

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 ACCEPT THE APPLICATION

The Parties:

Unite the Union

And

Evron Foods Ltd

DECISION

Introduction

1. Unite the Union submitted an application to the Industrial Court (the Court), received on 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.

Background

3. In the Union’s application it stated that the company employed a total of 225 workers and added, “*there have been recent redundancies but we are not aware of total paid off*”. The application also stated that the proposed bargaining unit comprised 116 workers, with 69 union members in the bargaining unit. The Union added that, “*85 workers in the bargaining unit have signed a petition supporting recognition of Unite for collective bargaining purposes.*”
4. In its response to the Union’s application the Employer stated that a total of 203 workers were employed by it on 11 February 2011. The Employer did not agree with the Union’s proposed bargaining unit, adding there were 127 workers employed in the proposed bargaining unit, and that it excluded, “*23 hourly paid employees who do not support recognition but are directly affected by any decision made by the bargaining unit*”.

Membership and petition check

5. To assist the determination of two of the admissibility criteria specified in the Schedule, i.e:
 - a) whether members of the union (or unions) constitute at least 10 per cent of the workers constituting the relevant bargaining unit (paragraph 36(1)(a); and
 - b) where a majority of the workers constituting the relevant bargaining unit would be likely to favour recognition of the union (or unions) as entitled to conduct collective bargaining on behalf of the bargaining unit (paragraph 36(1)(b))

the Panel proposed a confidential check be undertaken by the Case Manager. In letters to both parties, dated 1st April 2011, the Case Manager requested that the Employer provide:-

- a) the names and addresses of the workers in the proposed bargaining unit on the date of Monday 4 April 2011; and
- b) job title for each worker

and the Union was asked to provide:-

- a) the names and addresses of all union members currently within their proposed bargaining unit on the date of Monday 4th April;
- b) details of how union subscriptions were paid by members, amount paid, and date of last payment; and
- c) a copy of a petition signed by workers in the bargaining unit in favour of recognition.

The Case Manager's letter confirmed that neither the lists nor the petition would be copied to the other party or the Panel.

6. The Employer provided a list of 150 workers in the Union's proposed bargaining unit. This list contained 125 workers against the 4 job descriptions given in the union's proposed bargaining unit and 25 others with different job descriptions. These 25 workers were removed by the Case Manager for the purposes of the membership check. The Union provided a petition with 84 hand-written names accompanied by a signature and job title. All of the petition sheets had "8th February 2011" printed across the top of each sheet. The Union also provided a membership list containing 70 names. All but five of the listed subscriptions provided details that were current as of 31st March 2011 and the method of payment in all cases was given as "DD", apart from one, which was given as "Cash".
7. The membership check showed that there were 63 union members on the Employer's list, which was 50.4% membership of the proposed bargaining unit, although this fell to 61 members, or 48.8% of the proposed bargaining unit, when calculated against only those members whose subscriptions were up to date. Further, 76 signatures on the petition were on the Employer's list, or 60.8% of the proposed bargaining unit, of which 25 (20%) were not currently members of the Union.

Views of the Panel

The Panel noted that the Union's description of the proposed bargaining unit in its application to the Court did not accurately reflect the description given in the letter of request to the Employer. However the Panel felt that there was no inconsistency between the descriptions regarding the employees who would be included in the proposed bargaining unit.

Considerations

8. The Court is required by the Trade Union and Labour Relations (Northern Ireland) Order 1995 to decide whether the Union's application to the Court is valid within the terms of Schedule 1A, paragraphs 5 – 9, is made in accordance with paragraphs 11 or 12 and is admissible within the terms of paragraph 33 to 42 of Schedule 1A to the Order, and therefore should be accepted.
9. The Panel considered all the documentation relating to the tests and was satisfied that the Union's application meets all the statutory criteria.

Decision

10. For the reasons given above, the Industrial Court is satisfied that:
 - a) members of the Union constitute at least 10% of the workers constituting the proposed bargaining unit;
 - b) a majority of workers constituting the proposed bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit; and
 - c) having considered the submissions made by the Parties, the application meets the remaining statutory admissibility and validity criteria.
11. The Industrial Court's decision is therefore that the application is accepted

Barry Fitzpatrick

Mr Barry Fitzpatrick
Mr George McGrath
Mr Bob Gourley

Decision Date: 14th April 2011
Date Issued to Parties: 14th April 2011