

**THE INDUSTRIAL COURT**

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

**SCHEDULE 1A – COLLECTIVE BARGAINING: RECOGNITION**

**DECLARATION OF RECOGNITION**

**The Parties:**

Amicus

and

Sanmina SCI (UK) Ltd

**Introduction**

1. Amicus (the Union) submitted an application to the Industrial Court (the Court) dated 6<sup>th</sup> 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 10<sup>th</sup> April 2006. The Employer submitted a response to the Court on 13<sup>th</sup> 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 27<sup>th</sup> April 2006 the Panel accepted the Union’s application. The parties then entered a period of negotiation in an attempt to reach agreement on the appropriate bargaining unit. In a joint letter dated 18<sup>th</sup> May 2006 both the Employer and the Union requested a two week extension period to allow for further discussions and by letter dated 22<sup>nd</sup> May 2006 the Court informed the parties that a two week extension to the 20 day negotiation period had been granted until 13<sup>th</sup> June 2006. In a further joint letter dated 13<sup>th</sup> June 2006 both parties again requested a further extension of one week to allow for further discussions and by letter dated 13<sup>th</sup> June 2006 the Court informed the parties that the 20 day negotiation period had further been extended until 20<sup>th</sup> June 2006.

4. By joint letter dated 19<sup>th</sup> June 2006, the Employer and the Union confirmed to the Court that the bargaining unit had been agreed. This letter 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”*

5. As the bargaining unit agreed between the parties differed from that which the Union proposed in its application the Panel was required by paragraph 20 of the Schedule to decide whether the Union’s application was valid in accordance with the tests set out in paragraphs 43 to 50: that there was no existing recognition agreement in force, that there was no competing application and that there had been no previous application to the Court in respect of the new bargaining unit. However, in addition to those tests the Panel had to be satisfied, in accordance with paragraphs 45(a) and (b) of the Schedule, that 10% of the workers constituting the new bargaining unit were members of the Union and that a majority of workers in the new bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of that bargaining unit.
6. By a decision dated 4<sup>th</sup> July 2006, the Panel determined that the application was not invalid and gave notice to the parties (in accordance with paragraph 20(5) of the Schedule) that it would proceed with the application.

## Issues

7. Paragraph 22(2) of the Schedule requires the Court to issue a declaration that a Union is recognised as entitled to conduct collective bargaining on behalf of a group of workers constituting the bargaining unit if it is satisfied that a majority of the workers constituting the bargaining unit are members of the Union, unless any of the three qualifying conditions set out in Paragraph 22(4) are fulfilled. If any of these conditions are met, or the Court is not satisfied that a majority of workers in the bargaining unit are members of the Union, the Court must give notice to the parties that it intends to arrange for a secret ballot to be held. The qualifying conditions in paragraph 22(4) are as follows:-
  - (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.*

## Membership Check

8. To assist in deciding whether to arrange for a secret ballot under Schedule 1A to the 1995 Order, the Panel proposed a fresh independent check of the level of Union membership in the bargaining unit. The information was received by the Court from both parties on 1<sup>st</sup> August 2006. The Case Manager's letter dated 7<sup>th</sup> July 2006 confirmed that this information would not be copied to the other party or the Panel.
9. The Employer provided a list which contained the names and job title/category of worker of 38 workers in the bargaining unit. The Union provided a list of 27 current members of staff in AMICUS in the bargaining unit.
10. The membership check showed that although the Union provided a list of 27 Union members in the bargaining unit, six of these names did not appear on the Employer's list. The Case Manager verbally sought clarification from the Union in relation to these six individuals and was subsequently advised by the Union that upon further investigation it accepted that one had been excluded when the Company and Union had reached agreement in relation to the bargaining unit.
11. Following instruction from the Chairman, and with the agreement of the Employer, the Case Manager visited the Company's premises to clarify the status of the remaining five Union members not appearing on the Employer's list. This visit took place on 4<sup>th</sup> August 2006 and the Case Manager met with the HR Manager. The Employer provided the Case Manager with sight of computer print-outs of: all

hourly paid employees; all salary paid employees; all employees who had left the company within the previous 12 months and all employees who had been made redundant. The information contained on these lists showed that of the five Union members not appearing on the Employer's list, two had left the company (one in November 2005 and one in May 2006) and three were hourly paid (which the employer stated did not belong to the bargaining unit, as a voluntary agreement was currently in place in relation to hourly paid workers).

12. Out of the 21 names common to both the Union's and the Employer's lists it was established that the level of Union membership in the bargaining unit was 55%.

### **The Parties' Submissions in Relation to Form of Ballot**

13. In view of the possibility that a ballot might be necessary submissions were requested as to the type of ballot which should be held.
14. Both parties responded to the Court on 1<sup>st</sup> August 2006, with the Union stating it would prefer a postal ballot. It gave no reason as to why they chose this option. The Employer also stated that it would prefer a postal ballot as *"this would eliminate any potential disruption in the workplace and ensure that those balloted could exercise their franchise in complete confidentiality"*.
15. A Case Manager's Report was produced in relation to the findings of the membership check and the submissions received in relation to the form of ballot to be held. This Report was issued to both parties on 7<sup>th</sup> August 2006 inviting any comments either party may have in relation to this. The Employer verbally advised the Court on 8<sup>th</sup> August 2006 that it did not wish to make any comment on the Report and the Union responded by letter dated 7<sup>th</sup> August 2006 stating that in its view *"AMICUS has tried through all of this process to reach a voluntary agreement with the company and through discussions with the company, we agreed to amend the original bargaining unit as they stated it would give them operational difficulties, even though this meant our membership numbers would be reduced because of this"*. It further stated that the Case Manager's Report indicated that it had 55% of employees in membership even after a recent redundancy exercise had been carried out and with the removal of some of its members to hourly paid. It contended that automatic recognition should be granted.

### **The Parties' Submissions in Relation to Paragraph 22(4) of Schedule 1A**

16. Submissions were requested from both parties in relation to the three qualifying conditions, as specified in paragraph 22(4) of Schedule 1A and by letter dated 14<sup>th</sup> August 2006 the Union responded expressing its desire to resubmit their previous submission of 7<sup>th</sup> August 2006 (see paragraph 15 above). The Employer responded by letter dated 10<sup>th</sup> August 2006 in relation to paragraph 22(4)(a) stating that in their view a postal ballot should be conducted to accurately determine the level of support within the company for collective bargaining arrangements for staff employees and that by doing so would be in the interest of good industrial relations since it would remove any ambiguity that may currently exist between the parties. It did not comment on paragraphs 22(4)(b) or (c).

17. A further Case Manager's Report was produced and issued to both parties on 15<sup>th</sup> August 2006 again inviting comments from both parties. Both parties verbally advised the Court that they did not wish to make any comments in relation to this Report.

### **Considerations**

18. The Order requires the Panel to consider whether it is satisfied that the majority of the workers in the bargaining unit are Union members. If the Panel is satisfied that the majority of the bargaining unit are Union members, it must then decide if any of the three conditions in paragraph 22(4) are fulfilled. If the Panel considers any of them are fulfilled it must give notice to the parties that it intends to arrange for the holding of a secret ballot.
19. The Panel considered carefully the submissions of the parties in this matter and the Case Manager's Report on the level of membership within the bargaining unit and is satisfied that at 55% the Union has a majority of the bargaining unit in its membership. Having satisfied themselves on that front the Panel turned to the question of whether a ballot should be ordered, despite the existence of majority membership, as set out within the terms of paragraphs 22(3) and 22(4) of the Schedule.
20. Paragraph 22(4)(a) requires the Court to order a secret ballot even when there is majority Union membership in the bargaining unit where it is satisfied that to do so would be in the interest of good industrial relations. The Panel considered the submissions of both parties on this matter and in particular noted that a voluntary agreement was already in place in relation to hourly paid workers and that no evidence had been produced to indicate that relationships between the parties are or have been unstable. In this particular case, the Panel is therefore not satisfied that this qualifying condition is met.
21. Paragraph 22(4)(b) requires the Court to order a ballot when it has received evidence, which it considers to be credible, that a significant number of Union members within the bargaining unit do not want the Union to conduct collective bargaining on their behalf. No evidence has been put before the Panel to demonstrate that the Union members within the bargaining unit do not want the Union to conduct collective bargaining on their behalf and it is therefore satisfied that this condition is not met.
22. Paragraph 22(4)(c) requires the Court to order a secret ballot where 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 to conduct collective bargaining on their behalf; membership evidence being evidence about the circumstances in which the Union members became members and evidence about the length of time for which Union members have been members. No such membership evidence has been produced. The Panel is therefore satisfied that this condition is not met.

## Declaration

23. The Panel is satisfied in accordance with paragraph 22(2) of the Schedule that the majority of the workers in the bargaining unit are members of the Union. Additionally, the Panel is satisfied that none of the conditions in paragraph 22(4) of the Schedule is met. The Industrial Court accordingly declares that the Union is recognised by Sanmina SCI (UK) Ltd as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit; the bargaining unit being that as set out in paragraph 4 of this decision.

*Barry Fitzpatrick*

Mr Barry Fitzpatrick  
Ms Avril Hall Callaghan  
Mr George McGrath

Decision Date: 18<sup>th</sup> August 2006  
Date Issued to Parties: 23<sup>rd</sup> August 2006