

Case Ref No: IC 45/2011

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

DETERMINATION OF THE BARGAINING UNIT

The Parties:

Unite the Union

And

Evron Foods Ltd

INTRODUCTION:

1. Unite the Union submitted an application to the Industrial Court (the Court) dated 7th March 2011 for recognition at Evron Foods Limited, Carn Industrial Estate, Portadown, BT63 5WD. The bargaining unit description was “Despatch Operatives, Production Operatives, Team Leaders, Store Persons” and the location was given as “Portadown Plant”. The Court gave both Parties notice of the application on 9th March 2011. The Employer submitted a response to the Court on 16th March 2011.
2. In accordance with Article 92(A) of the Industrial Relations (Northern Ireland) Order 1992, the Industrial Court Acting Chairman established a Panel of the Court to deal with the case. The Court consisted of Mr Barry Fitzpatrick, Chairman, and, as Members, Mr Bob Gourley and Mr George McGrath. The Case Manager appointed to support the Court was Mr Paul Cassidy.
3. By a decision dated 14th April 2011, the Court accepted the Union’s application. The Parties were unable to reach an agreement on the appropriate bargaining unit. The Chairman invited both Parties to attend an informal Hearing in an attempt to reach agreement on the bargaining unit. An informal Hearing was held on 19th May 2011, at which the parties failed to reach an agreement.
4. A full Hearing was arranged for 1st June 2011. The Court invited both Parties to provide the Panel with, and exchange, written submissions relating to the question of the determination of the appropriate bargaining unit. This Hearing was postponed and a rearranged Hearing was held on 20th July 2011; the names of those who attended are appended to this decision. Both Parties were offered the opportunity to add to or amend their written submissions but neither did so. The Employer’s preference for a bargaining unit consisted of all of the workers

listed in the Union's proposal together with 23 other workers on the same terms and conditions, but not included in the Union's proposed bargaining unit.

SUMMARY OF THE UNION'S CASE

5. The Union's submission outlined that the proposed bargaining unit was chosen to include job grades directly connected with making the product, dispatching the product and providing materials to make the product, whilst excluding other job grades which were not directly connected with making the product, namely Fabrication Operatives and other Engineers (henceforth described as 'Engineers') and Admin, Clerical and Management grades. The Union submission also stated that the Engineers were paid in accordance with their skills and trade as Engineers whereas the wages of the workers in its proposed bargaining unit were derived from the National Minimum Wage. The Union added that the Employer had argued, in an earlier application, for the exclusion of Engineers from the bargaining unit but now wished their inclusion for the sole purpose of increasing the size of the bargaining unit.
6. Ms McGeady and Mr Kettyles elaborated on the above points on behalf of the Union at the Hearing. They stated that Engineers within the Portadown factory are physically located adjacent to the production lines but only go to the production lines when called upon to do so. They did not feel that the exclusion of Engineers from the bargaining unit would cause difficulties for the company's management and cited examples of other recognition agreements in the food industry involving Unite where Engineers had not been included in the bargaining unit.
7. In the Union's view, the Engineers considered themselves to be skilled workers and had a different status to that of the production workers.
8. The Union's representatives told the Panel that, whilst they did not want the 19 excluded Engineers to be included in the bargaining unit, they were prepared to include 4 other workers currently excluded from the proposed bargaining unit.

SUMMARY OF THE EMPLOYER'S CASE

9. The Employer's submission stated that the proposed bargaining unit contained 126 workers but excluded 23 others who would be greatly affected by any decisions made by the proposed bargaining unit. The Employer also stated that the excluded workers were on the same terms and conditions as those in the proposed bargaining unit, the only difference being the rate of pay, adding that four rates of pay currently exist in the proposed unit. The Employer added that the proposed bargaining unit was in contradiction to the legislation, which attempted to avoid small fragmented bargaining units. The Employer felt that the proposed bargaining unit would be unmanageable.
10. Mr Paisley elaborated on the above points on behalf of the Employer at the Hearing. He stated that the rate of pay of many workers in the proposed bargaining unit was not determined by the National Minimum Wage. He said that, whilst shift Engineers have a separate place to work for safety and to

ensure no contamination of the hygiene of the production line, they are allocated to areas of work and their work affects the productivity and downtime of the shift. He added that the company currently operated a Workers' Council, which included all of the company's workforce. He rejected the Union's proposal to include only 4 of the excluded workers to the bargaining unit and reaffirmed the company's view that all 23 excluded workers, including all of the Engineers, should be included in the bargaining unit.

CONSIDERATIONS:

11. Schedule 1A of the Order requires the Court to decide the appropriate bargaining unit and, in making that decision to take into account the need for the unit to be compatible with effective management and the matters listed in Para 19(4) of the Schedule, in so far as they do not conflict with that need. These are:
 - the views of the employer and of the union;
 - existing national and local bargaining arrangements;
 - the desirability of avoiding small fragmented bargaining units within an undertaking;
 - the characteristics of workers falling within the proposed bargaining unit and of any other employees of the employer whom the Court considers relevant; and,
 - the location of workers.

Paragraph 19B(4) states that, in taking an employer's views into account for the purpose of deciding whether the proposed bargaining unit is appropriate, the Court must take into account any view the Employer has about any other bargaining unit that it considers would be appropriate.

The Panel was also aware of the judicial review judgment of the English Court of Appeal in *Regina (Kwik-Fit (GB) Ltd) v. Central Arbitration Committee*, in which it was declared that the decision for the Panel to make is whether the proposed bargaining unit was *an* appropriate bargaining unit and not whether it was necessarily the more appropriate or most appropriate bargaining unit.

12. The Panel's first responsibility is to decide, in accordance with paragraph 19B(2)(a) of the Schedule, whether the Union's proposed bargaining unit, described in paragraph 1 above, is compatible with effective management. The Panel listened carefully to the oral submissions of both parties, studied their written submissions and questioned them closely on aspects of their cases. The Panel was of the opinion that the Union's proposed bargaining unit was an appropriate bargaining unit and that it was not incompatible with effective management. In particular, the Panel considered that the characteristics of workers falling within the proposed bargaining unit were different from the characteristics of other workers of the Employer who might have been included in the bargaining unit and that it was typical in the food industry for production workers to be in a separate bargaining unit to that of Engineers and other workers.
13. The Panel considered the Employer's suggested bargaining unit and also the Union's offer to include 4 excluded workers in the bargaining unit. It was felt

that both possible bargaining units would reduce the likelihood of fragmentation of the bargaining units within the Portadown plant. However, the Panel remained satisfied that the proposed bargaining unit was an appropriate one.

DECISION:

14. The Court's decision is that the appropriate Bargaining Unit is that proposed by the Union, that is, "Despatch Operatives, Production Operatives, Team Leaders, Store Persons".

Barry Fitzpatrick

Mr Barry Fitzpatrick
Mr George McGrath
Mr Bob Gourley

Date of Decision: 29 July 2011
Decision Issued to Parties: 29 July 2011