Neutral Citation No: [2023] NIKB 81	*Ref:*	**TRE12233**
	ICOS No:	**23/60681/01**
*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:*	**28/07/2023**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION
(JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY SEAGATE TECHNOLOGY IRELAND FOR JUDICIAL REVIEW

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Mr Matthew Corkey (instructed by Carson McDowell Solicitors) for the Applicant
Mr Christopher Summers (instructed by the Departmental Solicitor's Office) for the Industrial Court
Mr Michael Potter (instructed by Norman Shannon & Co Solicitors) for Unite the Union

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Ex Tempore

TREACY LJ

Introduction

[1] By this application the applicant seeks leave to challenge decisions of the Industrial Court relating to an application by Unite Trade Union for statutory recognition pursuant to the provisions of Part 1 of Schedule 1A to the Trade Union and Labour Relations (Northern Ireland) Order 1995 ("the 1995 Order").

[2] The test for leave is an arguable case with a realistic prospect of success. In arriving at my decision in this case, I have had the benefit of oral submissions from counsel on behalf of the applicant, the respondent and the notice party. I also had the benefit of written submissions from the applicant and the notice party.

[3] Leave is sought to challenge three decisions of the Industrial Court as identified in the Order 53 Statement in the following terms:

(i) The applicant seeks to challenge the proposed respondent's decision of 22 May 2023 provided in long form on 24 May 2023 to admit an application for recognition of a trade union pursuant to Part 1 of Schedule 1A to the

Employee Relations (Northern Ireland) Order 1995, the application having been made by Unite the union.

(ii) The applicant seeks to challenge the proposed respondent's decision of 29 June 2023 whereby it refused an application by the applicant to extend the period within which the proposed respondent required a bargaining unit to be agreed between the applicant and Unite, and whereby it refused to adjourn the hearing of 31 July 2023.

(iii) The applicant seeks to challenge the proposed respondent's decision of 14 July 2023 whereby it changed its stated position of 21 June 2023 to the effect that the application before it would progress unless and until there are High Court proceedings which must take priority.

[4] On 14 July 2023, the proposed respondent stated:

> "The Industrial Court is not prepared to delay to accommodate a judicial review challenge and is content to contest any proceedings issued including a request for interim relief."

[5] The applicant also seeks interim relief in the form of an order prohibiting the industrial court from undertaking a hearing of the notice party's application for recognition until the conclusion of these proceedings or further order.

[6] The relevant statutory provisions that are in issue in the present case are contained in Part 1 of Schedule 1A to the Trade Union and Labour Relations (Northern Ireland) Order 1995 which provides the procedure for an application for statutory recognition of a union. Para 36 of Part 1 of Schedule 1A to the 1995 Order provides as follows:

> "36.—(1) An application under paragraph 11 or 12 is not admissible unless the Court decides that—
>
> (a) members of the union (or unions) constitute at least 10 per cent of the workers constituting the relevant bargaining unit, and
>
> (b) a majority of the workers constituting the relevant bargaining unit would be likely to favour recognition of the union (or unions) as entitled to conduct collective bargaining on behalf of the bargaining unit."

[7] Para 36(3) provides that the Court must give reasons for the decision.

[8] There is no dispute that, in principle, such admissibility decisions can be subject to judicial review prior to the Industrial Court process moving to the next stage, that is to say the hearing on the composition of the bargaining unit.

[9] The first decision which the applicant seeks to challenge is the decision of 22 May 2023 to admit the application for recognition. The principal basis of this challenge is the contention that the Industrial Court failed to provide adequate or intelligible reasons for its admission decision. The Industrial Court, in accordance with the statutory scheme, did provide a short form and then a long form decision. This is acknowledged by the applicant, who in my view, unrealistically contends that these documents did not contain any or adequate reasons. On the available evidence there appears to be over 50% union membership in the bargaining unit. There was no compelling, if any, evidence to undermine the information contained in Unite's application for recognition. A membership check was not required to determine that the 10% membership requirement was met.

[10] For the purpose of addressing the admissibility requirement re evidence of likely majority support for recognition the court's attention was drawn to extracts from *Harvey on Industrial Relations* to the effect that the Industrial Court may be so satisfied if there is approximately 40% union support. In the present case, the evidence before the Industrial Court allowed it to determine that the support criterion was also met.

[11] As has been pointed out, it is not in the union's interest to mislead the Industrial Court about the levels of union membership or support. If the recognition application is accepted on the basis of unreliable information, but the application is ultimately unsuccessful, the union is penalised as it cannot bring a further application for a period of three years. I have no reason to doubt that this is well understood by all involved in recognition proceedings. The Industrial Court's decision, in my view, intelligibly and adequately explains the basis of its decision. The central factor in their determination was the evidence as to the number of persons in the proposed bargaining unit and the number of union members which comprised more than 50% of the workers in the proposed bargaining unit.

[12] Accordingly, I find that the applicant has failed to establish that this ground is arguable.

[13] I turn now to the second and third decisions which I can deal with rather more briefly. These impugned decisions relate to the approach to the timetabling of the hearing and were made by a specialist court. These were, in my view, fair and reasonable decisions, which were in effect case management decisions. The issues about changing circumstances such as restructuring within the company which had been raised by the applicant can be raised before the Industrial Court on 31 July. In this context the court's attention was drawn by the notice party to an extract from *Harvey* at para 1296 which states as follows:

> "The CAC will not normally be deflected by an employer's plea that circumstances are about to change dramatically so that it is a waste of time attempting to define a bargaining unit. The CAC must determine the issue on the basis of the circumstances as they exist at the time when the decision falls to be made. Other procedures may be invoked if and when there is a material change of circumstances."

Harvey then refers to a number of cases in support of that proposition.

[14] The Industrial Court has not erred in law in refusing to adjourn the proceedings pending the decision of the High Court on the question of leave and interim relief. The respondent has, in my view, misinterpreted what the Industrial Court was seeking to convey in the relevant correspondence to which the court was referred. There are no High Court proceedings which must take priority.

Conclusion

[15] The conclusion of the court is as follows. The court refuses leave on the three grounds of challenge advanced as none of those grounds pass the test of establishing an arguable case with a realistic prospect of success. In light of this conclusion the issue of interim relief does not arise.

[16] Leave is therefore refused, and the application for judicial review is dismissed.