

Industrial Court

ANNUAL REPORT
2006 - 2007



This report on the activities of the Industrial Court for the period 1st April 2006 to 31st March 2007 was sent by the Acting Chairman of the Industrial Court to the Department for Employment and Learning on 20th September 2007.



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Review of the Year



*Mr Barry Fitzpatrick
Acting Chairman*

The year 2006-07 has been a busier year for the Court than 2005-06 in terms of applications to the Court, although some of the developments in our remit, which came into effect in 2005-6 have not yet made a significant impact on our work.

As always, we have set out in some detail the applications which came before us in 'Review of Industrial Court Cases' below. Two applications, *Sanmina* and *Doherty & Gray*, were accepted during the year. In neither case did the union applicants take advantage of the opportunity, introduced in 2005, to have appointed a 'suitable independent person' (SIP) to handle communications between the union and members of the bargaining unit from acceptance of the

application until any of a series of events occurs, including, for example, the appointment of a 'qualified independent person' (QIP) to conduct a ballot.

A few points are worthy of note in relation to these cases. In *Sanmina*, the Panel was confronted with one of the more difficult points with which to deal, namely whether to declare recognition where there is a relatively small majority in the bargaining unit who are union members. One school of thought is that, once a majority are union members, recognition should follow. A second school of thought is that the Schedule¹ leaves open the possibility of a ballot, even where this criterion has been fulfilled, if the Court "is satisfied that a ballot should be held in the interests of good industrial relations".

Ultimately, the Court's task is to produce durable solutions, without prejudice to the impartial exercise of its functions. Hence, it has been typical to order a ballot if union membership was a few percentage points above 50%. However, in *Sanmina*, although the percentage of union membership over 50% was relatively small, the Court took into account that the applicant union already had a declaration of recognition in relation to another bargaining unit within the company and that those arrangements appeared to work in a satisfactory fashion. Hence, the Court was not "satisfied that a ballot should be held in the interests of good industrial

¹ Schedule 1A to the Trade Union and Labour Relations (Northern Ireland) Order 1995 (enacted in the Employment Relations (Northern Ireland) Order 1999 and amended in the Employment Relations (Northern Ireland) Order 2004.

relations” and recognition was declared.

In *Doherty & Gray*, the Court did make use of a new provision in the statutory recognition regime, namely paragraph 18A(2) of the Schedule. This requires the employer to provide the Court with a range of information within 5 days of an application being accepted. This includes “a list of the categories of worker in the proposed bargaining unit”. Eventually, it transpired that both parties (and the Court) had been operating under the misapprehension that some of the workers, who were in fact piece rate workers, were ‘hourly-paid’, as described in the bargaining unit. The Court was able to rely on the information supplied by the employer to conclude that the piece rate workers were properly included in the bargaining unit.

Doherty & Gray was also the first case in which the Court dealt with a bargaining unit including a number of migrant workers. In consequence, the Court had the notice of the ballot and the ballot papers translated into Polish and Ukrainian.

I mentioned in last year’s Annual Report that the Court had been able to bring the parties together informally in the *Atlas* case to produce a recognition agreement. In *McCabes*, the Court was for the first time considering a complaint that a party had failed to apply a recognition agreement. Once again, the Court was able to bring the parties together informally. Although the Panel did not play an active role in the discussions, the parties were able to reach a satisfactory outcome. Hence, as mentioned before, the Court is always seeking durable solutions, where appropriate.

Two further innovations in our jurisdiction had yet to trouble the Court by the end of 2006-07, namely the introduction of ‘unfair practices’ in relation to statutory recognition and the coming into effect of the Information and Consultation Regulations, although the Court’s first application was submitted shortly after the end of this reporting year.

A further EU-driven jurisdiction has been added to the Court’s remit, namely the European Co-operative Society (Involvement of Employees) Regulations 2006 (which came into force on 18th August 2006).

We had two successful members’ meetings during the course of the year (see below). Our Annual Members’ Day was held on 19th September 2006 at The Mount Business and Conference Centre, Belfast. Given that the Court had been relatively inactive in 2005-06 but was once again receiving applications in 2006-07, it was agreed to have a Members’ Training Day on 2nd February 2007 at Belfast Castle. The Training Day focused on a couple of case studies which we had adapted from earlier cases to deal with developments in statutory recognition. Members found the working through of practical examples a useful exercise in keeping themselves up to speed with developments.

It was also most helpful to maintain our links with the Central Arbitration Committee ('the CAC') on this occasion, through the presence of Simon Gouldstone, the CAC's Director of Policy and Operations. Members were reminded that Simon had attended our first training session at the Burrendale Hotel, back in 2001. It was also appropriate that the meeting was being held at Belfast Castle as the Chairman of the CAC, Sir Michael Burton, attended the presentation of our first Annual Report there in 2002.

As always, there have been changes in membership of the Court and the Secretariat during the year. We have been pleased to welcome Marie Turner as Senior Case Manager, working alongside Brenda Slowey, Case Manager. Alan Finlay also joined the Secretariat, working with Paul Cassidy, Head of Administration. Much as we are pleased now to have Lynne Taylor as our new Secretary, we are sad to lose Brian Patterson who made a substantial contribution to work of the Court over the past couple of years. His co-operation and continuous support was very much appreciated by all involved in the Court. The Secretariat, when not admirably fulfilling their roles in case management and administration, has been revamping our website at www.industrialcourt.gov.uk, including a scroller to keep you totally up to speed on the latest developments in the Court. There you will also find up-to-date Guidance and Application Forms. I am also grateful to the Secretariat for the excellent chart of progress of applications, which you will find later in this Report.

The Court also lost the benefit of the skills and expertise of one of its Members, Fiona Cummins, during the course of the year. There are still protracted discussions with the Department over the issue of terms of appointments to the Court, although these issues may now be close to resolution. In the meantime, vacancies in the Court, particularly that of Chairman, have not been filled and I remain Acting Chairman for the time being.

Roles, Objectives, Targets and Results

Main Role

- ◆ Statutory applications for recognition and de-recognition of trade unions;
- ◆ Resolve disputes about the establishment and operation of employee information and consultation arrangements;
- ◆ Statutory applications for disclosure of information for collective bargaining;
- ◆ Disputes over the constitution of European Works Councils and European Co-operative Societies; and
- ◆ Voluntary arbitration

Objectives

- ◆ To manage the statutory adjudication process dealing with trade union applications to the Industrial Court in an efficient, professional, fair and cost effective manner;
- ◆ To achieve outcomes which are practicable, fair, impartial and, where possible, voluntary;
- ◆ To provide 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. We will answer enquiries concerning our work, although we do not offer legal advice;
- ◆ 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
- ◆ To develop an Industrial Court secretariat with the skills, knowledge and experience to meet operational objectives.

Performance Measures and Targets (Based on Objectives)

- ◆ 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 3 working days.

- ◆ To produce an Annual Report on the work of the Industrial Court in 2006/2007.

Report sent to the Department for Employment and Learning on 20th September 2007.

Membership of the Industrial Court 2006-2007

Chairman: *Vacant

Deputy Chairman: Mr Barry Fitzpatrick

**Members with
Experience as
Representatives of
Employers** Mr George McGrath
Retired Deputy Chief Executive
BT (NI)

Mr W F Irvine McKay
Retired Chartered Accountant and Stockbroker

Mr Maurice Moroney
Retired Employment Relations Manager
Ulster Bank Ltd

Mr Mervyn Simpson
Self Employed Business Consultant /
Ex Business Development Manager
Du Pont

**Post vacant from 8th March 2006, from which time the Deputy Chairman has undertaken the role of Acting Chairman*

**Members with
Experience as
Representative of
Workers**

**Mr Joe Bowers
Retired Regional Officer
MSF**

**Mr Bob Gourley
Retired Regional Officer
USDAW**

**Ms Avril Hall-Callaghan
General Secretary
UTU**

**Mr Jim McCusker
Retired General Secretary
NIPSA**

**Mr Peter Williamson
Irish Regional Secretary
AMICUS**

****Mrs Fiona Cummins
Regional Industrial Organiser for Women
And Equality
ATGWU**

**** Resigned 20th February 2007**

Annual Members' Day



The Industrial Court held its Annual Members' Day on 19th September 2006 in the Mount Business and Conference Centre, Belfast.

At the Members' Day the Acting Chairman, Mr Barry Fitzpatrick, gave an analysis of the applications the Court had dealt with in 2006, including a number of issues which had arisen for the first time. He explained the rationale behind how the Court considered and addressed these issues, and informed members of the impact that changes to trade union recognition legislation (by the Employment Relations (NI) Order 2004) had on the Court.

Mark McAllister, Senior Employment Relations Officer of the Labour Relations Agency, attended and provided members with a very interesting and valuable overview of the Industrial Court's jurisdictions and the effect these had had on the Labour Relations Agency. The presentation was well received by all members.



The day ended with the Acting Chairman presenting the Court's 2005/06 Annual Report to the Department for Employment and Learning, which was accepted by Mr David McAuley, Director of Strategy and Employment Rights Division.

Members' Training Day

At the Members' Day in September it was decided that a training day should be arranged to afford members the opportunity to consider in depth the impact that changes to the trade union recognition legislation had on the Court. Consequently a training day was held on 2nd February 2007 at Belfast Castle.

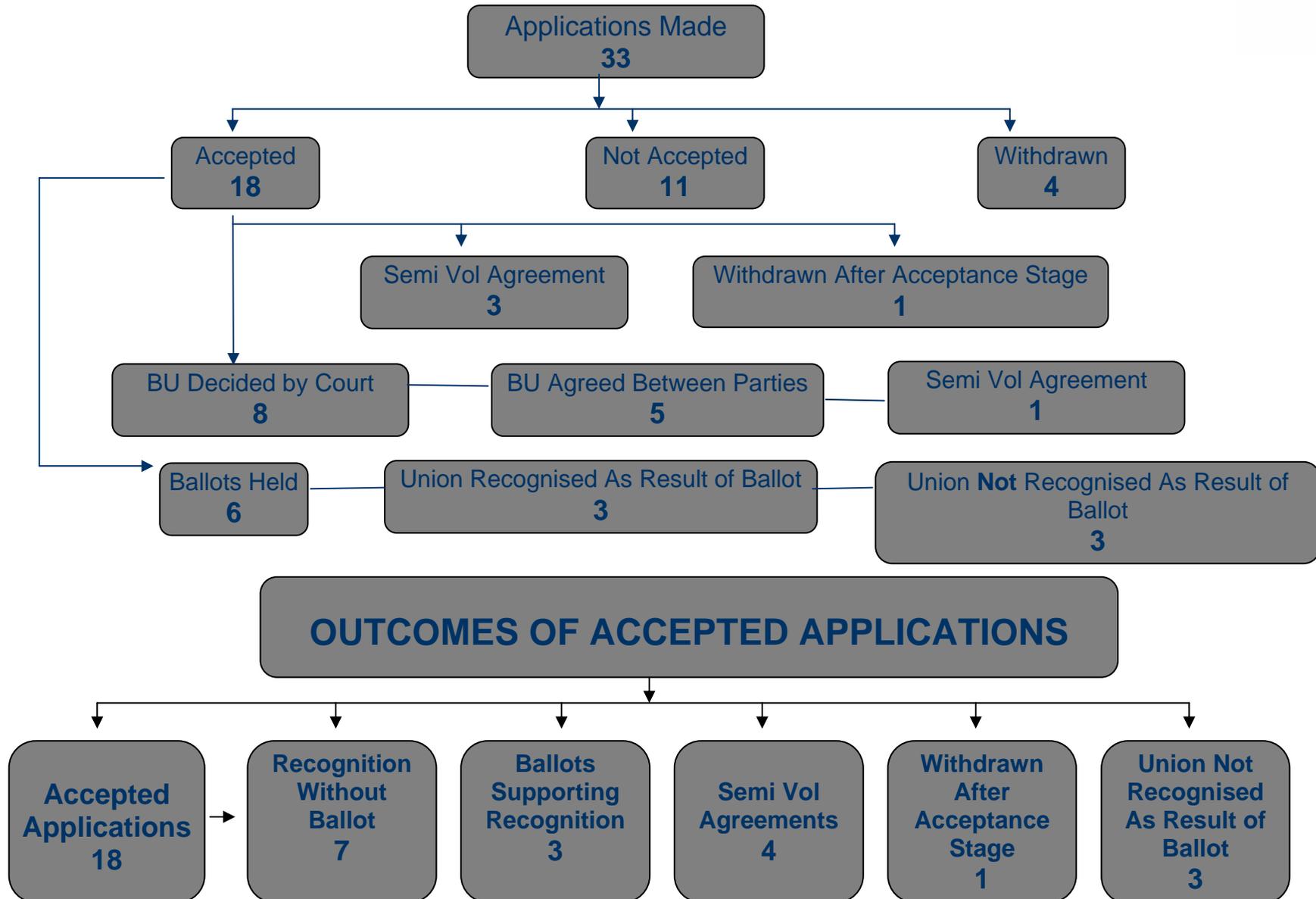
The training made use of case studies to explore two particular areas, namely allegations of unfair practices, and failure to carry out a recognition agreement.

Members commented favourably on this style of training as it was felt that the use of case studies increased their understanding of the changes to the legislation, and gave members the opportunity to interact and debate.

Simon Gouldstone from the Central Arbitration Committee (CAC) kindly attended and gave a very informative presentation detailing events in CAC throughout the past year. This was agreed to be beneficial for all who attended as it was a valuable opportunity to hear and share experiences with our GB counterparts.



Industrial Court Applications



The Industrial Court's Caseload in 2006-2007

The Industrial Court has dealt with the following new applications during the period 1st April 2006 to 31st March 2007:

PARTIES:	CASE REF NO:
BFAWU and Doherty & Gray	IC31/2006
AMICUS and Sanmina SCI (UK) Ltd	IC32/2006
Prison Officers' Association & Youth Justice Agency	IC33/2006
ATGWU & James E McCabe Ltd	IC34/2006

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

Review of Cases

IC31/2006 – BFAWU AND DOHERTY & GRAY

This was a repeat application submitted to the Court by the Union. The previous application was rejected because the Union had submitted its application to the Court prematurely. A second application was consequently submitted by the Union dated 5th April 2006 for recognition at Doherty & Gray for a bargaining unit consisting of *“All hourly paid production workers in the Boning Hall”*.

The application was accepted and the parties entered a period of negotiation to agree the appropriate bargaining unit. As no agreement was reached by the parties, the Panel considered written submissions from both parties and determined that the appropriate bargaining unit was the same as that proposed by the Union in its application, ie *“All hourly paid production workers in the Boning Hall”*.

In view of the provisions in paragraph 18A(2), introduced in 2005, the employer had provided the Court with a range of information, including “a list of the categories of worker in the proposed bargaining unit”. Although the parties did not dispute the categories of worker (Supervisor, Boner and Operative) within the bargaining unit, the number of workers within the bargaining unit differed. In order to assist it to make a decision under either paragraph 22 or 23 of the Schedule, the Panel proposed that independent checks of the number of workers and level of union membership within the bargaining unit be carried out.

Both parties provided this information and, once this was analysed by the Court, it became apparent that one category of worker within the bargaining unit (ie Boner) did not appear to be hourly paid; the Contract of Employment’s description of a Boner was shown as “Piece Rate Worker” and the remuneration showed that wages were paid weekly in arrears on quarters of beef boned.

In order to clarify this issue, the Panel decided that a hearing should be arranged: to determine whether hourly paid production workers in the Boning Hall should include or exclude Piece Rate Workers; and to consider further submissions on the nature of a secret ballot, in the event that this was proven necessary.

This took place at the Leighinmohr Hotel, Ballymena on 6th September 2006, with the Panel taking into consideration both written and oral submissions submitted by both parties. The Panel concluded that, as the appropriate bargaining unit (as determined by it previously) contained three categories of workers (Supervisor, Boner and Operative), then these workers constituted the bargaining unit for the purpose of arranging the holding of a ballot under Regulation 23 of the Schedule. The Panel further determined that a secret workplace ballot should be held, with a postal element for those workers known in advance to be absent from the workplace on the day of the ballot.

Electoral Reform Services were appointed as the Qualified Independent Person (QIP) to conduct the ballot and, as both parties had previously advised the Court that the bargaining unit consisted of English, Ukrainian and Polish speaking workers, the Court duly requested the QIP to translate the workplace notices and the ballot papers into the specified languages.

The QIP reported that, of the 23 workers in the bargaining unit, 22 had voted in the ballot and there was one spoilt ballot paper. 8 workers (38.1% of those voting) voted to support the proposal that the Union be recognised by the Employer, and 13 workers (61.9% of those voting) voted to reject the proposal. The proportion of workers in the bargaining unit who supported the proposal was 34.8%.

The ballot did not establish that the majority of workers voting, and at least 40% of the workers in the bargaining unit, supported the proposal that the Union be recognised by the Employer for the purposes of collective bargaining. For this reason, the Court declared that the Union was not recognised by the Employer as entitled to conduct collective bargaining on behalf of the bargaining unit.

IC 32/2006 - AMICUS AND SANMINA SCI (UK) LTD

Again, this was a repeat application submitted to the Court. The previous application had been rejected as the Union's description of the proposed bargaining unit in its initial letter of request for recognition to the Company differed from the description given in its application to the Court. The Union subsequently submitted a further application to the Court dated 6th April 2006 for recognition at Sanmina SCI (UK) Limited for a bargaining unit consisting of *"Managers and staff working in Sanmina covering Commercial, Operations Management, Engineering, Finishing Engineering, Tool Room Supervisor, Production Supervisors, Purchasing/Materials, Administrators, NPI Manufacturing, Facilities/Maintenance, Planning Training IT, Quality/Test"*.

The Court accepted the Union's application and the parties subsequently agreed a bargaining unit. As the bargaining unit agreed between the parties differed from that which the Union proposed in its application, the Court, under paragraph 20 of the Schedule, determined that the application was not invalid in accordance with the tests set out in paragraphs 43 to 50 and that it would proceed with the application.

To assist in deciding whether a secret ballot should be held, the Panel proposed a fresh independent check of the level of Union membership in the bargaining unit. The Case Manager carried out this check and established that the level of Union membership in the bargaining unit was 55%.

Paragraph 22(2) of the Schedule requires the Court to issue a declaration that a Union is recognised as entitled to conduct collective bargaining on behalf of a group of workers constituting the bargaining unit if it is satisfied that a majority of the workers are members of the Union, unless any of the three qualifying conditions set out in Paragraph 22(4) are fulfilled. These conditions are:

- if the Court is satisfied that a ballot should be held in the interests of good industrial relations;
- if the Court has evidence from a significant number of union members in the bargaining unit that they do not want the Union to conduct collective bargaining on their behalf; and
- membership information regarding the circumstances in which workers joined the union or length of membership leads to doubts whether a significant number of union members in the bargaining unit want the Union to conduct collective bargaining on their behalf.

If any of these conditions are met, or the Court is not satisfied that a majority of workers in the bargaining unit are members of the Union, it must give notice to the parties that it intends to arrange for a secret ballot to be held.

In order to ascertain whether any of the three conditions set out in paragraph 22(4) was fulfilled, the Panel requested submissions from both parties. The Panel considered these submissions and particularly noted that a semi-voluntary agreement between the union and the employer was already in place in relation to hourly paid workers and that no evidence had been produced to indicate that relationships between the parties were or had been unstable.

The Court was therefore satisfied that, at 55%, the Union had a majority of the bargaining unit in its membership and that none of the conditions in paragraph 22(4) of the Schedule had been met. The Court accordingly declared that the Union be recognised by the Company as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit.

IC33/2006 – PRISON OFFICERS' ASSOCIATION & YOUTH JUSTICE AGENCY

The Prison Officers' Association submitted an application dated 12th May 2006 to the Court that it should be recognised for collective bargaining by the Youth Justice Agency. The Employer duly responded to the Union's application. The Court is required by the Schedule to decide whether the Union's application to the Court: is valid within the terms of paragraphs 5–8; is made in accordance with paragraphs 11 or 12; and is admissible within the terms of paragraphs 33 to 42 of the Schedule. Therefore the Panel met to determine whether this application should be accepted.

In its deliberations, the Panel found that neither of the letters of request from the Union to the Employer had specified that the request was made under Schedule 1A. Paragraph 4 of Schedule 1A states that a union or unions seeking recognition must make a request to the employer and that paragraphs 5-9 apply to that request. Paragraph 8 states that a request will not be valid unless it is in writing, identifies the bargaining unit and states that it is made under Schedule 1A. Therefore, the Court was not satisfied that the request was valid within the terms listed above and, accordingly, had no alternative but to declare the application as not accepted.

The Panel was not required to make a decision on any other points but did note that, even if the request had met the validity requirement under paragraph 8(c), the application might have been deficient in other aspects, in that the description and address of the bargaining unit in the letter of request differed from that given in the application form.

Paragraph 2(3) of Schedule 1A requires that the reference to the proposed bargaining unit is to the bargaining unit proposed in the letter of request. The Panel further observed that both the Union and the Employer had made reference to existing recognition agreements involving two separate Unions which covered workers in the proposed bargaining unit, which might not have met the requirement of paragraph 35(1).

IC 34/2006 – ATGWU & JAMES E McCABE LTD

This was the first application made to the Court for assistance under paragraph 32 of Schedule 1A.

In 2004 the Court had issued a Declaration of Recognition in support of the Union to conduct collective bargaining and, subsequently, a method of bargaining had been agreed between the Union and the Employer.

The Union applied to the Court for assistance, as it was of the opinion that there had been a failure by the Employer to carry out the agreement. In the circumstances, the Panel decided to bring the Parties together informally to determine whether there was any scope for them to reach agreement on the contentious issues. After directions from the Panel, the parties entered into discussion and negotiation, which led to a mutually-agreed amendment to the Agreement.

Resources

Industrial Court

Number of Members		11
Of which:		
	Chairman and Deputy Chairman	1
	Panel Members	10

Staffing

Number of Staff (part-time)		5
Of which:		
	Management/Operations	3
	Administration	2

Expenditure

Fees and Expenses of Chairmen and Members	£19,288.83
Staff Costs	£87,062.35
Other Costs (inc. Training, Travel and Accommodation)	£13,394.80
Total	£119,745.98

Staff and Contact Details

Staff (as at March 2007)

Secretary:	Miss Lynne Taylor
Senior Case Manager:	Mrs Marie Turner
Case Manager:	Miss Brenda Slowey
Head of Administration:	Mr Paul Cassidy
Administrative Support:	Mr Alan Finlay

Contact Details

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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 the Secretary who will investigate your complaint.

If you wish to complain or you have any other comments, please write to or contact:

*Miss Lynne Taylor
Secretary
Industrial Court
Adelaide House
39-49 Adelaide Street
BELFAST
BT2 8FD
Tel No: 028 902 57520
E-mail: lynne.taylor@delni.gov.uk*

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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