appointed to support the Court was Ms Anne-Marie O’Kane, who was replaced by Mrs Joanna Calixto.
3. The Panel appointed to consider the above application decided on 31 August 2004 that the application was admissible. The appropriate bargaining unit was decided at a hearing on the 11 October 2004 and this decision was issued to Parties on 12 October 2004.
4. A membership check was conducted by the Case Manager on 15 October 2004 and Parties were notified that on this date the Union had 54.5% membership within the Bargaining Unit. Following this check, it was made known to the Court that check-off arrangements had not actually been in place, and in fact this was not the correct percentage of Union membership on the specified date. On 22 October 2004 the Court granted a postponement to allow an updated Case Manager’s report in light of the new evidence. This revised Case Manager’s report showed Union

membership to be at 6.06% on 15 October 2004. Parties were given the opportunity to comment on this revised report and were asked, without prejudice to a decision of the Court under paragraphs 22 and 23 of the Schedule, if a ballot was ordered, what their preference would be regarding the form of ballot.

Submissions:

5. The Union submission dated 27 October 2004 stated that while the Union accepted the Case Manager's Report dated 15 October 2004 and subsequent findings, the Union and its members were of the belief that the Company were to introduce the national check off for Diageo. The Union therefore submitted that as they had since provided the Court with one month's subscriptions in arrears from its members (which would cover the period of 15 October 2004 when the Membership Check was carried out) and moved them onto direct debit or branch payments, they had membership levels of 54.5% and requested that the Court accordingly award automatic recognition.
6. The undated submission from the Company stated that 6.06% clearly did not constitute a majority of the Bargaining Unit, and on that basis requested that the Court arrange for the holding of a ballot to determine if the workers in the Bargaining Unit want the Union to conduct collective bargaining on their behalf.

Considerations:

7. When considering whether or not to order a ballot, the Court was required to take into consideration Paragraph 22 (1) (b) and Paragraph 22 (2), which state that the Court may award automatic recognition where it is satisfied that a majority of the workers constituting the Bargaining Unit are members of the union.
8. As the date of the Membership check had been specified by the Court as 15 October, the Court was bound to take membership levels at 6.06%. The Court, whilst recognising that the Union had since this date produced evidence that its Membership had significantly increased, could not take this into consideration, and was so compelled to arrange for the holding of a ballot under Paragraph 23 of Schedule 1A.
9. Having made this decision, the Court then had to determine the form of the ballot and whether an extension was necessary to the 20 day period in which the ballot was to be conducted.
10. In deciding the type of ballot to be held, 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 practicality; and
- (c) such other matters as the Court considers appropriate.

Submissions:

- 11. In its submission dated 27 October 2004, the Union stated that it would prefer a workplace ballot “due to the nature of the business and the shift patterns currently worked within Diageo”.
- 12. In its undated submission, the Company stated that it would prefer a postal ballot, in order to maintain harmonious relations in the workplace, as “this will afford additional comfort to workers in making their decision.”

Determinations:

- 13. The Court noted that although the Company requested a postal ballot in order to provide “additional comfort to workers”, it had not been alleged that a workplace ballot would be likely to be affected by unfairness or malpractice. The Court, having considered the limited submissions from the Parties, Paragraph 25 (5) and (6) of the Schedule, and taking into account the industrial relations experience of the Panel therefore decided that a combination ballot would ensure the highest possible return.
- 14. The following persons would be entitled to apply for a postal ballot:

Those Employees on Maternity Leave;
Those Employees on Long-Term Sick Leave; and
Those Employees with Pre-Booked Leave.
- 15. Neither Party submitted that an extension to the 20 day balloting period was required.
- 16. 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 and workplace elements.
- 17. The Court will of course take into consideration the question of costs when appointing a QIP.

Decision:

- 18. The Court’s decision is that a secret ballot should be conducted by a combination of workplace and postal voting and an extension to the 20 day period in which to conduct the ballot is not required.

Barry Fitzpatrick

Professor Barry Fitzpatrick
Mr Mervyn Simpson
Ms Fiona Cummins

Date of Decision: 4 November 2004
Date issued to Parties: 5 November 2004