

Industrial Court

ANNUAL REPORT
2008/09



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Industrial Court Annual Report 2008/09

This report on the activities of the Industrial Court for the period 1st April 2008 to 31st March 2009 was sent by the Chairman of the Industrial Court to the Department for Employment and Learning on 19th January 2010.

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Chairman's review of the year

It gives me great pleasure to write for the first time the opening remarks for an annual report of the Industrial Court. I was privileged to be appointed as Chairman of the Court on 1st October 2008, taking on the role from Barry Fitzpatrick who had been Acting Chairman since 8th March 2006. I would like to thank Barry for his sterling work during that period. Barry has now returned to the post of Deputy Chairman.



Mr Eugene O'Loan, Chairman

The reporting year began as the Court dealt with an application by Unite the Union seeking recognition in respect of a bargaining unit at Falls Bowling and Lawn Tennis Social Club. Barry has commented on this case further in his remarks below but I am pleased to note that agreement between the Union and the Employer was reached in this case. The Court has always sought to resolve matters informally and, in my role as Chairman, I will continue to support that approach.

The first and only application received during the reporting year, on 3rd November, was again from Unite the Union. On this occasion Unite was seeking recognition of a bargaining unit at Dunbia (Northern Ireland), Dungannon. The case brought to light differences between the union and the employer as to the make-up of the bargaining unit and, following a series of attempts by the Court to clarify respective positions, a hearing took place on 20th March 2009. The remainder of the case was dealt with following the end of the reporting year and the outcome is detailed in the **Review of cases 2008/09** presented later in the report.

The Court held its Annual Members' Day on 27th January 2009 in Jurys Inn Hotel, Belfast. The day provided a valuable opportunity to discuss recent cases, share practical industrial relations experiences and discuss administrative issues. The 2007/08 Annual Report was presented to Members and to a representative from the Department for Employment and Learning. A fuller account of the day is provided later in this report.

The Court's Secretariat continued to deliver a professional service throughout the year and, on behalf of the Court, I would like to thank them for their continuing efforts.

I have asked Barry to add a few words to reflect his role as Acting Chairman for the first half of this reporting year.

Deputy Chairman's remarks

I would like to thank the Secretariat of the Court for its excellent work during my two and a half years as Acting Chairman. Indeed, as frequently mentioned in these reviews of the year, we on the Court have consistently been impressed with the quality of the work of our Secretariat and I can personally vouch for this as both Deputy and Acting Chairman.

I should add an historical note. The Industrial Court, for the then United Kingdom of Great Britain and Ireland, was established in 1919 through the Industrial Court Act of that year. I have stated, for example, at the LRA Annual Conference in 2008, that 2009 would be the 90th birthday of the Court and our website declares this fact. Some preliminary research has however established that the Industrial Court for Northern Ireland was established in 1921. It seems that the Government of Ireland Act 1920 allowed for institutions in the United Kingdom to be re-established in both Northern and (the then) Southern Ireland. Hence we have to wait two more years for a 90th birthday party and, perhaps, a more detailed historical note in that year's Annual Report.

It is worth noting however that the Industrial Court is the only arbitration body to survive in 'these islands' with its original name intact. In the Republic of Ireland, the body was renamed 'The Labour Court'. In Great Britain it was reconstituted, and renamed, as the Industrial Arbitration Body in the mid-20th century and as the Central Arbitration Committee in 1976.

The only application on which I chaired a panel in this year was Unite the Union and Falls Bowling and Lawn Tennis Social Club. The prime issue in this application was whether there was already a collective agreement "in force". The Central Arbitration Committee had already decided, in *NUM and RJB Mining (UK)*, that a pre-existing collective agreement could exist between the employer and the applicant union.

The Court was not clear whether a collective agreement was in force in this case. The panel decided to invite the parties to attend an informal meeting with the Chairman and, as a result, the parties were happy to take their case to the LRA, where it was resolved. This is another example of the Court preferring to promote informal resolution of the disputes which it is required to resolve.

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
- ◆ 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
- ◆ 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 2008/09	30/09/09	19/01/10

Membership of the Industrial Court 2008/2009

Membership of the Court during the period 1st April 2008 to 31st March 2009 is recorded below.

Chairman

Mr Eugene O'Loan¹

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 Peter Williamson

Retired Irish Regional Secretary,
AMICUS

¹ Barry Fitzpatrick was Acting Chairman from 8th March 2006 until Eugene O'Loan's appointment on 1st October 2008.

Annual Members' Day



Mr Eugene O'Loan, Chairman (right) and Mr Barry Fitzpatrick, Deputy Chairman (left)

The Industrial Court held its Annual Members' Day on 27th January 2009 in Jurys Inn Hotel, Belfast.

The event afforded Members an opportunity to meet collectively to discuss the cases the Court has dealt with throughout the year, share their experiences of these and industrial relations more generally, and discuss the handling of a range of scenarios which can arise as a case proceeds.

During the morning, Members of the Court and staff from the Secretariat broke into discussion groups which were asked to consider a range of issues and report back. This approach, which has been helpful on previous Members' training days, once again proved a stimulus for useful debate during the afternoon session.

The Members' Day was the first presided over by the new Chairman of the Court, Mr Eugene O'Loan. Mr O'Loan took up post on 1st October 2008, succeeding Mr



Mr Barry Fitzpatrick presents Mrs June Ingram, DEL, with the Court's Annual Report

Barry Fitzpatrick who had been Acting Chairman from 8th March 2006. During the course of the day, Mr Fitzpatrick presented the 2007/08 Annual Report to the Members of the Court and to Mrs June Ingram, Director of Strategy and Employment Relations Division in the Department for Employment and Learning (DEL).



Members of the Court and the Secretariat in discussion

The day also included discussion of 'domestic' and administrative issues. In addition, following staffing changes to the Court's Secretariat, some Members also had

a first opportunity to welcome new Case Manager, Maria Cummins, who joined the staff during the summer of 2008.

Applications and case outcomes

The Industrial Court received the following application in the named jurisdiction during the period 1st April 2008 to 31st March 2009.

Applications for recognition for collective bargaining purposes

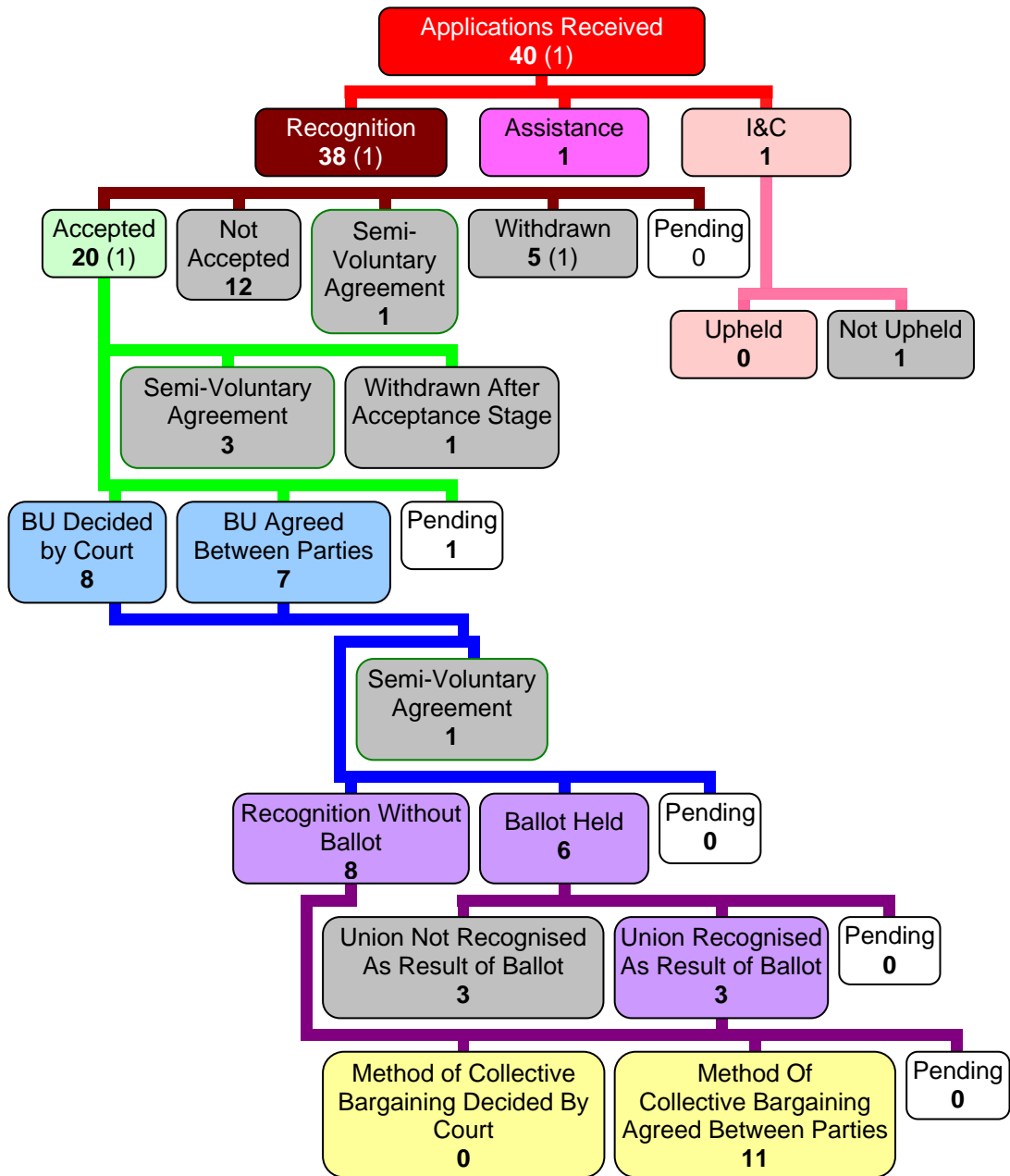
PARTIES	CASE REF NO
Unite the Union and Dunbia (Northern Ireland)	IC40/2008

However, although the application was received during the previous reporting year, the Court continued to deal with case IC39/2008, **Unite the Union and Falls Bowling and Lawn Tennis Social Club**.

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 these cases may be found starting on **page 12**.

On the following page is a diagram setting out the outcomes of all cases dealt with by the Industrial Court. Figures in brackets refer to cases reaching a particular stage during the reporting year. 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 2008/09

IC39/2008 – Unite the Union & Falls Bowling and Lawn Tennis Social Club

This application was received in March 2008, and was covered briefly in last year's report, but was ongoing into the 2008/09 reporting period. In this application, Unite the Union sought recognition in respect of a bargaining unit consisting of "all bar workers and doormen" at Falls Bowling and Lawn Tennis Social Club.

The panel met on 11th April 2008 to consider the admissibility of the Union's application and concluded that it required clarification on a number of issues. The Court was not yet satisfied that there was not a collective agreement already in place. In addition, the Court could not be satisfied that at least 10% of the bargaining unit were Union members, or that a majority of workers in the bargaining unit were likely to favour Union recognition. The panel therefore requested further information from both parties to help clarify these issues. It was also agreed that the Chairman would request an informal meeting with the parties as it was felt by the panel that this matter might be resolved informally.

An informal meeting took place between the Chairman and the two parties on 24th April 2008, which resulted in both parties agreeing to speak to the Labour Relations Agency with a view to reaching an agreement. The Court was happy to extend the statutory deadline while both parties were in negotiations, and on 5th June 2008 the Court received notification from the Union that the parties had reached agreement and that it did not wish to proceed with the application for recognition. The application was therefore deemed 'withdrawn' by the Union and no further steps were taken by the Court.

IC40/2008 – Unite the Union & Dunbia (Northern Ireland)

Unite the Union submitted an application to the Industrial Court on 3rd November 2008 seeking recognition at Dunbia (Northern Ireland) for a bargaining unit consisting of "hourly paid employees at Dunbia sites in Dungannon". The employer submitted its response to the Court on 14th November 2008. The acceptance period in this case was extended on two occasions, the first at the request of the Union to allow both parties to continue with voluntary discussions, and the second at the request of the employer to allow adequate time to respond to the Case Manager's Report.

In its application the union stated that a list of union members and a petition from non-members were attached but this information was not provided with the original documentation, a point which was noted by the employer in its response to the application. The Court subsequently received, on 1st December 2008, both a union membership list and a petition from non-members prepared to join the

union if recognition was granted. The employer also declared that the definition of the proposed bargaining unit in the application differed from that set out in the original letter of request from the union and therefore it could not agree with the definition in the application. The Court contacted the union by e-mail on 3rd December 2008 asking for clarification on the definition of the proposed BU. The Union responded by e-mail on the same date and declared that it was content with the definition in the original letter of request, which stated that the BU consisted of all hourly paid operatives in the Dunbia plants based in Dungannon, but did not include clerical administration, supervisory staff and management grades.

A Case Manager's report was produced based on all relevant information available on 3rd December 2008 and was issued to both parties for their comments. The union responded advising that it had no further comment to make, and the employer responded through its solicitor by telephone and e-mail on 3rd December 2008 requesting an extension to allow adequate time to respond to the Case Manager's Report. An extension was granted by the Court until 11th December 2008. The employer's solicitor stated by e-mail on 5th December 2008 that a response would not be provided until the employer had received copies of both the union membership list and the petition from non-members, which it felt should have been included with the application and therefore should have been made available to the employer. The Court advised the employer by e-mail on 5th December 2008 that, as the supporting documents supplied by the union consisted of a members' list and a petition, neither of which had been sent with the application; they would be treated in confidence and therefore would not be copied to the employer.

After full consideration of all the documentation submitted by the Parties and the Case Manager's Report, the Panel accepted the application on 11th December 2008. This decision was reviewed at the request of the employer, questioning the accuracy of some of the figures used, but after due consideration the panel confirmed its decision to accept the application on 12th December 2008.

The Court requested further information from the parties on 9th January 2009 to allow the Case Manager to carry out a membership and support check to establish whether there would be a need for a ballot. A further Case Manager's Report was prepared based on this information, and the panel met on 20th February 2009 to discuss this and the subsequent responses from the parties. At this meeting the panel decided that a hearing was required to establish what constituted the bargaining unit, how many members of the BU were union members and, if a ballot were to be held, what form it would take. This hearing took place on 20th March 2009.

The following information on the case relates to a period after the close of the reporting year, but it is helpful to provide it at this stage given the timing of this report's publication.

After a request for further supporting information from both parties, the panel decided on 2nd June 2009 that a combined workplace and postal ballot would be required. Arrangements were made to hold such a ballot, including the appointment of a Qualified Independent Person (QIP) to carry it out on behalf of the Court.

However on 31st July 2009, before the ballot could be held, the Court received notification from the union that the parties had reached a voluntary recognition agreement and that it did not wish the Court to proceed any further with the application.

Resources

Membership of the Court

ROLE	NUMBER
Chairman and Deputy Chairman	2
Panel Members	7
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	£11,225.32
Staff costs	£59,469.80
Other costs (including training, travel and accommodation)	£8,828.88
TOTAL	£79,524.00

Staff and contact details

Staff

Secretary Dr Alan Scott

Senior Case Manager Mr Paul Lyons

Case Manager Mrs Maria Cummins

Head of Administration Mr Paul Cassidy

Administrative Support Mr Alan Finlay

Contact Details

The Industrial Court
Room 203
Adelaide House
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BELFAST
BT2 8FD

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Website: www.industrialcourt.gov.uk

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 it 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 17**.

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).



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