

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 RECOGNITION/BALLOT

The Parties:

Unite the Union

And

Lynas Food Service

Background

1. The Industrial Court (the Court) received an application on 15th 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 Court accepted the application by way of a Short Decision dated 6th July 2018 and a Long Decision, issued on 24th July 2018.

2. Following acceptance of the application, an informal meeting was held on 25th July 2018, in the Magherabuoy House Hotel, Portrush, during which it was confirmed that the bargaining unit proposed by the Union was considered by both parties to be an appropriate bargaining unit.

Provisions on recognition or holding of a ballot

3. The next stage of the process is set out in paragraphs 22 and 23 which provide:-

“22.—(1) This paragraph applies if—

(a) the Court proceeds with an application in accordance with paragraph 20 or 21 (and makes no declaration under paragraph 19F(5)), and

(b) the Court is satisfied that a majority of the workers constituting the bargaining unit are members of the union (or unions).

(2) The Court must issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit.

(3) But if any of the three qualifying conditions is fulfilled, instead of issuing a declaration under sub-paragraph (2) the Court must give notice to the parties that it intends to arrange for the holding of a secret ballot in which the workers constituting the bargaining unit are asked whether they want the union (or unions) to conduct collective bargaining on their behalf.

(4) These are the three qualifying conditions—

(a) the Court is satisfied that a ballot should be held in the interests of good industrial relations;

(b) the Court has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union (or unions) to conduct collective bargaining on their behalf;

(c) membership evidence is produced which leads the Court to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the union (or unions) to conduct collective bargaining on their behalf.

23.—(1) This paragraph applies if—

(a) the Court proceeds with an application in accordance with paragraph 20 or 21 (and makes no declaration under paragraph 19F(5)), and

(b) the Court is not satisfied that a majority of the workers constituting the bargaining unit are members of the union (or unions).

(2) The Court must give notice to the parties that it intends to arrange for the holding of a secret ballot in which the workers constituting the bargaining unit are asked whether they want the union (or unions) to conduct collective bargaining on their behalf.”

4. In order to apply paragraphs 22 and 23, the Chairman, with approval from the Panel, instructed the Case Manager to conduct a membership (and likely support) check. This will assist the Court in clarifying the number of workers in each category listed within the bargaining unit and to ascertain the level of Union membership. The following information was requested from the parties:

From the Union:

- a list of the names and addresses and understood job titles of the workers in the bargaining unit, based on the description as provided in the definition of the agreed bargaining unit on Wednesday 25th July 2018; and
- details of how Union subscriptions are paid by members, amount paid, and date of last payment.

From the Employer:

- a list of the names and addresses and job titles of the workers in the bargaining unit, based on the description as provided in the definition of the agreed bargaining unit on Wednesday 25th July 2018;
- an appendix listing the names, addresses and job titles of those workers who the employer does not consider to be part of the bargaining unit based on their duties, as agreed at the informal meeting; and
- payroll print-out for each worker.

5. The Parties were asked to supply the information to the Case Manager no later than noon on 2nd August 2018.

Information provided by the Parties

6. On Tuesday 31st July 2018 the Union provided:

- A membership list containing 38 names, with relevant 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, as with the membership check, 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. It should be further noted that the job titles were not based on the descriptions as provided in the definition of the agreed bargaining unit as requested by the Court.

7. On Thursday 2nd August 2018 the Employer provided a response to the Court with the following:

- A list of 90 workers including names, addresses and job titles.
- A further list of 15 workers who the employer stated might consider themselves “shunters”. The employer stated in its response that ‘these shunters do not have a driving licence for the employers lorries (unlike drivers and trunkers) and they would be responsible for shunting lorries around the employers yard when they are being washed, loaded or serviced in some other way. It is the employers understanding however we appreciate the Union will have to confirm, that these “shunters” are not intended to be included in the bargaining unit.’
- A payroll print-out for each worker.

8. The Union was asked by the Employer to confirm that these 15 additional names were not to be included in the bargaining unit. They were not been included for the purposes of this membership check.

Recognition/Ballot Membership Check

9. A comparison of the names and addresses on the Union Membership list, with the list of workers in the bargaining unit supplied by the Employer showed the following:

Result of the checks of the level of Union Membership

Number of workers on list supplied by the Employer	90
Number of Union Members relevant to this application according to their job titles on list supplied by the Union	38 (42.22%)
Number of Union Members with dues paid	37 (41.11%)
Number of Union Members with dues paid whose names and addresses match with those provided by the Employer	34
Number of Union Members with dues paid appearing on the Employer list with no match issues	34 (37.77%)

Conclusions

10. The Panel met on 9th August 2018 to consider the Case Manager's Report setting out the result of the recognition/ballot membership check and came to the view that, in accordance with paragraph 23, it was not satisfied that a majority of the workers constituting the bargaining unit were members of the union.

11. In his letters of 13th August 2018, the Case Manager informed the Parties of the Court's Decision and to treat that letter as notice that the Court intended to arrange a ballot, in accordance with paragraph 23(2) of the Schedule.

DECISION

12. The Decision of the Industrial Court is that it is not satisfied that a majority of the workers constituting the bargaining unit were members of the union. In consequence, the parties have been notified of the Court's intention to hold a ballot.

Barry Fitzpatrick

Mr Barry Fitzpatrick
Mr Robin Bell
Mr Neal Willis

Decision Date: 9th August 2018
Date Issued to Parties: 14th August 2018