

Industrial Court

ANNUAL REPORT
2010/11



**INDUSTRIAL
COURT**

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Industrial Court Annual Report 2010/11

This report on the activities of the Industrial Court for the period 1 April 2010 to 31 March 2011 was sent by the Acting Chairman of the Industrial Court to the Department for Employment and Learning on 8 February 2012.

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Review of the year

Caseload

The Court had a quiet year in terms of caseload with only three applications during the reporting period, including an ongoing application at the start of the reporting period and a resubmitted application towards the end.

The ongoing application regarded a failure to disclose information involving the Northern Ireland Public Service Alliance (NIPSA) and Magherafelt District Council. As is permitted under the enabling legislation, the Industrial Relations (Northern Ireland) Order 1992, the matter was referred to the Court by the Labour Relations Agency. At a full hearing on 30 March 2010, both parties asked for an adjournment pending implementation of a settlement between them. The referral to the Court was formally withdrawn by NIPSA on 5 May 2010.

December 2010 saw an application from Unite the Union for recognition at Evron Foods Limited, in Portadown. This application was unusual in that the employer, in its response, claimed not to have received a written letter of request from the union, nor a copy of the application form, as required under Schedule 1A to the Trade Union and Labour Relations (Northern Ireland) Order 1995. The panel sought further evidence from the union to determine whether the union had, in fact, provided copies of papers to the employer. After examining the evidence, which included copies of letters sent to the employer and a receipt for a registered letter, the panel decided, on the balance of probabilities, that the employer had received original papers at least 10 working days before the union submitted its application to the Court, in line with its statutory obligations under the Schedule. However the union withdrew its application before the Court reached a formal decision on whether to accept the application.

Unite the Union resubmitted an application for recognition at Evron Foods Ltd in March 2011. The union's proposed bargaining unit for this application was different from that specified in the previous application. The application was accepted by the Court and, at the time of writing, the case remains ongoing.

Legislative developments

The Employment Act (Northern Ireland) 2010 received Royal Assent on 2 August 2010. The Act provided the powers for the Department for Employment and Learning to amend legislation related to the Industrial Court to provide greater flexibility by replacing arrangements for Court appointments, originally in primary legislation, with equivalent subordinate legislation provisions.

Following extensive consultation between the Department and the Court, The Industrial Court (Membership) Regulations (Northern Ireland) 2011 (S.R. 2011 No. 237) came into operation on 31 July 2011. This Statutory Rule specifies the

arrangements in relation to the appointment of members of the Industrial Court and their terms of appointment. It includes provision for the appointment of a Chairman, Deputy Chairman and Members of the Court, for the removal or suspension of Members in certain specified circumstances, and for the Members to hold and vacate office in accordance with their terms of appointment.

The Act also removed the restriction that the Court's secretariat functions could only be fulfilled by staff from the Department and extended the right to legal representation to all but one of the eight jurisdictions of the Court, the exception being the Court's original arbitration role.

Annual Members' Day

The annual Members' Day was held on 19th January 2011 in the Wellington Park Hotel, Belfast.

The holding of this annual event afforded Members a valuable opportunity to discuss the various cases the Court dealt with throughout the year, refresh their knowledge, share experience and provide direction for the year ahead.

A brief account of the day can be found on **page 7**.

Membership of the Court

One of the Court's employer representatives, Mr Irvine McKay, retired from the Court on 31 March 2011. Irvine was a longstanding Member of the Court, having served continuously since his appointment in 1990. He was involved in numerous cases during his tenure and made a valuable contribution to the work of the Court. I would like to thank him for all of his efforts over the last 21 years and wish him all the best on behalf of myself and the members and staff of the Court.

Sadly, Mr Bob Gourley passed away shortly before this Report was presented to the Department. Bob was also a long-standing Member of the Court, having served continuously since his appointment in 1996. He took on a significant number of cases, particularly in the last few years, due to the connections of other trade union representatives with an applicant union.

Bob brought great wisdom and experience to the work of the Court. He will be greatly missed by all his colleagues on the Court and in the Secretariat.

Staffing

There were no changes to the staffing of the secretariat during the reporting period.

Once again I would like to thank the officers of the Secretariat for their excellent work during the course of the year.

Links with the Central Arbitration Committee

As is always the case, the Court has benefited greatly from its close association with the Central Arbitration Committee (CAC). During the year myself and members of the Secretariat attended CAC Deputies' and Members' meetings. The positive working relationship between the Court and the CAC continues to be an invaluable one and I very much appreciate the assistance and cooperation of the CAC and its staff.

Your views

The Court is committed to continuing to provide a professional, effective and courteous service to its users. The feedback received from satisfaction surveys continues to be very positive, but we recognise that there can be no room for complacency and are constantly striving to improve the service. If you have any comments on the operation of the Court, please let us know. For more information, please see **page 17**.

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 and 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 derecognition 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 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 professional, 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.
- ◆ 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 2009-2010.	30/09/11	08/02/12¹

¹ The handing over of this Annual Report was delayed to coincide with a Members' Day meeting on 8 February 2012.

Membership of the Industrial Court 2010/11

Membership of the Court during the period 1 April 2010 to 31 March 2011 is recorded below.

Acting Chairman

Mr Barry Fitzpatrick

Members with experience as representatives of employers

Mr George McGrath

Retired Deputy Chief Executive, BT (NI)

Mr W F Irvine McKay²

Retired Chartered Accountant and
Stockbroker

Mr Maurice Moroney

Retired Employment Relations
Manager, Ulster Bank Ltd

Members with experience as representatives of workers

Mr Joe Bowers

Retired Regional Officer, MSF

Mr Bob Gourley

Retired Regional Officer, USDAW

Ms Avril Hall-Callaghan

General Secretary, UTU

Mr Peter Williamson

Retired Irish Regional Secretary,
AMICUS

² Mr W F Irvine McKay's appointment ended on 31 March 2011.

Annual Members' Day

The Industrial Court held its Annual Members' Day on 19th January 2011 in the Wellington Park Hotel, Belfast. The event provided an opportunity for the Members of the Court to come together to consider the outcomes of applications during the previous year, discuss recent developments relevant to the work of the Court and examine the relationships with key stakeholders.



Members of the Industrial Court pictured at the Annual Members' Day on 19th January 2011

Members took the opportunity to consider in detail the content of the proposed Industrial Court (Constitution) Regulations (Northern Ireland) 2011 then being prepared by the Department for Employment and Learning. The outcome of these discussions informed the Court's submissions to the Department on the Regulations, which became law on 31st July 2011.



Acting Chairman Barry Fitzpatrick (left) presents the Annual Report to Conor Brady from DEL (right)

appointment of new talent to the Court. The appointment process, which was taken forward by the Department, was completed in late 2011.

Acting Chairman, Mr Barry Fitzpatrick, presented the Court's Annual Report for 2009/10 to the Members of the Court and to officials from the Department for Employment and Learning.

The meeting marked the imminent retirement as the Court's longest serving Member, Mr W F Irvine McKay, who first joined the institution in 1990. With Irvine's retirement and other Members' tenures due to run for only a few more years, Members were keen to examine issues around the



Secretariat and Acting Chairman (from left): Alan Finlay, Barry Fitzpatrick, Alan Scott, Paul Cassidy, Paul Lyons

Applications and case outcomes

The Industrial Court received the following applications in the named jurisdictions during the period 1 April 2010 to 31 March 2011.

Applications for recognition for collective bargaining purposes

PARTIES	CASE REF NO
Unite the Union and Evron Foods Ltd	IC44/2010
Unite the Union and Evron Foods Ltd	IC45/2011

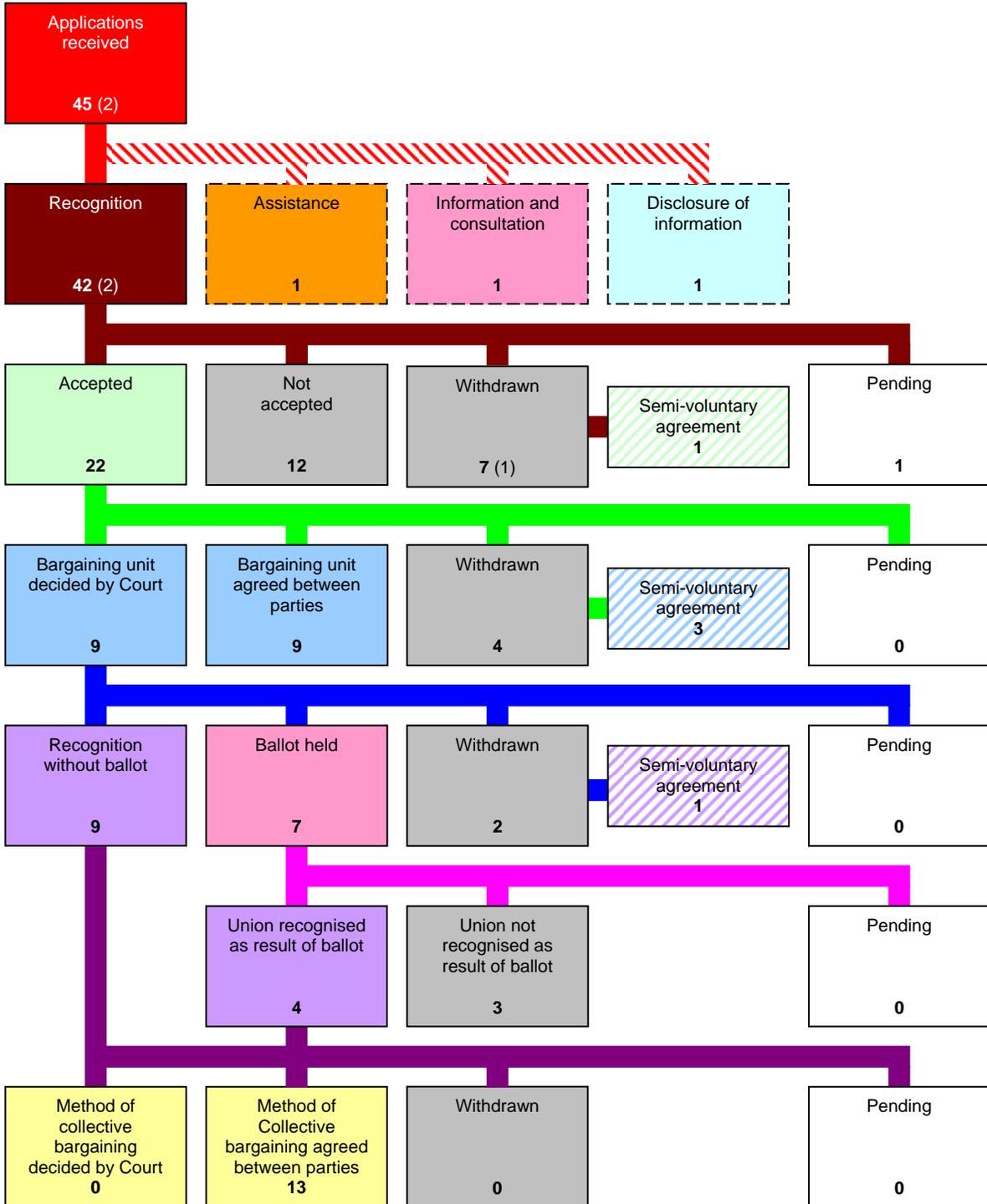
In addition, an application concerning failure to disclose information under Article 41 of the Industrial Relations (Northern Ireland) Order 1992, NIPSA and Magharafelt District Council, was ongoing from the previous reporting year.

The text of 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.

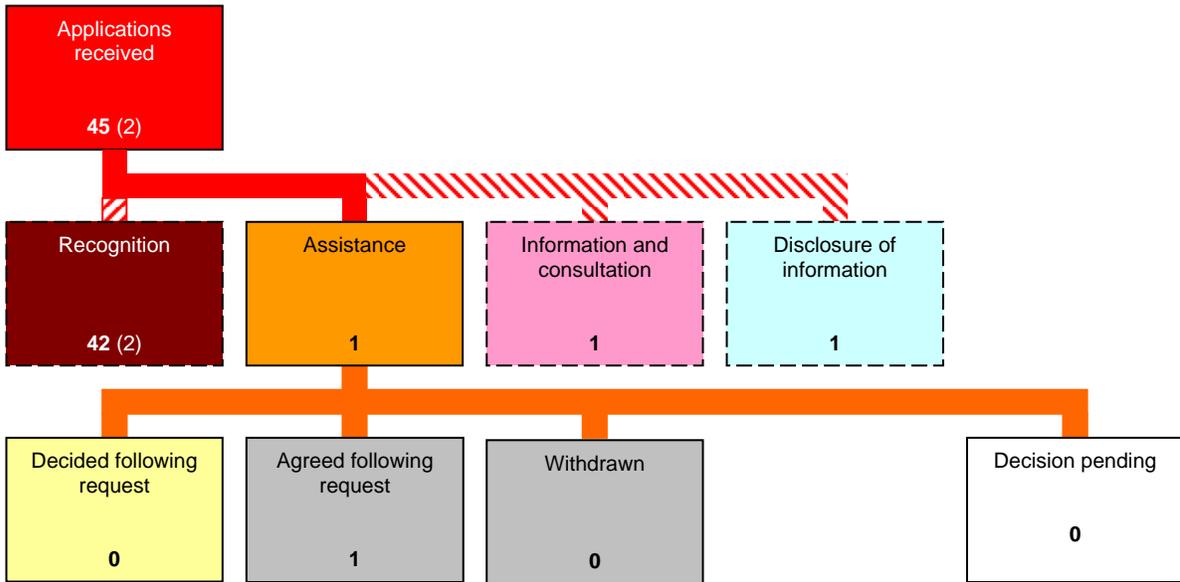
Accounts of each case may be found starting on **page 13**.

On the following pages are diagrams setting out the outcomes of all cases dealt with by the Industrial Court. Figures in brackets represent changes to total figures **during the reporting year** and do not reflect subsequent developments. 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.

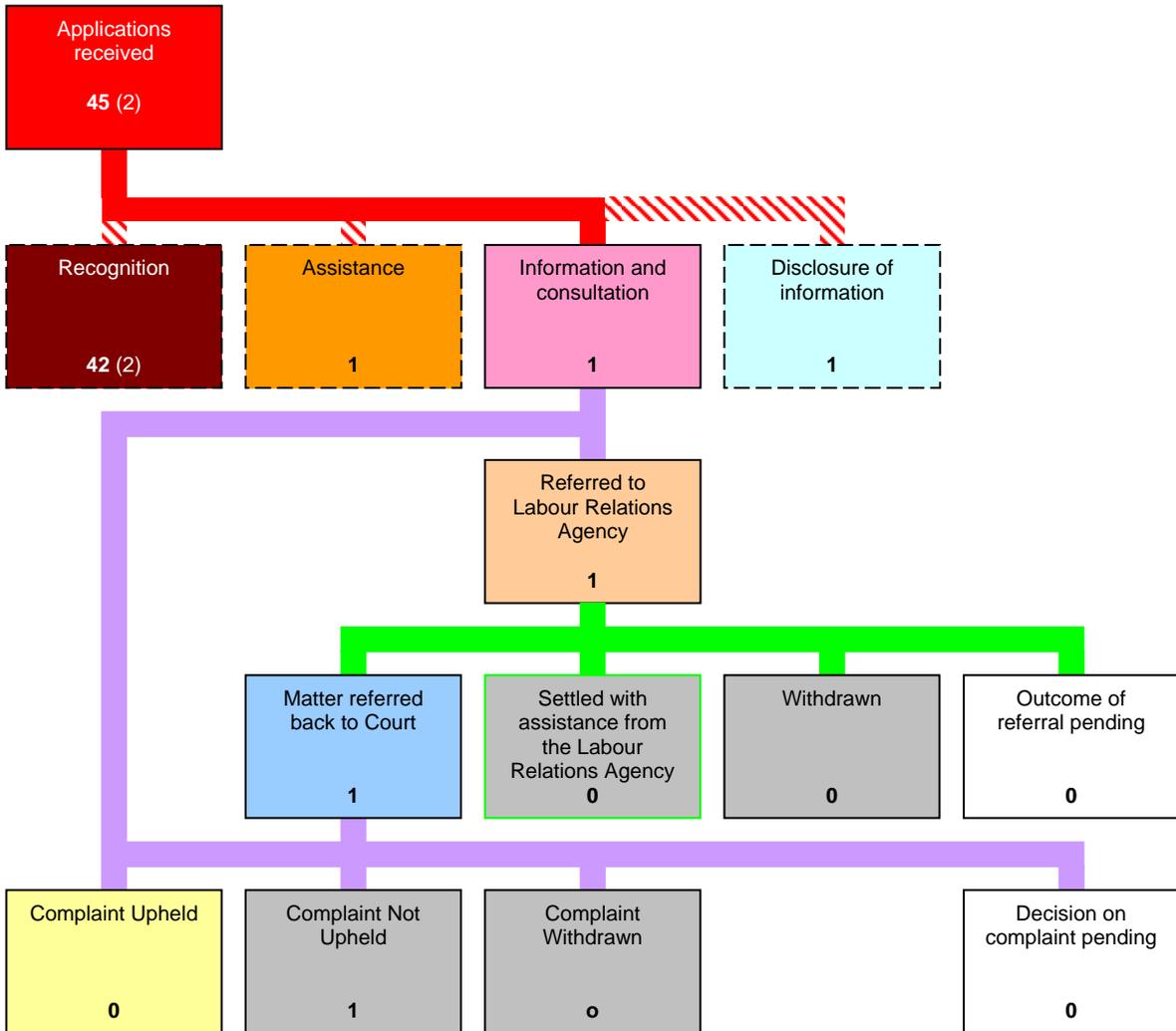
Applications for recognition



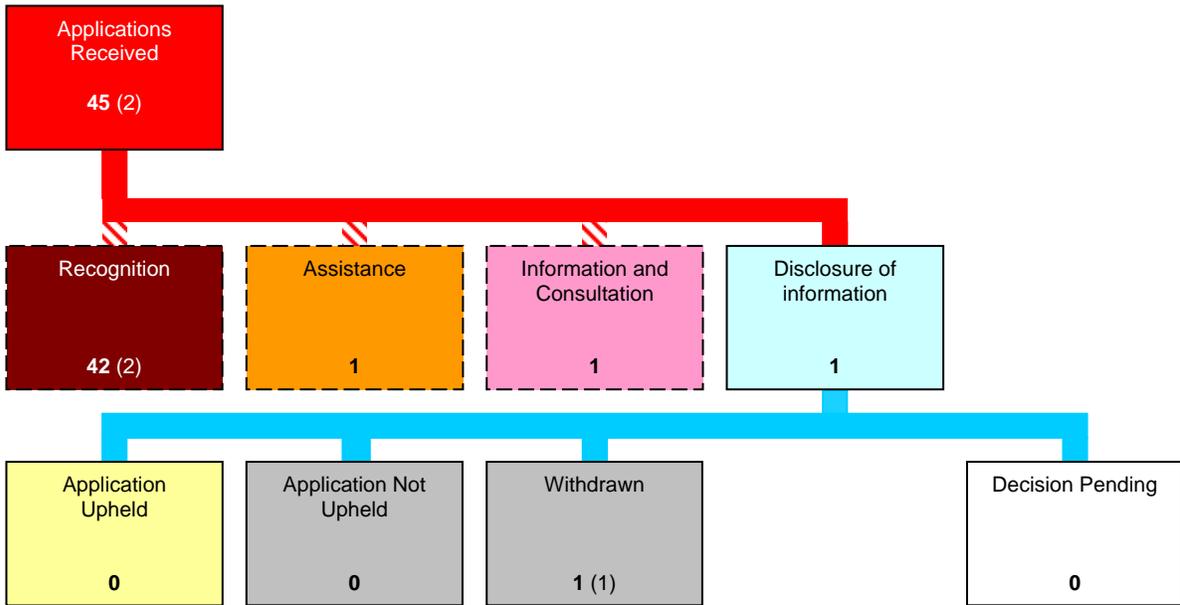
Applications for assistance



Information and consultation applications



Disclosure of information applications



Review of cases 2010/11

IC43/2009 – NIPSA and Magherafelt District Council

This application was ongoing at the beginning of the reporting year and concerned a referral to the Court from the Labour Relations Agency regarding a complaint of a failure to disclose information for collective bargaining purposes under Article 41 of the Industrial Relations (NI) Order 1992.

A preliminary hearing and an informal hearing were held to determine which issues were relevant to the resolution of the complaint and a full hearing was scheduled for 30 March 2011. At the hearing the parties asked for an adjournment, pending the implementation of a settlement agreed between them. This request was granted by the Court. The union subsequently confirmed that the terms of the agreement had been provided to it by Magherafelt District Council and that the complaint should be withdrawn. The Council consented to this request and, as a result, the matter was formally withdrawn.

IC44/2010 – Unite the Union and Evron Foods Ltd

Unite the Union submitted an application to the Industrial Court dated 14 December 2010 for recognition at Evron Foods Limited, Carn Industrial Estate, Portadown, Co Armagh. The bargaining unit description was *“Hourly paid operatives in the Portadown Plant at Team Leader grade or below but not including admin or management grades above Team Leader”*.

The application was copied to the employer on 22 December 2010 and the questionnaire response was received on 5 January 2011. This response, which was incomplete, stated that the employer did not receive a written request from the union for recognition under Schedule 1A; nor did it receive a copy of the union's application form. Evidence was subsequently sought from the union that a copy of the originating letter and application form were forwarded to the employer by the union.

A panel meeting was held on 12 January 2011 to consider the evidence of posting provided by the union. The panel decided, on the balance of probabilities, that the letter of request was received on some date after 11 November 2010 and that the application form was received on some date after 13 December 2010. Thus the panel was satisfied that the requisite period of 10 working days had elapsed between receipt of the letter of request and receipt of the application form. The panel duly extended the deadline for the employer to provide a full response questionnaire to the Court.

In a resubmitted response questionnaire, the employer said that it did not agree with the union's proposed bargaining unit, nor did it agree with the union on the total number of workers employed in the Portadown plant.

In order to assist the panel, the Case Manager carried out a membership check. However, due to a large discrepancy between the figures supplied by the parties regarding the total number of employees in the Portadown plant, the outcome of the check was not clear. There was an issue regarding both parties' usage of the term "operatives" and how it applied to the workers in the bargaining unit. The Case Manager, on the panel's instructions, subsequently wrote to the parties on 27 January 2011, asking them to clarify their usage of "operatives" and to indicate which employees they felt were included by the term. They were also asked to explain the discrepancy between the figures supplied by each party regarding the total number of workers employed. The deadline for acceptance of the application by the Court was extended to 2 February 2011.

On 2 February 2011 the union indicated to the Case Manager that it would withdraw the application and as such the Court decided to extend the deadline for acceptance to 7 February 2011. Written confirmation was received from the union on 7 February 2011 and the application was subsequently withdrawn before a formal decision on acceptance was reached by the Court.

IC45/2011 – Unite the Union and Evron Foods Ltd

Unite the Union submitted an application to the Industrial Court, dated 7 March 2011, for recognition at Evron Foods Limited, Carn Industrial Estate, Portadown, BT63 5WD. This application was a repeat of the previous application and described the bargaining unit as "*Despatch Operatives, Production Operatives, Team Leaders, Store Persons*" and the location was given as "*Portadown Plant*". The application was copied to the employer on 9 March 2011 and a completed response questionnaire was received on 16 March 2011. The employer also raised some concerns over the union's repeat application to the Court.

The panel which had considered the previous application was reappointed to consider this application. The panel responded to the employer regarding the concerns expressed and acknowledged that the description in the application form did not accurately reflect that given in the letter of request. However the panel's view was that there was nothing inconsistent in the two descriptions given by the union.

The application was accepted by the Court on 14 April 2011 and progressed to the next stage, the determination of an appropriate bargaining unit. The matter is presently ongoing.

Resources

Membership of the Court

ROLE	NUMBER
Acting Chairman	1
Panel Members	7
TOTAL	8

Secretariat to the Court (part-time staff)

ROLE	NUMBER
Management/Operations	2
Administration	2
TOTAL	4

Expenditure

COST RELATING TO	AMOUNT
Fees and expenses of Chairmen and Members	£25,239.29
Staff costs	£29,850.00
Other costs (including training, travel and accommodation)	£2,525.57
TOTAL	£57,614.86

Staff and contact details

Staff

Secretary Dr Alan Scott

Senior Case Manager Mr Paul Lyons

Case Manager Mr Paul Cassidy

Head of Administration Mr Paul Cassidy

Administrative Support Mr Alan Finlay

Contact Details

The Industrial Court
Room 203
Adelaide House
39-49 Adelaide Street
BELFAST
BT2 8FD

Telephone: 028 9025 7599

Fax: 028 9025 7555

E Mail: enquiries@industrialcourt.gov.uk

Website: www.industrialcourt.gov.uk

User satisfaction

The Industrial Court is committed to providing a professional, effective and courteous service to all of its users. If you are asked for your views on any aspect of the Court's service, we would appreciate your co-operation as this will help us to improve it in future. However, there is no need to wait until you are asked before getting in touch. All comments, complaints and suggestions are welcome; in particular, if you are dissatisfied with any aspect of our service, we would be very keen to hear from you so that we can rectify the matter. Contact details for the Court are provided on **page 16**.

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 202
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).



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Website: www.industrialcourt.gov.uk