STATUTORY INSTRUMENTS

2004 No. 3078

The Employment Relations (Northern Ireland) Order 2004

PART III

LAW RELATING TO INDUSTRIAL ACTION

Information about employees to be balloted on industrial action

5.—(1) Article 105 of the 1995 Order (notice of ballot and sample voting paper for employers) is amended as follows.

(2) In paragraph (1)(b) for "paragraph (3)" substitute "paragraph (2F)".

(3) For paragraph (2)(c) substitute—

"(c) containing—

(i) the lists mentioned in paragraph (2A) and the figures mentioned in paragraph (2B), together with an explanation of how those figures were arrived at, or

(ii) where some or all of the employees concerned are employees from whose wages the employer makes deductions representing payments to the union, either those lists and figures and that explanation or the information mentioned in paragraph (2C)."

(4) After paragraph (2) insert—

"(2A) The lists are—

(a) a list of the categories of employee to which the employees concerned belong, and

(b) a list of the workplaces at which the employees concerned work.

(2B) The figures are—

(a) the total number of employees concerned,

(b) the number of the employees concerned in each of the categories in the list mentioned in paragraph (2A)(a), and

(c) the number of the employees concerned who work at each workplace in the list mentioned in paragraph (2A)(b).

(2C) The information referred to in paragraph (2)(c)(ii) is such information as will enable the employer readily to deduce—

(a) the total number of employees concerned,

(b) the categories of employee to which the employees concerned belong and the number of the employees concerned in each of those categories, and

(c) the workplaces at which the employees concerned work and the number of them who work at each of those workplaces.

(2D) The lists and figures supplied under this Article, or the information mentioned in paragraph (2C) that is so supplied, must be as accurate as is reasonably practicable in the light of the information in the possession of the union at the time when it complies with paragraph (1)(a).

(2E) For the purposes of paragraph (2D) information is in the possession of the union if it is held, for union purposes—

(a) in a document, whether in electronic form or any other form, and

(b) in the possession or under the control of an officer or employee of the union.

(2F) The sample voting paper referred to in sub-paragraph (b) of paragraph (1) is—

(a) a sample of the form of voting paper which is to be sent to the employees concerned, or

(b) where the employees concerned are not all to be sent the same form of voting paper, a sample of each form of voting paper which is to be sent to any of them.

(2G) Nothing in this Article requires a union to supply an employer with the names of the employees concerned.

(2H) In this Article references to the "employees concerned" are references to those employees of the employer in question who the union reasonably believes will be entitled to vote in the ballot.

(2I) For the purposes of this Article, the workplace at which an employee works is—

(a) in relation to an employee who works at or from a single set of premises, those premises, and

(b) in relation to any other employee, the premises with which his employment has the closest connection.".

(5) Omit paragraphs (3) to (3B).

(6) In paragraph (5) for "paragraph (3)" substitute "paragraph (2F)".

Entitlement to vote in ballot on industrial action

6. In Article 108(1) of the 1995 Order (entitlement to vote in ballot on industrial action) after "induced" insert "by the union".

Inducement of members not accorded entitlement to vote

7.—(1) In Article 115B of the 1995 Order (small accidental failures to comply with certain provisions in relation to industrial action ballot to be disregarded) in paragraph (1), at the end add "for all purposes (including, in particular, those of Article 115A(c))".

(2) In Article 29 of that Order (right of union member to ballot before industrial action), in paragraph (2), omit "and" at the end of sub-paragraph (b) and after that sub-paragraph insert—

"(bb) Article 115A does not prevent the industrial action from being regarded as having the support of the ballot; and".

Information about employees to be contained in notice of industrial action

8.—(1) Article 118 of the 1995 Order (notice to employers of industrial action) is amended as follows.

(2) In paragraph (3)—

(a) for sub-paragraph (a) substitute—

"(a) contains—

(i) the lists mentioned in paragraph (3A) and the figures mentioned in paragraph (3B), together with an explanation of how those figures were arrived at, or

(ii) where some or all of the affected employees are employees from whose wages the employer makes deductions representing payments to the union, either those lists and figures and that explanation or the information mentioned in paragraph (3C); and",

(b) omit sub-paragraph (c) and the word "and" immediately preceding it.

(3) After paragraph (3) insert—

"(3A) The lists referred to in paragraph (3)(a) are—

(a) a list of the categories of employee to which the affected employees belong, and

(b) a list of the workplaces at which the affected employees work.

(3B) The figures referred to in paragraph (3)(a) are—

(a) the total number of the affected employees,

(b) the number of the affected employees in each of the categories in the list mentioned in paragraph (3A)(a), and

(c) the number of the affected employees who work at each workplace in the list mentioned in paragraph (3A)(b).

(3C) The information referred to in paragraph (3)(a)(ii) is such information as will enable the employer readily to deduce—

(a) the total number of affected employees,

(b) the categories of employee to which the affected employees belong and the number of the affected employees in each of those categories, and

(c) the workplaces at which the affected employees work and the number of them who work at each of those workplaces.

(3D) The lists and figures supplied under this Article, or the information mentioned in paragraph (3C) that is so supplied, must be as accurate as is reasonably practicable in the light of the information in the possession of the union at the time when it complies with paragraph (1).

(3E) For the purposes of paragraph (3D) information is in the possession of the union if it is held, for union purposes—

(a) in a document, whether in electronic form or any other form, and

(b) in the possession or under the control of an officer or employee of the union.

(3F) Nothing in this Article requires a union to supply an employer with the names of the affected employees.".

(4) In paragraph (5), for "is one of the affected employees" substitute "falls within a notified category of employee, and the workplace at which he works is a notified workplace".

(5) For paragraph (5A) substitute—

"(5B) In paragraph (5)—

(a) a "notified category of employee" means—

(i) a category of employee that is listed in the notice, or

(ii) where the notice contains the information mentioned in paragraph (3C), a category of employee that the employer (at the time he receives the notice) can readily deduce from the notice is a category of employee to which some or all of the affected employees belong, and

(b) a "notified workplace" means—

(i) a workplace that is listed in the notice, or

(ii) where the notice contains the information mentioned in paragraph (3C), a workplace that the employer (at the time he receives the notice) can readily deduce from the notice is the workplace at which some or all of the affected employees work."

(5C) In this Article references to the "affected employees" are references to those employees of the employer who the union reasonably believes will be induced by the union, or have been so induced, to take part or continue to take part in the industrial action.

(5D) For the purposes of this Article, the workplace at which an employee works is—

(a) in relation to an employee who works at or from a single set of premises, those premises, and

(b) in relation to any other employee, the premises with which his employment has the closest connection.".

(6) In paragraph (8), after "(5)" insert ", (5C)".

Dismissal where employees taking protected industrial action locked out

9.—(1) Article 144A of the Employment Rights Order (dismissal in connection with participation in official industrial action) is amended as follows.

(2) In paragraph (3) for the words from "within" to the end substitute "within the protected period".

(3) After paragraph (7) insert—

"(7A) For the purposes of this Article "the protected period", in relation to the dismissal of an employee, is the sum of the basic period and any extension period in relation to that employee.

(7B) The basic period is 12 weeks beginning with the first day of protected industrial action.

(7C) An extension period in relation to an employee is a period equal to the number of days falling on or after the first day of protected industrial action (but before the protected period ends) during the whole or any part of which the employee is locked out by his employer.

(7D) In paragraphs (7B) and (7C), the "first day of protected industrial action" means the day on which the employee starts to take protected industrial action (even if on that day he is locked out by his employer).".

Date of dismissal

10.—(1) Article 144A of the Employment Rights Order is also amended as follows.

(2) In paragraph (3) for "it takes place" substitute "the date of the dismissal is".

(3) In paragraph (4)(a) for "it takes place" substitute "the date of the dismissal is".

(4) In paragraph (5)(a) for "it takes place" substitute "the date of the dismissal is".

(5) After paragraph (9) add—

"(10) In this Article "date of dismissal" has the meaning given by Article 144(7).".

Dismissal after end of protected period

11.—(1) In Article 144A(6) of the Employment Rights Order (dismissal after end of protected period), after sub-paragraph (d) insert—

"(e) where there was agreement to use either of the services mentioned in sub-paragraphs (c) and (d), the matters specified in Article 144B.".

(2) After Article 144A of the Employment Rights Order insert—

"**Conciliation and mediation: supplementary provisions**

144B.—(1) The matters referred to in paragraph (6)(e) of Article 144A are those specified in paragraphs (2) to (5); and references in this Article to "the service provider" are to any person who provided a service mentioned in paragraph (6)(c) or (d) of that Article.

(2) The first matter is: whether, at meetings arranged by the service provider, the employer or, as the case may be, a union was represented by an appropriate person.

(3) The second matter is: whether the employer or a union, so far as requested to do so, co-operated in the making of arrangements for meetings to be held with the service provider.

(4) The third matter is: whether the employer or a union fulfilled any commitment given by it during the provision of the service to take particular action.

(5) The fourth matter is: whether, at meetings arranged by the service provider between the parties making use of the service, the representatives of the employer or a union answered any reasonable question put to them concerning the matter subject to conciliation or mediation.

(6) For the purposes of paragraph (2) an "appropriate person" is—

(a) in relation to the employer—

(i) a person with the authority to settle the matter subject to conciliation or mediation on behalf of the employer, or

(ii) a person authorised by a person of that type to make recommendations to him with regard to the settlement of that matter, and

(b) in relation to a union, a person who is responsible for handling on the union's behalf the matter subject to conciliation or mediation.

(7) For the purposes of paragraph (4) regard may be had to any timetable which was agreed for the taking of the action in question or, if no timetable was agreed, to how long it was before the action was taken.

(8) In any proceedings in which regard must be had to the matters referred to in Article 144A(6)(e)—

(a) notes taken by or on behalf of the service provider shall not be admissible in evidence;

(b) the service provider must refuse to give evidence as to anything communicated to him in connection with the performance of his functions as a conciliator or mediator if, in his opinion, to give the evidence would involve his making a damaging disclosure; and

(c) the service provider may refuse to give evidence as to whether, for the purposes of paragraph (5), a particular question was or was not a reasonable one.

(9) For the purposes of paragraph (8)(b) a "damaging disclosure" is—

(a) a disclosure of information which is commercially sensitive, or

(b) a disclosure of information that has not previously been disclosed which relates to a position taken by a party using the conciliation or mediation service on the settlement of the matter subject to conciliation or mediation,

to which the person who communicated the information to the service provider has not consented.".