

Industrial Court

ANNUAL REPORT
2007 - 2008



**INDUSTRIAL
COURT**

ANNUAL REPORT

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Industrial Court Annual Report 2007/08

This report on the activities of the Industrial Court for the period 1 April 2007 to 31 March 2008 was sent by the Chairman of the Industrial Court to the Department for Employment and Learning on 27 January 2009.

Table of contents

Chairman’s review of the year	4
Caseload	4
Legislative developments	5
Members’ Day and Training Day	6
Membership of the Court	6
Staffing	6
Your views	7
Roles, objectives, targets and results.....	8
Main role	8
Objectives	8
Performance measures and targets (based on objectives)	9
Membership of the Industrial Court 2007/2008.....	10
Annual Members’ Day	11
Members’ Training Day	12
Applications and case outcomes	13
Applications for recognition for collective bargaining purposes	13
Applications under Information and Consultation provisions	13
Review of cases 2007/08	15
IC35/2007 – J Sheridan and Montupet	15
IC36/2007 – Unite the Union (Amicus Section) and Derry News.....	16
IC37/2007 – Unite the Union (AT&G Section) and ICS	17
IC38/2008 – Unite the Union (AT&G Section) and Flybe.....	17
IC39/2008 – Unite the Union (AT&G Section) and Falls Bowling and Lawn Tennis Social Club	19
Resources	19
Membership of the Court.....	20
Secretariat to the Court (part-time staff).....	20
Expenditure	20
Staff and contact details	21
Staff	21
Contact Details	21
User satisfaction	22

Chairman's review of the year

Caseload

It has been another steady year of work for the Industrial Court, with four recognition applications received (the same number as during the previous year) and three dealt with within the period covered by the report.

In *Unite and Derry News*, the panel had to consider, among other issues, whether a copy of the application and notice of it had been received by the employer on a particular date, the number of workers employed on that date, and whether the employer was associated with another employer. Paragraph 7(1) of Schedule 1A to the Trade Union and Labour Relations (Northern Ireland) Order 1995 provides that a request is not valid unless the employer, taken with any associated employer or employers, employs (a) at least 21 workers on the day the employer receives the request or (b) an average of at least 21 workers in the 13 weeks ending with that day. The panel concluded that at least 21 workers were employed at Derry News on the day the employer received the union's letter of request for recognition.

It was established that the workforce included one part-time worker, who was part of the total workforce. Schedule 1A makes no distinction between part-time and full-time workers, unlike the Information and Consultation Regulations where part-time workers are treated as 'half workers'. This conclusion saved the Court from consideration of some complicated issues, including the cross-border nature of a group of companies, of which Derry News was a part.

In *Unite and ICS*, the application to the Court was withdrawn following agreement between the parties.

In *Unite and Flybe*, the issues under consideration included whether, under paragraph 35 of Schedule 1A, a collective agreement was already 'in force' in Northern Ireland and whether there was any provision in paragraph 35 precluding an agreement from being UK-wide. The panel decided that a pre-existing UK-wide agreement was in place in respect of the relevant bargaining unit and that there was no evidence to suggest that it did not apply in Northern Ireland.

This application shows that there is nothing to prevent the Schedule applying to a UK-wide agreement, although the Court and the Central Arbitration Committee have separate jurisdictions for Northern Ireland and Great Britain.

The last of the recognition applications received during 2007-2008, *Unite the Union and Falls Bowling and Lawn Tennis Social Club*, arrived with the Court in March 2008 and the case did not have a final outcome until June 2008, outside the reporting period.

Significantly, the Court received and dealt with its first Information and Consultation (I&C) case during the reporting year. I&C is a relatively new jurisdiction of the Court, deriving from regulations introduced in 2005 which established new minimum standards for workforce communication and involvement. A key issue in the case was whether the establishment of an Information and Consultation of Employees (ICE) Committee in the workplace precluded the employer from engaging in direct communication with the workforce on issues within the remit of the ICE Committee. The panel concluded that repetition of the previous practice of direct communication with the workforce was permissible under the I&C agreement.

The decision was made “in the circumstances of this complaint”. The Court was satisfied that the employer had not attempted to obstruct or bypass the work of the ICE Committee. It was also the case that no allegation of direct consultation with the workforce had been made and the Court was satisfied, in any event, that direct consultation had not taken place.

The Court dealt with a number of procedural points peculiar to the I&C Regulations. First, the Regulations provide that ‘interested parties’ have a right to be heard. The Court therefore identified existing and previous employees’ representatives, and also negotiating representatives, and some attended the eventual hearing.

Another procedural innovation is that the Court can refer a complaint to the Labour Relations Agency under regulation 36 if it is “of the opinion that it was reasonably likely to be settled by conciliation or other assistance provided by the Agency.” The Court made a reference in this case but the Agency was unable to facilitate a settlement.

A final point on the Court’s experience of an I&C case is that, although the complaint was about an alleged breach of the I&C agreement, the Court also had to take into account both the Regulations, for example, the ‘duty of co-operation’ between the parties in regulation 21, and the I&C Directive more generally.

A complete review of the year’s caseload can be found on [page 15](#).

Legislative developments

During the year, the Court has acquired a new jurisdiction by virtue of the Companies (Cross-Border Mergers) Regulations 2007, which came into force on 15 December 2007. The regulations implement European Directive 2005/56/EC and establish a legal framework to enable cross-border mergers between companies with share capital from Member States in the European Economic Area. The Regulations also establish the process to be completed where employee participation arrangements exist in one or more companies wishing to merge.

Members' Day and Training Day

The Court held its annual Members' Day on 20 September 2007 at Belfast Castle and a Training Day on 15 February 2008 at the Holiday Inn, Ormeau Avenue, Belfast. Both days provided all members of the Court with a rare opportunity to meet collectively to discuss their work. As the Court's caseload is not heavy, these meetings are an opportunity for panel members who may not have sat on a case for some time to refresh their knowledge. Members generally considered the days a success. Lively discussions took place on both days on a range of case studies. At the February meeting, members broke up into small groups, which were found to allow for personal interaction between members. An opportunity was also taken at the February meeting, following the decision in *J Sheridan and Montupet*, to review in detail the Court's first I&C case.

Brief accounts of the two days can be found on **pages 11 and 12**.

Membership of the Court

The membership of the Court saw only one change during the reporting year. Jim McCusker, retired General Secretary of NIPSA, asked that his appointment be allowed to lapse on 7 March 2007. Jim subsequently took up appointment as Chairman of the Labour Relations Agency, and we all wish him well in his new post.

It is with regret that I report the death of Mervyn Simpson, who passed away not long after the end of the reporting year in May 2008. We worked with Mervyn since the reconstitution of the Court in 2001. He was a valued member of the Court and his keen insights into employment relations issues and his ever-helpful approach were of tremendous value to us in our deliberations over the years. He is sadly missed.

On a more positive note, although it once again took place following the end of the reporting year, the position of Chairman – which I have filled in an acting capacity since 8 March 2006 – has now been filled, with the appointment of Eugene O'Loan who took on the role from 1 October 2008.

Staffing

The year has seen significant changes in the staffing of the Secretariat, with the departure of Lynne Taylor (Secretary), Marie Turner (Senior Case Manager) and, at the end of the reporting year, Brenda Slowey (Case Manager). This was a great loss to the Court as Marie and Brenda had accumulated great expertise in the handling of Court business. The Court is grateful to all these individuals for their valued contributions to the work of the Court and wishes them well in their future careers.

There has been some continuity as well as change, and we are very glad to have retained the services of Paul Cassidy, who remains Head of Administration, and Alan Finlay, in Administrative Support.

We also welcome our new Secretary Alan Scott, Senior Case Manager, Paul Lyons, and Case Manager, Maria Cummins. Strictly speaking, Maria joined us after the reporting period ended, but it is appropriate to acknowledge her arrival and I would once again like to acknowledge the continuing high quality support that the Secretariat provides to the Court.

Your views

We are committed to continuing to provide an effective service to our users. We regularly carry out satisfaction surveys and the feedback we receive is generally very positive. However, we are constantly striving to improve the service we provide, so if you have any comments on the operation of the Court, please don't hesitate to let us know. For more information on how to contact us, please refer to **page 22**.

Roles, objectives, targets and results

The Court's main role and corporate objectives are set out below. The following page sets out performance targets and measures the degree to which these have been achieved. The single target not reached relates to the date of presentation of this report to the Department for Employment and Learning. Other targets were not only achieved but exceeded.

Main role

- ◆ Deal with statutory applications for recognition and de-recognition of trade unions;
- ◆ Resolve disputes about the establishment and operation of employee information and consultation arrangements;
- ◆ Deal with statutory applications for disclosure of information for collective bargaining;
- ◆ Resolve disputes over the constitution of European Works Councils; and
- ◆ Provide 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 and 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)

Performance measure	Target	Achievement
Proportion of applications for which notice of receipt is given and responses sought within one working day	95%	100%
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.	90%	100%
To produce and supply to the Department for Employment and Learning an Annual Report on the work of the Industrial Court in 2007-2008.	30/09/08	27/01/09

Membership of the Industrial Court 2007/2008

Membership of the Court during the period 1 April 2007 to 31 March 2008 is recorded below.

Chairman

Vacant*

Deputy Chairman

Mr Barry Fitzpatrick

Members with experience as representatives of employers

Mr George McGrath

Retired Deputy Chief Executive, BT (NI)

Members with experience as representatives of workers

Mr Joe Bowers

Retired Regional Officer, MSF

Mr W F Irvine McKay

Retired Chartered Accountant and
Stockbroker

Mr Bob Gourley

Retired Regional Officer, USDAW

Mr Maurice Moroney

Retired Employment Relations
Manager, Ulster Bank Ltd

Ms Avril Hall-Callaghan

General Secretary, UTU

Mr Mervyn Simpson

Self Employed Business Consultant /
Ex Business Development Manager, Du
Pont

Mr Jim McCusker[†]

Retired General Secretary, NIPSA

Mr Peter Williamson

Retired Irish Regional Secretary,
AMICUS

* Post vacant from 8 March 2006, from which time the Deputy Chairman has undertaken the role of Acting Chairman. (However, please note that at the time of publication, the post of Chairman is occupied by Mr Eugene O'Loan, whose appointment took effect after the end of the reporting period, on 1 October 2008.)

[†] Mr McCusker's term of appointment came to an end on 7 March 2008.

Annual Members' Day

The Industrial Court held its Annual Members' Day on 20th September 2007 in Belfast Castle.

The holding of this event afforded members an opportunity to meet and to discuss the various cases the Court has dealt with throughout the year, share their experiences of these and employment relations more generally, and formulate policy for dealing with new types of applications.

A range of 'domestic' issues was also discussed, including the possibility of developing an intranet for the Court, and the connected issue of document security.

During the course of the day the 2006-2007 Annual Report was presented by the Acting Chairman, Mr Barry Fitzpatrick, to the Members of the Court and to Mr David McAuley, Director of Strategy and Employment Relations Division in the Department for Employment and Learning.

Members' Training Day

The Industrial Court held its Members' Training Day on 15th February 2008 in the Holiday Inn, Belfast.

Following a brief introduction, the Acting Chairman, Barry Fitzpatrick, provided a summary of the decisions made by the Court in the two most recent statutory recognition cases, and the members then discussed the considerations behind these decisions.

The Chairman then gave a presentation on the first Information and Consultation (I&C) case to be brought before the Court, after which the members split into small groups to work through an I&C case study before discussing their findings with the rest of the group.

The day was considered to be a success, based on feedback obtained from those who attended. It was also suggested, as I&C is a complex area, that further training at a future stage could be helpful.

Applications and case outcomes

The Industrial Court received the following applications in the named jurisdictions during the period 1 April 2007 to 31 March 2008.

Applications for recognition for collective bargaining purposes

PARTIES	CASE REF NO
Unite the Union (Amicus Section) and Derry News	IC36/2007
Unite the Union (AT&G Section) and ICS	IC37/2007
Unite the Union (AT&G Section) and Flybe	IC38/2008
Unite the Union (AT&G Section) and Falls Bowling and Lawn Tennis Social Club	IC39/2008

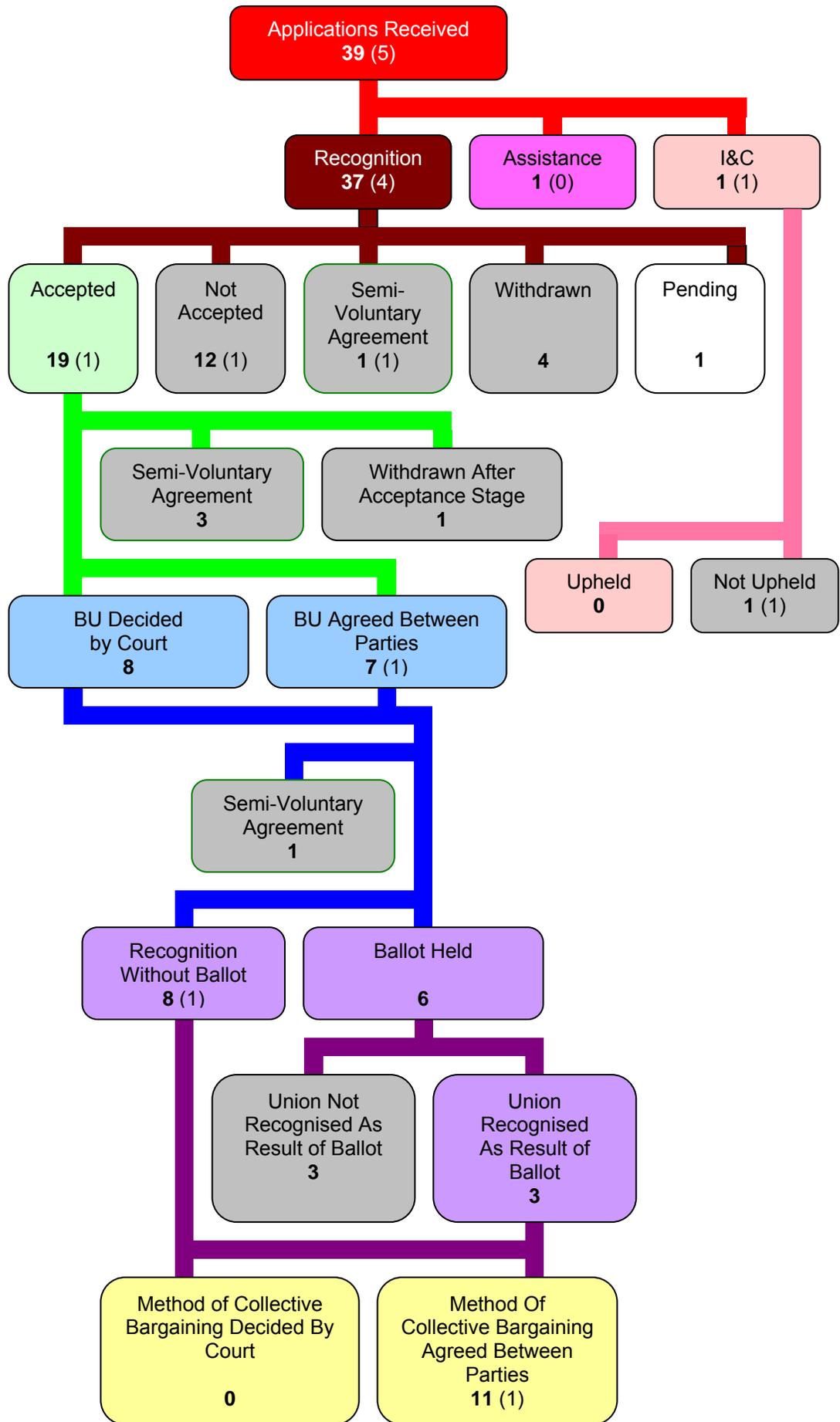
Applications under Information and Consultation provisions

PARTIES	CASE REF NO
J Sheridan and Montupet	IC35/2007

Specific decisions relating to each application can be found on the Industrial Court's website: www.industrialcourt.gov.uk. Note that a decision may not necessarily be reached in the reporting year that the corresponding application was received.

Accounts of each case may be found on **page 15**.

On the following page is a diagram setting out the outcomes of all cases dealt with by the Industrial Court. Please note that Court records have been reviewed and that, as a result, the figures quoted do not in all instances tally with previously cited statistics.



Review of cases 2007/08

IC35/2007 – J Sheridan and Montupet

This was the first case dealt with by the Court under its Information and Consultation (I&C) jurisdiction.

Mr J Sheridan, an I&C representative employed by Montupet UK, submitted a complaint under regulation 22(1) of the Information and Consultation of Employees Regulations (Northern Ireland) 2005. The complaint alleged that Montupet had failed to comply with an agreement it had reached regarding direct communication with its workforce. The applicant's contention was that Montupet had breached the agreement by communicating information about its business plan directly to employees rather than through the ICE (Information and Consultation of Employees) Committee.

After holding an informal meeting with the parties on 7th June 2007, the Court, taking the view that settlement of the matter by conciliation was reasonably likely, decided to refer the case to the Labour Relations Agency (LRA) under regulation 36 of the I&C Regulations. However, attempts to reach a conciliated settlement were unsuccessful and the case was referred back to the Court for adjudication.

Having considered regulation 35(2) of the I&C Regulations, the Court now determined that parties with an interest in the case should be given an opportunity to be heard. On 25th September, the Court held a pre-meeting with the parties and, separately, with the interested parties, to outline some of the issues and explain procedure at the forthcoming hearing. The opportunity was also taken to clarify a number of matters with the parties. Specifically, the parties were invited to consider whether and to what extent the negotiated agreement permitted direct information and, further, direct consultation between the employer and the workforce.

All parties (including the interested parties) were given an opportunity to provide written submissions for the Court's consideration in advance of the hearing, which took place on 9th November 2007 at Grosvenor House.

At the hearing, it was agreed between the parties, and the panel was satisfied, that the complaint dealt only with direct communication of information rather than consultation between Montupet and its workforce. Likewise it was accepted that the company's business plan was within the remit of the ICE Committee and therefore a proper subject of information and consultation between company and workforce. It was agreed that the complaint raised issues of direct information with the workforce in circumstances in which an ICE Committee had been established under a negotiated agreement in accordance with regulation 16(1)(f)(i) of the I&C Regulations. In considering the complaint, the Court further took into consideration the duty of co-operation set out in regulation 21.

In exploring the issues at the hearing, it was clear that the complainant believed electing an ICE Committee precluded the employer from engaging in direct communication with the workforce on issues within the remit of the Committee (cf. regulation 16(1)(f)(i) and 16(i)(f)(ii) of the Regulations). The employer, on the other hand, considered that the ICE Committee supplemented and strengthened rather than supplanted existing information and consultation arrangements. The employer contended that it was continuing earlier practice in presenting its business plan, and that this did not preclude the ICE representatives from fulfilling their role.

The Court concluded in its decision of 13th February 2008 that the employer was not in breach of the agreement in the circumstances of the complaint. It considered that the employer was not obstructing the ICE Committee, and that repetition of the previous practice of direct communication was permissible under the agreement. In dismissing the complaint, the Court did however note that once it became apparent that consultation of the workforce should take place, it would have been preferable if the ICE Committee had been reconvened, so that both the company and the ICE representatives could discuss proposed consultation arrangements and so that the company could have explained its intentions as to presentations on the business plan.

IC36/2007 – Unite the Union (Amicus Section) and Derry News

Unite the Union submitted an application for recognition by Derry News on 23rd May 2007. The application was in respect of a bargaining unit consisting of “all departments except editorial, casual workers, senior managers and directors”.

Following the Court’s acceptance of the application on 19th July 2007, on the basis that at least 21 workers worked for the company, the parties attempted to arrive at an agreed bargaining unit. To facilitate discussions, the panel extended the negotiation period on two occasions. The parties agreed the appropriate bargaining unit to be confined to the Administration Department and Sales Department, which covered the same employees and departments that had originally been proposed by the union.

Given that a ballot might be necessary, the Court requested submissions from the parties on the type of ballot which should be held. The employer expressed a preference for a postal ballot while the union initially expressed no preference but subsequently sought to reserve judgement until revised figures for membership within the bargaining unit became clear.

During October, the Court carried out a membership check which established that the level of union membership in the bargaining unit was 64%. When the parties were advised of the result of the membership check, both took the view that a ballot would not be necessary. Indeed, given the high percentage of workers who were members of the bargaining unit and the high level of support for recognition

ascertained by the union, the union considered that the holding of a ballot could be detrimental to good industrial relations.

A Case Manager's report on these developments was issued to the parties and their comments on it were sought. However, neither had any further comment to make.

In arriving at its decision on 30th October 2007, the panel carefully considered the submissions of the parties and the Case Manager's report. It concluded, firstly, that Unite had a majority of the bargaining unit in its membership. Giving consideration to paragraph 22(4) of Schedule 1A to the Trade Union and Labour Relations (Northern Ireland) Order 1995, it further concluded that there was no requirement to hold a ballot. It therefore declared Unite to be recognised by Derry News as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit.

IC37/2007 – Unite the Union (AT&G Section) and ICS

In an application dated 22nd June 2007, Unite (AT&G Section) sought recognition by ICS for collective bargaining purposes. In the application, Unite stated that attempts to achieve voluntary recognition for workers at Belfast International Airport had failed. The union stated that the proposed bargaining unit consisted of "all employees whose job descriptions cover service operatives and co-ordinators, incorporating, cleaning, driving, wheelchair duties and supervisory functions". Unite stated that 24 of the 31 workers in the bargaining unit were members and that it had majority support for recognition.

Through July and August, a number of extensions to the time allowed for a response from the employer were granted once it became clear that the employer and the union were willing to enter into negotiations for voluntary recognition.

Subsequently, in correspondence with the Court dated 24th August, both Unite and ICS requested that the Court take no further steps in relation to the case. On 28th August, the Court confirmed that, in accordance with the wishes of both parties, it would take no further steps.

IC38/2008 – Unite the Union (AT&G Section) and Flybe

In an application to the Court dated 9th January 2008, Unite sought recognition for collective bargaining purposes in respect of Flybe workers at George Best Belfast City Airport. The bargaining unit was described as consisting of "all Flybe Engineers, including the Engineering Store Person at George Best Belfast City Airport. The Bargaining Unit does not incorporate the Engineering Station Manager". Flybe's response to the application was submitted to the Court on 24th January 2008.

The application and response brought to light two main issues, namely whether a collective agreement was already in force and whether Unite had the required level of membership and support in order for its application to be admissible. However, the Chairman advised that the latter issue would only come into play if a recognition agreement was not already in place.

In relation to the first issue, Flybe submitted that it already recognised another union, the Association of Licensed Aircraft Engineers (ALAE) for collective bargaining purposes in respect of all engineers employed by the company at their bases in the UK. A copy of an agreement to this effect, dated 10th December 2007, was provided to the Court by way of evidence. The employer stated that this agreement had come into effect following a national ballot of Flybe engineers on 19th November 2007.

Unite responded to this contention by stating that it had been involved in negotiations to reach a voluntary agreement with Flybe but that, when no formal agreement could be reached, ALAE emerged as an alternative contender for recognition. Unite sought postponement of a balloting process which was being organised by the employer in order to allow for further dialogue. When the employer refused, Unite informed Flybe that it would not be bound by the outcome of the ballot.

The workplace ballot took place and Unite disputed Flybe's figures, which showed that 77% of those voting had supported ALAE in a turnout of 44%. Unite claimed that the employer had not taken the views of Belfast engineering staff into consideration and suggested that the application should be dealt with in accordance with the legislative process pertaining in this jurisdiction.

The employer responded that, while discussions between it and Unite had been ongoing, both had consistently agreed on a UK-wide bargaining unit, with the only areas of disagreement being in relation to the inclusion of administrative staff and ground handling staff in Guernsey. The employer had been approached by its own staff committee members of the bargaining unit and ALAE, and the latter could show membership comparable to that of Unite. ALAE requested the opportunity to be recognised on a national basis, indicating that it would seek recognition through the Central Arbitration Committee if Flybe did not consider its representations. The employer subsequently arranged access for both unions to all engineering staff and the ballot to determine whether engineers wanted recognition and, if so, in respect of which union. It claimed that both Unite and ALAE agreed to the ballot and were given access to all relevant work locations. At Unite's request, Flybe extended the access period by an additional two weeks but Unite subsequently withdrew from the ballot. The employer provided a copy of the ballot result.

On the basis of the submissions and evidence provided, the Court noted that there was no dispute that an existing recognition agreement was in place between ALAE and Flybe. Mindful of the jurisdictional issue highlighted by Unite, the panel

noted that Unite had at all times been aware of the employer's intention to enter into discussions regarding engineers across all sites within the UK. The panel considered that it had to satisfy itself, under paragraph 35 of Schedule 1A to the Trade Union and Labour Relations (Northern Ireland) Order 1995, that the collective agreement was 'in force' in Northern Ireland but that there was nothing in paragraph 35 which precluded an agreement from being UK-wide. There was nothing on the facts to suggest that the agreement was not in force in Northern Ireland on the date of the panel meeting. Accordingly, in a decision of 4th February 2008, the Court deemed Unite's application inadmissible in accordance with paragraph 35 of Schedule 1A.

IC39/2008 – Unite the Union (AT&G Section) and Falls Bowling and Lawn Tennis Social Club

Unite's application dated 11th March 2008 sought recognition in respect of a bargaining unit consisting of "all bar workers and doormen" at Falls Bowling and Lawn Tennis Social Club.

At the end of the reporting period, the case was ongoing and consequently it is not possible to provide an account of the issues arising in or the outcome of the case.

Resources

Membership of the Court

ROLE	NUMBER
Chairman and Deputy Chairman	1
Panel Members	8 [^]
TOTAL	9

Secretariat to the Court (part-time staff)

ROLE	NUMBER
Management/Operations	3
Administration	2
TOTAL	5

Expenditure

COST RELATING TO	AMOUNT
Fees and expenses of Chairmen and Members	£19,322.04
Staff costs	£83,069.60
Other costs (including training, travel and accommodation)	£14,560.93
TOTAL	£116,952.57

[^] The figure is accurate as of 31 March 2008

Staff and contact details

Staff

Secretary Dr Alan Scott

Senior Case Manager Mr Paul Lyons

Case Manager Miss Brenda Slowey*

Head of Administration Mr Paul Cassidy

Administrative Support Mr Alan Finlay

Contact Details

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Website: www.industrialcourt.gov.uk

* At the time of publication, the post of Case Manager is held by Mrs Maria Cummins.

User satisfaction

At the Industrial Court, we take very seriously our commitment to provide a courteous, helpful and efficient service to all of our users. If you are asked for your views on any aspect of our service, we would appreciate your co-operation as this will help us to improve our service in future. However, there is no need to wait until you are asked before contacting us. If at any stage you have any comments, whether of satisfaction, complaint or suggestion, please do not hesitate to contact us. In particular, if you are dissatisfied with any aspect of our service, we would very much appreciate your input so that we can rectify the matter. Contact details for the Court are provided on **page 21**.

If you cannot resolve your problem with the person who dealt with you originally, please ask to speak to the Secretary (contact details below) who will investigate your complaint.

Dr Alan Scott
Secretary
The Industrial Court
Room 213
Adelaide House
39-49 Adelaide Street
BELFAST
BT2 8FD

Telephone: 028 9025 7531

E Mail: Alan.Scott@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).



Industrial Court, Room 203, Adelaide House,
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Website: www.industrialcourt.gov.uk