STATUTORY RULES OF NORTHERN IRELAND

2001 No. 39

TRADE UNIONS

Trade Union Recognition (Method of Collective Bargaining) Order (Northern Ireland) 2001

Made - - - -	*1st February 2001*
Coming into operation	*8th March 2001*

The Department of Higher and Further Education, Training and Employment, in exercise of the powers conferred by paragraph 168(1) of Schedule 1A to the Trade Union and Labour Relations (Northern Ireland) Order 1995(**1**), and now vested in it(**2**), and of every other power enabling it in that behalf, and having consulted the Labour Relations Agency, hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Trade Union Recognition (Method of Collective Bargaining) Order (Northern Ireland) 2001 and shall come into operation on 8th March 2001.

Specification of method

2. The method specified for the purposes of paragraphs 31(3) and 63(2) of Schedule 1A to the Trade Union and Labour Relations (Northern Ireland) Order 1995 is the method set out under the heading "the specified method" in the Schedule to this Order.

(**1**) S.I. 1995/1980. (N. I. 12) Schedule 1 A was inserted by the Employment Relations (Northern Ireland) Order 1999 (S.I. 1999/2790 (N.I. 9), Article 3(3) and comes into operation on 8th March 2001

(**2**) The Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (S.R. 1999 No. 481) transferred functions under the Trade Union and Labour Relations (Northern Ireland) Order 1995 to the Department of Higher and Further Education, Training and Employment

Sealed with the Official Seal of the Department of Higher and Further Education, Training and Employment on 1st February 2001.

R. B. Gamble
A senior officer of the
Department of Higher and Further Education,
Training and Employment

THE SCHEDULE Article 2

Preamble

The method specified below ("the specified method") is one by which collective bargaining might be conducted in the particular, and possibly rare, circumstances discussed in the following paragraph. The specified method is not designed to be applied as a model for voluntary procedural agreements between employers and unions. Because most voluntary agreements are not legally binding and are usually concluded in a climate of trust and co-operation, they do not need to be as prescriptive as the specified method. However, the Industrial Court ("the Court") must take the specified method into account when exercising its powers to impose a method of collective bargaining under paragraphs 31(3) and 63(2) of Schedule 1A to the Trade Union and Labour Relations (Northern Ireland) Order 1995. In exercising those powers the Court may depart from the specified method to such extent as it thinks appropriate in the circumstances of individual cases.

Paragraph 31(3) provides for the Court to impose a method of collective bargaining in cases where a union (or unions, where two or more unions act jointly) has been recognised by an employer by means of an award of the Court under Part I of Schedule 1A, but the employer and union(s) have been unable to agree a method of bargaining between themselves, or have failed to follow an agreed method. Paragraph 63(2) provides for the Court to impose a bargaining method in cases where an employer and a union (or unions) have entered an agreement for recognition, as defined by paragraph 52 of Part II of Schedule 1A, but cannot agree a method of bargaining, or have failed to follow the agreed method.

The bargaining method imposed by the Court has effect as if it were a legally binding contract between the employer and the union(s). If one party believes the other is failing to respect the method, the first party may apply to the courts for an order of specific performance, ordering the other party to comply with the method. Failure to comply with such an order could constitute contempt of court.

Once the Court has imposed a bargaining method, the parties can vary it, including the fact that it is legally binding, by agreement provided that they do so in writing.

The fact that the Court has imposed a method does not affect the rights of individual workers under either statute or their contracts of employment. For example, it does not prevent or limit the rights of individual workers to discuss, negotiate or agree with their employer terms of their contract of employment, which differ from the terms of any collective agreement into which the employer and the union may enter as a result of collective bargaining conducted by this method. Nor does the imposed method affect an individual's statutory entitlement to time off for trade union activities or duties.

In cases where the Court imposes a bargaining method on the parties, the employer is separately obliged, in accordance with Article 44B of the Trade Union and Labour Relations (Northern Ireland) Order 1995 (as inserted by Article 7 of the Employment Relations (Northern Ireland) Order 1999), to consult union representatives periodically on his policy, actions and plans on training. The specified method does not discuss how such consultations should be organised.

The law confers certain entitlements on independent trade unions which are recognised for collective bargaining purposes. For example, employers must disclose, on request, certain types of information to the representatives of the recognised unions. The fact that the Court has imposed a bargaining method does not affect these existing statutory entitlements.

The specified method

The Parties

1. The method shall apply in each case to two parties, who are referred to here as the "employer" and the "union". Unless the text specifies otherwise, the term "union" should be read to mean "unions" in cases where two or more unions are jointly recognised.

The Purpose

2. The purpose is to specify a method by which the employer and the union conduct collective bargaining concerning the pay, hours and holidays of the workers comprising the bargaining unit.

3. The employer shall not grant the right to negotiate pay, hours and holidays to any other union in respect of the workers covered by this method.

The Joint Negotiating Body

4. The employer and the union shall establish a Joint Negotiating Body (JNB) to discuss and negotiate the pay, hours and holidays of the workers comprising the bargaining unit. No other body or group shall undertake collective bargaining on the pay, hours and holidays of these workers, unless the employer and the union so agree.

JNB Membership

5. The membership of the JNB shall usually comprise three employer representatives (who together shall constitute the Employer Side of the JNB) and three union representatives (who together shall constitute the Union Side of the JNB). Each union recognised by the employer in respect of the bargaining unit shall be entitled to one seat at least. To meet this requirement, the Union Side may need to be larger than three and in this eventuality the employer shall be entitled to increase his representation on the JNB by the same number, if he wishes.

6. The employer shall select those individuals who comprise the Employer Side. The individuals must either be those who take the final decisions within the employer's organisation in respect of the pay, hours and holidays of the workers in the bargaining unit or who are expressly authorised by the employer to make recommendations directly to those who take such final decisions. Unless it would be unreasonable to do so, the employer shall select as a representative the most senior person responsible for employment relations in the bargaining unit.

7. The union shall select those individuals who comprise the Union Side in accordance with its own rules and procedures. The representatives must either be individuals employed by the employer or individuals employed by the union who are officials of the union within the meaning of Article 2 of the Trade Union and Labour Relations (Northern Ireland) Order 1995 ("the 1995 Order").

8. The JNB shall determine their own rules in respect of the attendance at JNB meetings of observers and substitutes who deputise for JNB members.

Officers

9. The Employer Side shall select one of its members to act as its Chairman and one to act as its Secretary. The Union Side shall select one of its members to act as its Chairman and one to act as its Secretary. The same person may perform the roles of Chairman and Secretary of a Side.

10. For the twelve months from the date of the JNB's first meeting, meetings of the JNB shall be chaired by the Chairman of the Employer Side. The Chairman of the Union Side shall chair the JNB's meetings for the following twelve months. The chairmanship of JNB meetings will alternate in the same way thereafter at intervals of twelve months. In the absence of the person who should chair JNB meetings, a JNB meeting shall be chaired by another member of that person's Side.

11. The Secretary of the Employer Side shall act as Secretary to the JNB. He shall circulate documentation and agendas in advance of JNB meetings, arrange suitable accommodation for meetings, notify members of meetings and draft the written record of JNB meetings. The Secretary of the Employer Side shall work closely with the Secretary of the Union Side in the discharge of these duties, disclosing full information about his performance of these tasks.