

Case Ref No: IC-70/2016

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:

SIPTU

And

Drinks Inc Ltd

DECISION

Background

The Industrial Court (the Court) received an application on 7th January 2016, for recognition at Drinks Inc Ltd , 4 Falcon Road, Belfast , BT12 6SJ. This address is the location of the bargaining unit. The bargaining unit was described as “consisting of Driver’s and Warehouse operatives working for Drinks Inc Ltd, 4 Falcon Road , Belfast , BT12 6SJ. For the avoidance of doubt this includes staff regarded as helpers and working in the yard, it excludes supervisor grades in the warehouse and administration grade staff.”

The application was copied to the Employer on 6th January 2016. The Employer Response form was issued to the Employer on the 11th January 2016 and a reminder issued on 20th January 2016 with a deadline of 25th January 2016.

Application Form

In its application, the Union stated that the total number of workers employed by the employer was 61, the number of workers in the bargaining unit was 38 and the number of union members in the bargaining unit was 23.

The Union also produced a letter to the Court which was from the Union to the Employer, dated 13th November 2015, which made a formal request for recognition.

This letter described the proposed bargaining unit as:-

“consisting of Driver’s and Warehouse operatives working for Drinks Inc Ltd , 4 Falcon Road , Belfast , BT12 6SJ. For the avoidance of doubt this includes staff regarded as helpers and working in the yard, it excludes supervisor grades in the warehouse and administration grade staff.”

Employer Response to Union Application

The Employer response was received on 25th January 2016.

In its response the Employer stated that the Union's written request for recognition under Schedule 1Aa was received on 16th November 2015.

The Employer stated that the Union Application Form to the Industrial Court and supporting documentation was received on 9th January 2016 and that the bargaining unit had not been agreed prior to receiving the Application Form.

The Employer contacted the Labour Relations Agency before Christmas 2015 and explained to them that, due to the period prior to Christmas being the Company's busiest time of year, a meeting could not be facilitated until the New Year. Nothing further was heard from the LRA in respect of a meeting in January 2016. It is understood that SIPTU declined to meet at the LRA on a proposed date of 11th January 2016.

The Employer stated that they had a total of 84 employees; however they declined to state how many workers were in the bargaining unit.

Panel Meetings

The Panel held a preliminary meeting to review the papers on 26th January 2016 and a second meeting, to decide on acceptance of the application, on held 4th February 2016.

Membership Check Requested

In order to assist in the determination of the admissibility tests in Schedule 1A, the Chairman, with the agreement of the Panel, instructed the Case Manager to conduct a membership check and a 'majority likely to' check. The following information was requested from the Parties.

From the Union:

- the names and addresses of all Union members currently within the proposed bargaining unit on the date of Tuesday 26th January 2016;
- details of how Union subscriptions are paid by members, amount paid, and date of last payment; and
- its understanding of the job titles of each of these Union members.

From the Employer:

- a list of the names and addresses of the workers in the proposed bargaining unit on the date of Tuesday 26th January 2016; and
- job titles for each of these workers.

The parties were asked to supply the information to the Case Manager no later than noon on Monday 1st February 2016.

Information provided by the parties.

On Friday 29th January 2016 the Union provided:

- A membership list containing 21 names with membership numbers and details of dues paid and date last paid.
- A list of names and addresses for 21 union members within the proposed bargaining unit.
- A list of names and job titles of members within the proposed bargaining unit.

On Monday 1st February 2016 the Employer provided a response to the Court with the following:

- A list of 30 workers including names, addresses and job titles.

Recognition Petition.

A signed petition from workers in the proposed bargaining unit was received on 8th January 2016 from the Union. This same petition was again sent to the Court along with other documents from the Union on Friday 29th January 2016.

The petition was dated ‘November 2015’. However, none of the signatures was dated. There were 28 signatures on the petition and 4 were signed in Block Capitals. Sixteen of the signatures on the petition match names of workers on the list that the Employer has provided to the Court on 1st February 2016.

Admissibility and validity tests

The Panel was satisfied that the admissibility and validity tests, other than the membership and ‘majority likely to’ tests were satisfied.

In particular, the Panel considered whether paragraph 10 of the Schedule applied. Paragraph 10(2)-(7) provide:-

“(2) If before the end of the first period the employer informs the union (or unions) that the employer does not accept the request but is willing to negotiate, sub-paragraph (3) applies.

(3) The parties may conduct negotiations with a view to agreeing a bargaining unit and that the union is (or unions are) to be recognised as entitled to conduct collective bargaining on behalf of the unit.

(4) If such an agreement is made before the end of the second period no further steps are to be taken under this Part.

(5) The employer and the union (or unions) may request the Agency to assist in conducting the negotiations.”

(6) The first period is the period of 10 working days starting with the day after that on which the employer receives the request for recognition.

(7) The second period is—

(a) the period of 20 working days starting with the day after that on which the first period ends, or

(b) such longer period (so starting) as the parties may from time to time agree.”

It is clear from the papers that some attempt was made to arrange a meeting at the LRA, although it is unclear whether its purpose was to “conduct negotiations with a view to agreeing a bargaining unit”. In any event, a meeting was not arranged within the ‘second period’, which the Panel estimates came to an end on or around 30th December 2015.

The Union’s Application Form was received by the Court on 9th January 2016, after the end of the second period. A meeting at the LRA was proposed for 11th January but this was also outside the second period.

The Panel is therefore satisfied that the validity tests in paragraph 12 of the Schedule are satisfied.

Membership Check

A comparison of the names and addresses on the Union membership list with the list of workers in the proposed Bargaining Unit supplied by the Employer show the following:

Result of the check of the level of union membership

Number of workers on the list supplied by the Employer	30
Number of Union members on the list supplied by the Union	21
Number of Union members with dues paid	21
Number of Union members whose names match those provided by the Employer	14
Number of Union members whose names match but addresses do not	0
Number of Union members appearing on the Employer’s list with no match issues	14 (46.67%)
Number of non-Union members appearing on the petition	2
Number of workers who would be likely to favour recognition of the Union	16 (53.33%)

The Panel asked the Case Manager whether the job titles provided by the Employer and the Union coincided with each other and that was confirmed.

The Panel specifically asked the Case Manager to confirm that two non-Union members had signed the petition with recognisable signatures and this was also confirmed. On that basis, the Panel is satisfied that members of the Union constitute at least 10% of the workers constituting the proposed bargaining unit and, taking into account the check of the Union’s petition, that 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.

The Panel received further information about workforce changes within the proposed bargaining unit but is concerned with the evidence produced in relation to the date upon which the membership check was based.

Decision

For these reasons, 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. the application meets the remaining admissibility and validity criteria.

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

Barry Fitzpatrick

Mr Barry Fitzpatrick
Mr Neal Willis
Ms Barbara Martin

Decision Date: 4 February 2016
Date Issued to Parties: 16 February 2016