

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

Amalgamated Engineering and Electrical Union

and

Kwik-Fit Ireland

Introduction

1. The Amalgamated Engineering and Electrical Union (the Union) submitted an application to the Industrial Court (the Court) dated 2nd July 2001, that it should be recognised for collective bargaining by Kwik-Fit Ireland (the Company). The application was accepted on 20 July 2001.
2. Following a hearing held on 7th September 2001, the Court determined that the appropriate bargaining unit was: all staff excluding Area Managers and Depot Managers at Ballymena, Belfast 4 Units, Bangor, Coleraine, Enniskillen, Glengormley, Lisburn, Newry, Newtownards and Portadown.
3. Paragraph 22(2) of the Schedule requires the Court to issue a declaration that the 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 applicant 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 applicant union, the Court must give notice to the Parties that it intends to arrange for a secret ballot to be held.
4. The Union submitted that a majority of the workers within the Bargaining Unit were members of the union and none of the qualifying conditions were fulfilled. The Company submitted that it had concerns around both the level of union membership and the circumstances under which members became members. It further submitted that a ballot should be held. A hearing was arranged for 5th November 2001 to determine this issue.

5. The Court requested the Case Manager to carry out a membership check including evidence relating to the circumstances in which union members became members, the length of time for which union members had been members and the Union rules relating to payment of membership subscriptions.
6. Both Parties were advised that as a matter of policy, the Case Manager would not inform the Company as to the names of union members but would provide a factual report to both parties detailing the findings of the membership check.
7. The Case Manager received a list of staff employed in Northern Ireland by Kwik-Fit Ireland from the Company, containing national insurance numbers and dates of birth (to be used as unique identifiers). The Case Manager also received lists of union members verifying that they were currently paying subscriptions, along with copies of their direct debit forms, dates of birth and national insurance numbers from the Union. Both sets of information were compared by the Case Manager and cross-checked by another Case Manager working to the Court. The Union also submitted that part of its Union rule- book explaining membership procedures and a petition from the workers in the Bargaining Unit indicating their wish for Kwik-Fit Ireland to enter into negotiations for Trade Union recognition with AEEU. Names on this petition were also compared with the Company list.
8. The membership check was completed on 12th October 2001 and the result, indicating that a majority of workers in the Bargaining Unit were union members, was notified to the Parties.
9. The Court, having regard to the Company's initial submission on the three qualifying conditions decided to proceed with the hearing as scheduled. Parties were invited to make further submissions on the three qualifying conditions as set out in paragraph 22(4).

Summary of Company's Case

10. The Company advised the Court that unless it had access to the names of union members, the application forms, the membership records and the petition apparently supporting union recognition, it would not be in a position to fully make its case. The Company referred to Article 6 of the European Convention on Human Rights and quoted from Central Arbitration Committee (CAC) procedures to support its contention that the information it sought was key to the Court's decision on recognition and as such should be revealed to the Company. The Company provided the Court with extracts from Human Rights cases, which it considered to be relevant to its submission. As a result of questioning from the Court, the Company advised the Court that it would not have asked for further information from the Union to verify union membership. Rather it wanted to see the information, which had already been given to the Case Manager to carry out the membership check on behalf of the Court. Furthermore, when asked by the Court if it had approached workers in the Bargaining Unit to try to gauge their

opinion on the issue of recognition, the Company replied that it did not think it would have been appropriate to do so.

Summary of the Union's Case

11. The Union advised the Court that it had provided sufficient evidence through the Case Manager to support its contention that it had a majority of members in the Bargaining Unit and had also provided additional evidence of support for recognition from the majority of workers in the Bargaining Unit via the petition. It further contended that, although the Company was still querying union membership after receiving the report of the membership check carried out by the Case Manager on behalf of the Court, it had agreed to co-operate with this check. The Union contended that the Company was aware that it could ask for and pay for such a check to be carried out by another independent party such as the Labour Relations Agency (LRA). The Union also advised the Court that the LRA has offered such a check at an earlier mediation meeting, which the Company had declined. As a result of questioning from the Court the Union re-iterated its contention that all AEEU members employed by Kwik-Fit Ireland are fully paid up members, that no special incentives had been given to any worker to encourage them to join the union, other than normal union benefits and that the increase in membership among Kwik-fit employees was in its opinion consistent with what would be expected during a recognition campaign. In respect of the Company's reference to Article 6 (The Right To A Fair and Public Trial within a Reasonable Time) of the European Convention on Human Rights, as incorporated into the Human Rights Act 1998, the Union drew the Court's attention to Articles 8 (The Right To Respect For Private and Family Life, Home and Correspondence) and 11 (the Right to Freedom of Assembly and Association) of the Convention to argue against the Company's wish to see the membership lists.

CONSIDERATIONS

12. The Order requires the Court to consider whether it is satisfied that a majority of the workers constituting the bargaining unit are members of the union. If the Court 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 Court considers any of these are fulfilled it must give notice to the Parties that it intends to arrange for the holding of a secret ballot. In making these decisions the Court has fully considered the parties' views as expressed in the submissions, the evidence presented at the hearing, and has drawn on the Court's own industrial relations experience.
13. The membership check undertaken by the Case Manager indicated that the level of union membership was over 50% of the Bargaining Unit (60.32%), and the Company has not produced any substantive evidence to dispute this figure. Therefore the Court is satisfied that the majority of the workers in the Bargaining Unit are union members.

14. The Panel has given thorough consideration to each of the qualifying conditions in paragraph 22(4).
15. **Condition 22(4) (c).** The Court in considering the Company's request to see the membership information, while aware of Article 6 of the European Convention on Human Rights, as incorporated by the Human Rights Act 1998, considers that the privacy rights under Article 8 and the freedom of association rights under Article 11 of the same Convention, are also of relevance to the interpretation of the Schedule. The Court noted that such rights are not absolute. The Court, in its endeavour to strike a balance between competing legislation has set a clear policy on confidentiality of membership lists which is not only contained in the Court's "Guidance for the Parties" but was emphasised in the letter to Parties requesting information for the membership check. Consequently, the Court is satisfied that it should maintain its policy that membership lists given in confidence to the Case Manager (working on behalf of the Court) cannot be subsequently passed to the Company. In reaching this decision, the Court has relied upon the industrial relations experience of its lay members to come to the conclusion that the process of statutory recognition, as set out in the Schedule, would be undermined if membership lists were to be revealed to an employer. On this basis, the Court, mindful of the requirements of Article 6 but also of Articles 8 and 11 of the Convention, has initiated as fair and transparent a process as possible, without jeopardising the process itself. The Court has also taken on board the Company's concerns about the level of union membership and the circumstances around recruitment and to this end had specifically asked the Case Manager to gather such detail from the Union while undertaking the membership check as to address these concerns. The Case Manager undertook this to the satisfaction of the Court. The Court therefore, not having received any substantive evidence from the Company to cast doubt on the level of support for Union recognition for collective bargaining on behalf of members within the Bargaining Unit, does not consider this condition to be satisfied.
16. **Condition 22. (4) (b).** The Court does not consider that there is any evidence relating to this condition.
17. **Condition 22. (4) (a).** The Court considered the Company's submission that due to its concerns over union membership and the lack of any history of union recognition within the company, a ballot should be held in the interests of good industrial relations. The Court notes that the Company did not take earlier potential opportunities to gauge the extent of support for the union either through speaking to its workers personally or by using independent means, for example through the LRA. The Court is satisfied that the workers in the Bargaining Unit have expressed their views through joining and remaining in the Union, or for a minority, in choosing not to join the Union. Furthermore the Court accepts the petition signed by a majority of workers in the Bargaining Unit, supporting Company /Union negotiations for Trade Union recognition on their behalf as a clear indicator of the worker's wishes. In the

absence of any contrary evidence from the Company the Court is satisfied that the interests of good industrial relations do not require a ballot to be held.

18. Consequently, the Court **declares** that the Amalgamated Engineering and Electrical Union is recognised as entitled to conduct collective bargaining on behalf of the Workers described as: all staff excluding Area Managers and Depot Managers at Ballymena, Belfast 4 Units, Bangor, Coleraine, Enniskillen, Glengormley, Lisburn, Newry, Newtownards and Portadown, employed by Kwik-Fit Ireland.

Handwritten signatures of Richard Steele and Mervyn Simpson.

Court Chair	Mr Richard Steele
Members	Mr Mervyn Simpson
	Mr Bob Gourley
Date of Decision:	15 th November 2001

Appendix (list of those attending)

Representing the Union

Mr Peter Williamson (Regional Secretary, Ireland)

Mr Terry Collins (Regional Organiser, Northern Ireland)

Representing the Employer

Mr Ivan Holloway (Managing Director, Kwik-Fit Ireland)

Mr Stephen Hills (Halliwell Landau, solicitors)