Industrial Court Annual Report

2003-2004

This report on the activities of the Industrial Court for the period 1 April 2003 to 31 March 2004 was sent by the Chairman of the Industrial Court to the Department for Employment and Learning on 22 June 2004.

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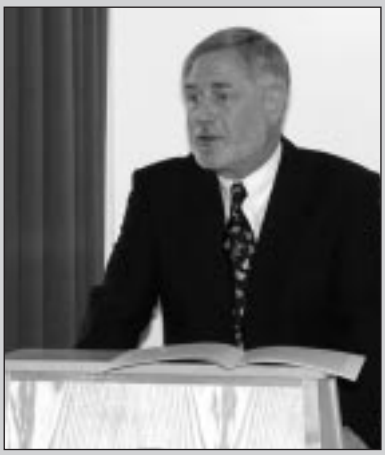
APPENDICES



Richard Steele
Chairman

CHAIRMAN'S REVIEW OF THE YEAR

In previous annual reports, I commented upon the role of the Court with particular reference to the legislative remit involving trade union recognition and de-recognition.

The Court has continued to maintain strong links with the Central Arbitration Committee, the equivalent organisation in Great Britain, and with the Labour Relations Agency in Northern Ireland. I have continued to promote the role of the Industrial Court and to this end I have met with various employer bodies and trade union organisations. I have also developed my own knowledge in areas which impact on the Court, for example Freedom of Information.

In this, our third year since the re-constitution of the Court, we have dealt with four applications for statutory recognition. Despite the relatively small number of applications, each case has involved complex issues. I will comment briefly on each of these applications, however full decisions are posted on our website, the address of which is on page 15 of this Report.

ATGWU and POLYPIPE (ULSTER) LIMITED

An application from the ATGWU was accepted in respect of Polypipe (Ulster) Limited and a subsequent decision was made in respect of the appropriate bargaining unit. As the Union did not claim to have a majority of Union members within the bargaining unit, both Parties were informed that a secret ballot would be conducted. A statutory 10 day notification period then followed which affords the last opportunity during which a Semi-Voluntary Agreement can be arrived at between the Parties; this period cannot be extended. This period lapsed and neither Party notified the Court that an Agreement had been reached. The legislation states that a ballot must then be arranged. However the Parties met informally with the Panel to discuss access arrangements for the ballot and at this meeting they indicated that a Semi-Voluntary Agreement might be viable. The Panel used its duty under Paragraph 171 of the Schedule which is to *'have regard to the object of encouraging and promoting fair and efficient practices and arrangements in the workplace'* and allowed the Parties to arrive at a Semi-Voluntary Agreement outside the statutory timescales.

UNISON and MAYBIN PROPERTY SUPPORT SERVICES (NI) LTD

Unison submitted an application in respect of a bargaining unit consisting of 'Court Service officials employed in the contract let by the Northern Ireland Court Service and secured by Maybin'. In their application Unison referred to an existing agreement with GMB and the Employer also referred to that agreement in their response to the application. The Panel instructed the Case Manager to carry out a verification exercise of membership within the proposed bargaining unit which resulted in the Panel deciding that in accordance with Paragraph 35(1) of the Schedule there was already in force an agreement which covered workers within Unison's proposed bargaining unit and Unison's application was not accepted. This was the first application the Court has dealt with in which the

situation arose that Union membership information was obtained via the employer from a Union not party to the proceedings.

AMICUS and NEWFIELDS INDUSTRIAL SUPPORT SERVICES

The Panel instructed the Case Manager to carry out a membership check prior to deciding on the acceptability of this application. The results of this check were circulated to the Parties and the Employer subsequently made assertions that a majority of union members would not support recognition. The Panel were presented with conflicting information in respect of Paragraph 36(1)(b) of the Schedule and decided that the Case Manager should carry out further investigations by interviewing members of the bargaining unit to ascertain if they would be in support of the Union's claim for recognition. The results of these interviews showed that 3 workers out of a bargaining unit of 19 supported recognition. After affording the Parties the opportunity to comment on the outcome of the interviews the Panel made a decision that the application could not be accepted.

ATGWU and J E McCABE LIMITED

The decision accepting this application was subject to Judicial Review proceedings, which are commented upon by Prof Fitzpatrick later in this Report. The Judicial Review proved to be a very valuable learning experience for all those involved with the Court and our Guidance Notes are currently being revised as a result.

In the course of the year, Elizabeth Rutherford resigned as a Panel Member of the Court and I would like to take this opportunity to thank her for the contribution that she made to the Court and wish her all the best for her future. I would also like to thank the remaining Panel Members for their enthusiasm, knowledge and commitment which is invaluable to the Court.

Developments throughout the year have necessitated revision to the Guidance Notes for Parties and next year will see major developments in the jurisdiction of the Court as legislative changes to the statutory trade union recognition provisions are enacted and provisions implementing the Information and Consultation Directive are introduced. As ever, we, the Industrial Court look forward to these challenges.

Professor Barry Fitzpatrick
Deputy Chairman

DEPUTY CHAIRMAN'S COMMENTS ON JUDICIAL REVIEW PROCEEDINGS

I was appointed Chairman of an Industrial Court Panel to adjudicate upon the application of the Amalgamated Transport and General Workers' Union (ATGWU) for recognition in James E McCabe Limited, of Craigavon. The Panel included Bob Gourley and Caroline Whiteside. On 14 August 2003, the Court accepted the Union's application, an acceptance decision which became the subject of an application for judicial review by the Company. The purpose of this comment is to give an explanation, from the Court's perspective, of the outcome of the judicial review proceedings and to highlight revisions of the Court's procedures which have resulted from the proceedings.

McCabes was a case which provides a relatively rare scenario for the Court, namely an application in which the union claimed a comparatively modest level of union membership in its proposed bargaining unit, 14 out of 38 workers. This percentage was obviously sufficient to satisfy one of the two major admissibility tests for the Court, namely that the union should have 10% membership in the proposed bargaining unit. However, the Union also had to demonstrate to the Court that the second admissibility test, namely the likelihood of a majority of the workers in the proposed unit favouring recognition of the Union for collective bargaining, was also satisfied. To do so, the Union stated in its application form that 'employees' had signed a petition supporting recognition but did not indicate how many employees had done so. It did supply, in support of its application, a list of 14 membership numbers and a petition from which the names of those signing had been redacted.

A significant aspect of most stages of the statutory recognition process is a strict statutory timescale. At the application stage, this is 10 working days from receipt of the application to a decision on admissibility. This period has a particular sensitivity as it is possible during this time for the Company to enter into a collective agreement with another trade union, thereby rendering the Union's application inadmissible. The Panel convened on 14 August, within the statutory timetable, to consider the application. It was confronted with two difficulties. First, the Company's response to the application form arrived on that date. Secondly, the Union, at the Case Manager's request, provided also on that day a petition which appeared to be signed by 36 out of the 38 workers in the proposed bargaining unit.

The Panel concluded, without seeking a membership check by the Case Manager, that the Union had satisfied the '10%' admissibility test, given that it had claimed membership of over a third of the relevant workers. Given also that the Case Manager informed the Court that nearly all of the workers in the proposed bargaining unit appeared to have signed the petition, the Panel decided that it had enough evidence upon which to conclude that the 'majority likely to' test was also satisfied.

Although the Company made a series of challenges to the Court's admissibility decision, Mr Justice Weatherup, in his decision of 19 December 2003, considered them under three headings, illegality, procedural unfairness and irrationality. It is instructive that Weatherup J commenced his analysis of the case with reference to a series of judicial reviews of the CAC in Great Britain, quoting in particular from Moses J in *R (On the application of the BBC) v CAC* (2003), to the effect that the 'CAC was intended by Parliament to be a decision making body in a specialist area that is not suitable for judicial intervention.' This approach weighed heavily on Mr Justice Weatherup's judgment. Nonetheless, he did come to the conclusion that certain aspects of the Court's approach warranted closer scrutiny.

On the question of illegality, the issue focused on the obligation on an applicant Union in Paragraph 34(b) of Schedule 1A to copy to the Company what is described as 'supporting documentation'. It has been the policy of the Court, since its re-constitution, to protect to the best of its ability the confidentiality of union membership and those who sign petitions, whether in support of the Union or the Company, during the statutory process. As such, the Court has taken the view, consistent with CAC policy, that 'supporting' documentation only concerned documentation 'accompanying' the application form. The Court's Guidance therefore advised Unions not to send membership lists or signed petitions with their application forms, unless they wished to copy them to the Company.

Mr Justice Weatherup did not accept the Court's interpretation. He concluded that 'supporting' must mean any documentation supplied by the Union whether or not with its application. However, he also made a significant distinction between documentation 'provided' by a Union of its own accord and documentation 'furnished' or supplied by the Union in response to a request by the Case Manager in performance of her investigative function on behalf of the Court. On this basis, his Lordship concluded that the Union had not been obliged under Paragraph 34(b) to copy the signed petition to the Company, as the petition had been requested by the Case Manager. The judgment also accepted the crucial distinction made by the Court between the investigative function of the Case Manager, who will see confidential information, and the adjudicatory function of the Court, which will be made aware of numerical outcomes etc from confidential information but will not see the confidential information itself.

On procedural unfairness, the High Court concluded that there was no unfairness in the process whereby information was given to the Case Manager and relayed, without breach of confidence, to the Court. Because of the difficulties outlined, the Case Manager's report was only completed on the day of the Panel meeting and hence was not copied to both Parties. The High Court was of the view that, had the Company seen a copy of the Case Manager's report, the representations which it had already made would not have been any different and therefore could not have affected the Panel's decision.

Finally, on irrationality, Mr Justice Weatherup had to conclude on whether the Court had sufficient evidence to make its decision both on the '10%' test and the 'majority likely to' test. The conclusion reached was that the Court did have sufficient evidence of union membership. The Company had not made submissions to the effect that the membership numbers should be verified and the Court

was entitled to proceed on the available evidence. The High Court was less sanguine about the evidential value of the petition. The High Court concluded that there was a significant number of unsatisfactory aspects to the petition, that it was signed by union members as well as non-union members despite wording to the contrary, that it only contained 11 signatures at the time of the application but 36 by the time it was submitted and that the Company was not informed by the Court of the receipt of the petition. He concluded that the Court should have initiated further investigation of the petition but nonetheless took the view that, given the probability of a ballot at a later stage in the process and given the specialist nature of the Court's functions, he would not interfere with the Court's decision.

There are a number of lessons to be learnt from this experience on the part of the Court, which will be incorporated into the Court's revised Guidance. First, the approach of the Court whereby investigative and verification functions are carried out by the Case Manager have been fully vindicated by this judgment. Secondly, the Court will make clear in future the distinction between the providing of information of the Union's own accord as part of the application process and the furnishing or supplying of information by either party at the request of the Court. Thirdly, the Court will copy the Case Manager's report to both parties at each stage of the decision making process. Finally, the Court may be more willing to initiate verification of petitions and other communications from workers in the bargaining unit.

Hence, although a somewhat gruelling experience, the Court has emerged from this judicial review with its core procedures intact but with valuable refinements to those procedures in place.

Michael McCullough
Secretary

SECRETARY'S REMARKS

On taking up post as Secretary to the Industrial Court I had much to learn about the role and responsibilities of the Court. It has been a steep learning curve and I would like to express my appreciation to the Secretariat staff for their patience and assistance in my development.

Throughout the last year the Industrial Court has continued to develop and forge stronger links with its GB equivalent, the Central Arbitration Committee (CAC) and the Court and Secretariat have used the CAC's experience as a benchmark. One example of the benefit of the development of these links has been clearly demonstrated in the planning and delivery of Panel training, where real CAC cases were used as a step by step training tool by the Secretariat, to develop Panel Member knowledge in dealing with potentially complex cases.

While the number of cases handled this year was significantly lower than in previous years, each application to the Court requires a high level of case management by staff throughout each stage of the process. The Judicial Review of application IC-22/2003 was uncharted water for the Court and Secretariat and despite the positive outcome, there were learning points for the Court. Guidance Notes for the Parties are being significantly revised to incorporate all the points raised by the Judicial Review.

The introduction of Parts 3, 4 and 5 of Schedule 1A to the Trade Union and Labour Relations Order, on de-recognition, will be a major challenge during the forthcoming year. Members of the Court and Secretariat have arranged to attend a CAC training activity on de-recognition and the information gathered will be cascaded to all Panel Members at a training event to be arranged later in the year.

Despite the short time I have been in post I have enjoyed the challenge and diversity of the role of Secretary to the Industrial Court and look forward to the future development of all aspects of the Court and to continually improve the service provided.

ROLE, OBJECTIVES, TARGETS AND RESULTS

OUR MAIN ROLE IS DEALING WITH:-

i) statutory applications for recognition and de-recognition of trade unions;

ii) statutory applications for disclosure of information for collective bargaining;

iii) disputes over the constitution of European Works Councils; and

iv) voluntary arbitration.

OUR OBJECTIVES ARE:-

1. to manage the statutory adjudication process dealing with trade union applications to the Industrial Court in an efficient, professional, fair and cost effective manner;

2. to achieve outcomes which are practicable, fair, impartial, and where possible, voluntary;

3. to give a courteous and helpful service to all who approach us. We aim to publish clear, accessible and up to date guidance and other information on our procedures and requirements, and will answer enquiries concerning our work, although we do not offer legal advice;

4. to provide an efficient service, and to supply assistance and decisions as rapidly as is consistent with good standards of accuracy and thoroughness, taking account of the wishes of the parties and the statutory timetables; and

5. to develop our staff so that they are fully equipped to do their work and contribute to the aims of the Industrial Court.

OUR PERFORMANCE MEASURES AND TARGETS BASED ON THESE OBJECTIVES ARE:-

- proportion of applications for which notice of receipt is given and responses sought within one working day (target: 95%);

  100% of applications received a notice of receipt and response sought from employer within one working day.

- proportion of written enquiries and complaints to receive a substantive reply within three working days (target: 90%) and the remainder to be acknowledged within three working days and a substantive reply within ten;

  100% received a substantive reply within three working days.

- to initiate the drafting of an annual report on the work of the Industrial Court in its third year by 31 March 2004. (Publication by June 2004).

  First draft of Annual Report prepared 30 March 2004.

MEMBERSHIP OF THE INDUSTRIAL COURT 2003-2004

Chairman	Mr Richard Steele
Deputy Chairman	Professor Barry Fitzpatrick
Members with Experience as Representatives of Employers	Mr George McGrath Retired Deputy Chief Executive BT (NI)
	Mr W F Irvine McKay Self-Employed Marketing Consultant
	Mr Maurice Moroney Employment Relations Manager Ulster Bank Ltd
	Mrs Elizabeth Rutherford* Ex Personnel Manager Harland & Wolff
	Mr Mervyn Simpson Ex Business Development Manager Du Pont
	Ms Caroline Whiteside Personnel Manager Ulster Carpet Mills Ltd
Members with Experience as Representatives of Workers	Mr Joe Bowers Retired Regional Officer MSF
	Mr Bob Gourley Regional Officer USDAW
	Ms Avril Hall-Callaghan General Secretary UTU
	Mr Jim McCusker Retired General Secretary NIPSA
	Mr Peter Williamson Irish Divisional Organiser AMICUS
	Ms Fiona Marshall Regional Industrial Organiser for Women And Equality ATGWU

* Resigned 7 November 2003

THE INDUSTRIAL COURT'S CASELOAD IN 2003-2004

The Industrial Court has dealt with the following applications during the period 1 April 2003 to 31 March 2004.

ATGWU and Polypipe (Ulster) Limited

UNISON and Maybin Property Support Services (NI) Ltd

ATGWU and J E McCabe Ltd

AMICUS and Newfields Industrial Support Services

Specific decisions relating to each application can be found on the Industrial Court's website: www.industrialcourt.gov.uk

RESOURCES AND FINANCIAL INFORMATION

INDUSTRIAL COURT

Number of Members		13*
Of which:	Chairman and Deputy Chairman	2
	Panel Members	11*
Fees and expenses		£36,162.91

STAFFING

Number of staff (Part-Time)		4
Of which:	Management	1
	Operations	2**
	Administration	2

OTHER EXPENDITURE

Accommodation (Hearings/Training Events)	£3,393.55
Staff Costs (including accommodation, etc)	£129,509.00
Other Costs	£20,727.31

* A Panel Member with experience as a representative of Employers resigned on 7 November 2003.

** One Post Vacant from February 2004.

STAFF AND CONTACT DETAILS

STAFF

Secretary	Mr Michael McCullough
Acting Senior Case Manager	Ms Anne-Marie O'Kane
Case Manager	Vacant
Head of Administration	Mr Harry Kirk
Administrative Support	Miss Aine Magee

CONTACT DETAILS

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Fax:	028 9025 7555
E Mail:	enquiries@industrialcourt.gov.uk
Website:	www.industrialcourt.gov.uk

USER SATISFACTION

If you are asked for your views on any aspect of our service, we would appreciate your co-operation. However, if you have any comments, whether of satisfaction, complaint or suggestion, please do not hesitate to contact us. If you are dissatisfied with any aspect of our service, please let us know so that we can rectify the matter/s. If you cannot resolve your problem/s with the person who dealt with you originally, please ask to speak to their manager or, if necessary, the Secretary of the Industrial Court who will investigate your complaint.

If you wish to complain in writing, please write to:

Michael McCullough
Secretary
Industrial Court
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

In the event of any complaint, we hope that you will let us try to put things right but if necessary you can write to your MLA, who can tell you how to have your complaint referred to the Parliamentary Commissioner for Administration (the Ombudsman).

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39-49 Adelaide Street, Belfast, BT2 8FD.
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Website: www.industrialcourt.gov.uk