

**Case Ref No: IC-75/2018**

**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

Lynas Food Service

**Background**

1. The Industrial Court (the Court) received an application on 15<sup>th</sup> June 2018, for recognition at Lynas Food Service, Loughanhill Road Industrial Estate, Gateside Road, Coleraine. The proposed bargaining unit was described as ‘Drivers, Drivers Helpers, Shunters. Bargaining groups excluded – Casual Helpers’ working for Lynas Food Service at their Coleraine site, Loughanhill Industrial Estate, Gateside Road, Coleraine BT52 2NR. The application was copied to the Employer on 15<sup>th</sup> June 2018. The Employer Response Form was issued to the Employer on 18<sup>th</sup> June 2018 with a deadline of 21<sup>st</sup> June 2018.

**Application Form**

2. In its application, the Union stated that the total number of workers employed by the Employer was unknown, the number of workers in the bargaining unit was 88 and the number of Union Members in the bargaining unit was 45. The Union also produced a letter to the Court from the Union to the Employer, making a formal request for recognition. The Employer acknowledged receipt of this letter on 1<sup>st</sup> May 2018. This letter described the proposed bargaining unit as ‘Drivers, Drivers Helpers, Shunters’. The proposed bargaining groups excluded ‘Casual helpers’.

**Employer Response to Union Application**

3. The Employer Response was received on 21<sup>st</sup> June 2018. In its response the Employer stated that the Union’s written request for recognition under Schedule 1A was received on 1<sup>st</sup> May 2018. The Employer stated that the Union did not serve the Application Form on the Employer or any supporting documents and that the bargaining unit had not been agreed prior to receiving the Application Form. The Employer stated that it employs a total of 510

workers and that 90 workers were in the bargaining unit as defined in the Union's application.

### **Panel Meetings**

4. The Panel held a preliminary meeting to review the papers on 22<sup>nd</sup> June 2018 and agreed to meet again on 6<sup>th</sup> July 2018. At that meeting, the Panel confirmed with the Case Manager that a range of admissibility and validity tests, set out in paragraphs 5–9, 11 and 12 and 33–42 of the Schedule, were satisfied. The one exception, other than the membership/‘majority likely to’ checks, was evidence that the application form and supporting documents had been provided to the Employer, which was disputed by the Employer in its response. This evidence was requested by the Panel and was subsequently received by the Case Manager on 26<sup>th</sup> June 2018.

### **Membership Check Requested**

5. In order to assist in the completion of the determination of the remaining tests in the Schedule, the Chairman, with approval from the Panel, instructed the Case Manager to conduct a membership and ‘majority likely to’ check. The following information was requested from the parties:

The Union was asked to provide:

the names and addresses of all Union members currently within the proposed bargaining unit on Wednesday 27<sup>th</sup> June 2018;  
the Union's understanding of the job titles of each of these Union members;  
details of how Union subscriptions are paid by members, amount paid, and date of last payment.

The Union was also invited to produce further evidence of support for collective bargaining within the proposed bargaining unit as Q. 15 of the Application Form made reference to a petition.

The Employer was asked to provide:

a list of the names and addresses of the workers in the proposed bargaining unit on Wednesday 27<sup>th</sup> June 2018; and  
job titles for each of these workers.

6. The Parties were asked to supply the information to the Case Manager no later than noon on Tuesday 3<sup>rd</sup> July 2018.

### **Information provided by the Parties**

7. On Friday 29<sup>th</sup> June 2018, the Union provided:

A membership list containing 38 names, with membership numbers, union fees paid, date of last union fee payment, addresses and understood job titles for those within the proposed bargaining unit. It should be noted that this list contained other names of union members but

these are not relevant for the purposes of this application and the job descriptions on this list are clearly indicated and understood;

A petition containing 59 names with signatures and dates.

8. On Thursday 2<sup>nd</sup> July 2018, the Employer provided a response to the Court with the following:

A list of 89 workers including names, addresses and job titles.

### **Membership and ‘Majority Likely to’ Checks**

9. 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 showed the following:

Number of workers on list supplied by the Employer	89
Number of Union Members relevant to this application on list supplied by the Union	38
Number of Union Members with dues paid	38
Number of Union Members whose names and addresses match with those provided by the Employer	37 (41.57%)
Number of names on petition	59
Number of names on petition who are also on employer’s list	58
Number of names on petition who are also on employer’s list and are not union members.	25
Number of workers who would be likely to favour recognition of the Union	62 (69.66%)

It should be noted that the Employer uses the job titles of ‘Driver, Helper and Shunter’ for all 89 workers on its list whilst the Union used a variety of understood job titles for the 37 workers on its list.

### **Case Manager’s Report**

10. The Case Manager’s Report was issued on 3<sup>rd</sup> July 2018. No response was received from the Union. The Employer made a response late in the afternoon of 5<sup>th</sup> July 2018 and is dealt with in the body of this Decision.

### **Considerations**

11. In light of the resolution of other outstanding matters, the Court considered the issues of Union membership, and ‘majority likely to’ in the proposed bargaining unit. The relevant admissibility tests are set out in paragraph 36 of the Schedule, which provides:-

*“(1) An application under paragraph 11 or 12 is not admissible unless the Court decides that—*

*(a) members of the union (or unions) constitute at least 10 per cent of the workers constituting the relevant bargaining unit, and*

*(b) 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.”*

12. The Court is satisfied that the 10% Union membership test is satisfied. On the issue of the ‘majority likely to’ test, the Employer raised an issue on the contemporaneity of the submitted petition. The Case Manager made the Panel aware of the range of dates on the petition and other matters in relation to the Court’s guidance on the production of petitions. The Panel was satisfied that it was a current reflection of the views of those who signed it. The Employer also raised an issue whether “some of those who signed the petition were not aware of what they were signing or felt that they had no option but to sign.” However, the Employer provided no supporting evidence in this regard. In light of the substantial level of support in favour of recognition, and that the petition satisfied the Court’s guidance on production of petitions, the Court concluded that the ‘majority likely to’ test has been satisfied.

13. The Employer also raised an issue over not having sight of the petition. However, it is the Court’s settled practice that an Employer should not have sight of any supporting petition unless it is appended to the Application Form. The Employer also raised an issue concerning discussion under the good offices of the Labour Relations Agency. As the Case Manager stated in his letter of 18<sup>th</sup> June 2018, “If you want to discuss anything in circumstances where confidentiality can be guaranteed you may of course contact the Labour Relations Agency, whether or not they are already involved.” In these circumstances, the Court only takes cognisance of signed agreements which may emerge from any such discussions.

## **DECISION**

14. For the reasons to be outlined above, the Industrial Court is satisfied that:

members of the Union constitute at least 10% of the workers constituting the proposed bargaining unit;

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

the application meets the remaining admissibility and validity criteria.

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

*Barry Fitzpatrick*

Mr Barry Fitzpatrick

Mr Robin Bell

Mr Neal Willis

Decision Date: 6<sup>th</sup> July 2018  
Date Issued to Parties: 24<sup>th</sup> July 2018