

Case Ref No: IC-41/2009

## 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:

USDAW  
&  
North West Bookmakers Ltd  
  
(trading as 'Ladbroke')

#### Introduction

The Union of Shop, Distributive and Allied Workers ("USDAW") (the Union) submitted an application to the Industrial Court (the Court) dated 7th May 2009 for recognition at North West Bookmakers Ltd, which trades as Ladbroke. The bargaining unit description is '*All staff employed by Ladbroke's in their betting shops in Northern Ireland, up to and including the job role/grade of shop manager*'.

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, Deputy Chairman, and, as Members, Mr George McGrath and Mr Peter Williamson. The Case Manager appointed to support the Court was Ms Maria Cummins.

The application was duly copied to the Employer on 8th May 2009, which returned its questionnaire on 15th May 2009.

#### Issues

1. The Panel 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.

In its application the Union indicated that the number of Union members in its proposed bargaining unit was 179. In addition the Union also maintained that it has received pledge cards from 126 non-union members supporting USDAW's claim for recognition from the Employer.

L'Estrange & Brett Solicitors had come on record for the Employer. The Employer, in its response form, confirmed having received a written request from USDAW for recognition under Schedule 1A on 1st April 2009 and also confirmed that the request was rejected by the Employer in correspondence dated 17th April 2009.

2. As of 11th May 2009, North West Bookmakers (trading as Ladbroke) employed 450 employees in Northern Ireland, and stated that there were 413 employees in the bargaining unit as defined by the union.

The Employer did not agree with the proposed bargaining unit or the number of workers in the bargaining unit as defined in the Union's application and stated its objections as follows:

"As part of the Ladbrokes Northern Ireland operations, the company employs 28 employees of a similar grade and level to the proposed bargaining unit at 35-47 Donegall Place, Belfast. These employees perform roles in Tele-betting, Trading, Administration, Machine Co-ordination and Operational Support. It would not be compatible with effective management of Ladbrokes Northern Ireland operations to exclude these employees from any proposed bargaining unit".

### **Membership and petition check**

3. 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 Chairman of the Panel instructed the Case Manager to conduct a confidential membership/'majority likely to' check. Accordingly, the Case Manager wrote to the Parties on 20<sup>th</sup> May 2009. The Employer agreed to provide the Court with:

- A list of the names of the workers in the proposed bargaining unit;
- Job title for each worker in the proposed bargaining unit; and
- National Insurance number for each worker in the proposed bargaining unit.

The Union agreed to provide the Court with:

- The names of all Union members currently within its proposed bargaining unit;
- Details of how Union subscriptions are paid by members, amount paid, and date of last payment; and
- A copy of a petition or pledge cards signed by workers in the bargaining unit in favour of recognition.

The Case Manager confirmed that neither the lists nor the pledge cards would be copied to the other party or the Panel.

A panel meeting was arranged for 8<sup>th</sup> June 2009.

9. The Employer provided a list which contained the names, addresses and job titles of 453 workers it stated were within the Union's proposed bargaining unit. Due to a misunderstanding, the Case Manager's Report, dated 4<sup>th</sup> June 2009, referred to a figure of 413 workers. This was corrected at the Panel meeting.

10. The number of Union members provided by the Union was 179. The number of Union members not appearing on the Employer's list was 8. The number common to both lists was therefore 171, amounting to 37.74% of the proposed bargaining unit.

11. The Union provided photocopies of 134 pledge cards.

Each pledge card contained the following two statements with a tick box beside each:

a) *"I support the USDAW campaign for recognition in Ladbrokes Northern Ireland";*

b) *"I would like to join USDAW".*

100 employees completed and signed pledge cards indicating support for statement (a).

A further 34 employees indicated support for both statements (a) and (b). The Union has stated that these individuals are currently having their applications for membership processed.

It should be noted that in its Guidance to the Parties (May 2008), the Court has stated (Annex 2, paragraph 2.4):

*"The check can take a number of forms. Where it is intended to rely on a petition, pledge cards or some other form of signed statements as evidence of support, it will be helpful if the parties make clear the period within which the signatures were given, for example, by the inclusion of a column indicating the date of signature. If this information does not appear on the petition/pledge statement,*

*then the party submitting the evidence may be asked to provide written verification of the date or dates.*

*Since signatures on petitions cannot be challenged by any party, it may be necessary for the Court to verify signatures if it is of the opinion that there is any doubt over the legitimacy of signatures on the petition. It would be advisable, for example, for a worker signing a petition to set out his or her name in block capitals alongside the signature.”*

Each pledge card contained Name, Address, Postcode and Name of Betting Shop. None of the cards were dated. Some of the pledge cards were completed in block capitals and others were not; however the Union provided a printed list of those who had signed the pledge cards.

The check of the Union’s petition evidence established that although there were 134 signed pledge cards, 7 did not appear on the Employer’s list. A further two signatures were indecipherable. From the remaining 124 names appearing it was established that 26.7% of workers in the proposed bargaining unit had signed the Union’s pledge cards in favour of recognition for the purposes of collective bargaining.

### **Responses to the Case Manager’s Report**

15. In its letter of 8 June 2009, the Employer questioned the figure of 413 workers in the proposed bargaining unit. The Employer also questioned the lack of evidence of payment of union subscriptions and the undated nature of the pledge cards.
16. In its email of 8 June, the Union confirmed that all union subscriptions were made by direct debit and that the Union did not operate a system of free, discounted or deferred subscriptions. In a phone call to the Court made shortly before the Panel meeting, the Union stated that the pledge cards were signed on dates on or after 14<sup>th</sup> April 2009.

### **Considerations**

19. In deciding whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 4 of this decision are satisfied.
20. The Panel is satisfied that the Union made a valid request to the Employer within the terms of paragraphs 5 to 9 of the Schedule. It is satisfied that the description of the proposed bargaining unit in its letter of request coincided with the description in its application. It is satisfied that its application was made in accordance with paragraph 11. Furthermore, on the evidence before it, the Panel is satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 35 and paragraphs 37 to 42 of the Schedule. The remaining questions before the Panel are whether 10% of the workers in the Union’s proposed bargaining unit are members of the Union, and whether the majority of the workers in the Union’s proposed bargaining unit would be likely to favour recognition of the Union for collective bargaining.

Paragraph 36(1)(a)

21. On the basis of revised figures accepted by the Panel, the Case Manager's check of the Union's membership indicated that 37.74% of the workers in the proposed bargaining unit were members of the Union. The Panel notes with concern that the Union had not provided the full information required of it but concludes that it is most unlikely that any further investigation would call into question the finding of at least 10% Union membership in the proposed bargaining unit. The Panel, in accordance with paragraph 36(1)(a), is satisfied that at least 10% of the workers in the proposed bargaining unit are Union members.

Paragraph 36(1)(b)

22. Again on the basis of revised figures, the Case Manager's check of the Union's pledge cards indicated a support level of 26.71% in the proposed bargaining unit. Again the Panel is concerned that the pledge cards did not satisfy the terms of the Court's Guidance and that the Union only provided further information to the Court shortly before the Panel meeting. The combined figures of Union membership and further support for recognition of the Union is 64.45%. The Panel takes into account lack of full details of Union membership and also the undated nature of the pledge cards. Nonetheless, it considers that further investigation would not call into question the finding of majority support. The Panel, in accordance with paragraph 36(1)(b), is satisfied that the majority of the workers constituting the relevant bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit.

**Decision**

23. For the reasons given above, the Court is satisfied that the application is valid within the terms of paragraphs 5 to 9, was made in accordance with paragraph 11 and is admissible within the terms of paragraphs 33 to 42 of Schedule 1A.

The Industrial Court's decision is therefore that the application is accepted.

*Barry Fitzpatrick*

Mr Barry Fitzpatrick  
Mr George McGrath  
Mr Peter Williamson

Decision Date: 8<sup>th</sup> June 2009  
Date Issued to Parties: 17<sup>th</sup> June 2009

