

**THE HIGH COURT**

**[2015 No. 3419 P]**

**BETWEEN**

**UNIVERSITY COLLEGE CORK**

**PLAINTIFF**

**AND**

**SERVICES INDUSTRIAL PROFESSIONAL TECHNICAL UNION AND IRISH FEDERATION OF UNIVERSITY TEACHERS**

**DEFENDANTS**

**JUDGMENT of Mr. Justice Gilligan delivered on the 11th day of May, 2015**

1. The plaintiff in these proceedings is seeking two interlocutory injunctions pending the trial of the action herein as follows:-

(1) An injunction restraining the defendants and each of them, whether by themselves, their officers servants or agents or otherwise, or any person acting in concert with them or either of them or any person having notice of the making of any order of this Honourable Court from watching and/or besting and/or picketing any of the plaintiff's main campus premises situate in the City of Cork other than the premises known as the Tyndall National Institute situate at Lee Maltings, Dyke Parade, Cork.

(2) An injunction restraining the defendants and each of them, whether by themselves, their officers servants or agents or otherwise, or any person acting in concert with them or either of them or any person having notice of the making of any order of this Honourable Court from interfering with access to and/or egress to any of the plaintiff's main campus premises situate in the City of Cork.

2. The plaintiff university has a significant research institute, referred to as the "Tyndall National Institute" which is part of the university but located physically distant at Lee Maltings, Dyke Parade in Cork, approximately 1km from the main campus.

3. The plaintiff negotiates with the two defendant unions in respect to terms and conditions of its employees, including employees of the university who are located in the Tyndall National Institute.

4. There has been an ongoing dispute for some time between members of the defendants union who are also employees of the plaintiff at the Tyndall National Institute and who have been seeking an increase of pay. It is fair to say that the dispute has been simmering for some time and was referred to the Labour Relations Commission, but no final agreement could be reached.

5. The central aspect of the issue that now arises is that the defendant unions organised a secret ballot of their members working in the Tyndall National Institute, and by a substantial majority the members voted for industrial action. While Members of both the defendant trade unions were also employed by the plaintiff outside of the Tyndall National Institute on the main campus site of UCC. They were not involved in any way in the secret ballot.

6. It is of some significance to point out that in respect of the secret ballot which referred to industrial action, the employment is described as UCC Tyndall and the location of the count was the Tyndall Institute.

7. Subsequently, on 22nd April, 2015, the two defendant trade unions notified the plaintiff formally of the intention of both unions to initiate industrial action regarding the Tyndall pay dispute, and that pickets would be placed at the entrances to the employment on the following days, Thursday 30th April, 2015 from 8.00am to 5.30pm, Wednesday 6th and Thursday 7th May, 2015 from 8.00am to 5.30pm, and Wednesday 13th May, 2015, from 8.00am to 5.30pm.

8. It was indicated that the unions regretted the need to engage in this action but, however, given the current intransigence of management they found themselves with no other alternative.

9. Barry O'Brien, Director of Human Resources of the plaintiff, wrote to the defendants representatives indicating that the university was about to enter the examination season, and that it was not clear from the formal notice as given as to whether or not the reference to pickets being placed at the entrances to employment on the days specified referred to the Tyndall Building only, or to the UCC Campus, or both.

10. The letter sought an undertaking that the pickets would be confined to the entrance to the Tyndall National Institute Building only.

11. A reply was received later on 23rd April, 2015, formally withdrawing the notice of industrial action and by a subsequent email on 23rd April, 2015, the situation was clarified that the pickets on 1st, 6th and 7th May were to be at the entrance to the Tyndall Institute only, but the picket proposed for Wednesday 13th May (which at this stage is this coming Wednesday), will be placed at six of the twelve entrances to the main campus of the plaintiff university and would be from 7.00am in the morning until 5.30pm in the evening.

12. The notification is clear that it was the intention of both unions to initiate industrial action by withdrawal of labour and the placing of pickets regarding the Tyndall dispute, inter alia, at six entrances the University College Cork main campus.

13. Arthur Cox Solicitors on behalf of the plaintiff then queried the situation and expressed serious concern about the fact that examinations involving students would be taking place on Wednesday, 13th May at various locations on the main campus and querying the ballot.

14. In an earlier circular to its members, shop stewards and committees, Bill Mulcahy, the first named defendants organiser in the Education Centre, circulated its members advising them that industrial action was to recommence in the Tyndall pay dispute.

15. It was also indicated in the letter that Mr. Mulcahy took the view that there was now no option but to reinstate the industrial action with pickets being placed at the Tyndall Institute and that given the hard-line approach of UCC management and the Department of Education and Skills, it was now necessary to escalate the industrial action to include picketing at UCC on Wednesday 13th May, 2015, commencing at 7.00am and concluding at 5.30pm.

16. It was further indicated that union members at Tyndall regret having to escalate the action in this manner but, however, they were now in a desperate situation following fourteen months since the last pickets.

17. The second last paragraph of the communication states as follows:-

"We are asking all members to lend their support to the Tyndall staff on 13th May, 2015. Your solidarity will be deeply appreciated by your colleagues in Tyndall and they are committed to supporting you at any stage in the future should you so request."

18. The letter concluded by indicating that Mr. Mulcahy would be issuing further information to all members in the coming days and he once again thanked the union members for their support.

19. Subsequent to receipt of the correspondence from both defendant unions, the President of UCC wrote to all students regretting to have to inform them that the university had been served with notice of industrial action which has the potential to impact on the UCC community on Wednesday 13th May.

20. The letter went on to state:-

"We are conscious that this is an extremely important and stressful time for you and we assure you that the university will take all necessary measures to ensure that examinations will proceed as planned."

21. There was then an email from Mark Stanton, President of the UCC Student Union to all pupils indicating that he had just received an email from President Murphy regarding the potential for industrial action on Wednesday, May 13th.

22. The letter went on to state that the Students Union was guaranteeing that students will not be affected in any way, so they will not miss any study time or exams, and that this effectively meant that if you saw UCC on the news, there was no need to panic.

23. There was then a letter from the first named defendants to Arthur Cox Solicitors indicating that SIPTU took the view that Arthur Cox were misrepresenting their position and that the sole purpose of their picket at the main UCC campus was to peacefully communicate the reasons for their members dispute with the university.

24. The letter indicated that the communication as above referred to from Mr. Mulcahy of the 23rd April, 2015, was in effect a communication requesting support for the first named defendants members involved in the dispute and that the email was understood widely as requesting support and solidarity in ways other than the withdrawal of labour, and that a further communication had been sent out to clarify any possible confusion (which was denied) and that assurances had been given to the Students Union that there would be no disruption of scheduled exams.

25. The communication as forwarded by Mr. Mulcahy on behalf of the first named defendant and which, while not dated presumably is 1st May, 2015, was forwarded to the first named defendants members and stated that:-

"We wish to advise all SIPTU members that this dispute currently involves only the Tyndall members of SIPTU, hence all other union members are requested to attend for work as normal. In particular we wish to highlight that the industrial action at main campus is not designed to interfere in any way with the examinations taking place on 13th May, 2015, and that all staff involved in examinations should ensure that these proceed as scheduled."

26. The relevant sections of the Industrial Relations Act 1990, that appear to be pertinent are s. 11(1) which states:-

"It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union in contemplation or furtherance of a trade dispute, to attend at, or where that is not practicable, at the approaches to, a place where their employer works or carries on business, if they so attend merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or abstain from working."

Further, s. 14(2)(a):-

"(2) The rules of every trade union shall contain a provision that -

(a) the union shall not organise, participate in, sanction or support a strike or other industrial action without a secret ballot, entitlement to vote in which shall be accorded equally to all members whom it is reasonable at the time of the ballot for the union concerned to believe will be called upon to engage in the strike or other industrial action."

And, s. 19(1):-

"(1) Where a secret ballot has been held in accordance with the rules of a trade union as provided for in section 14, the outcome of which or, in the case of an aggregation of ballots, the outcome of the aggregated ballots, favours a strike or other industrial action and the trade union before engaging in the strike or other industrial action gives notice of not less than one week to the employer concerned of its intention to do so, that employer shall not be entitled to apply to any court for an injunction restraining the strike or other industrial action unless notice of the application has been given to the trade union and its members who are party to the trade dispute.

(2) Where a secret ballot has been held in accordance with the rules of a trade union as provided for in section 14, the outcome of which or, in the case of an aggregation of ballots, the outcome of the aggregated ballots, favours a strike or other industrial action and the trade union before engaging in the strike or other industrial action gives notice of not less

than one week to the employer concerned of its intention to do so, a court shall not grant an injunction restraining the strike or other industrial action where the respondent establishes a fair case that he was acting in contemplation or furtherance of a trade dispute."

27. Mr. Connaughton on the plaintiff's behalf, acknowledges that the Tyndall National Institute is a part of the plaintiff university and that the defendants' members are employees and are entitled to picket the National Institute Research premises.

28. Further, Mr. Connaughton acknowledges that there is a trade dispute ongoing between those employees of the plaintiff at the Tyndall National Institute and the plaintiff.

29. However, it is submitted on the plaintiff's behalf that it is patently clear from the communications forthcoming from the defendants that they were calling upon their members, in effect, to become engaged in industrial action against the plaintiffs on the main campus area of the university. In effect, it is contended that what the defendants have in fact done is to communicate with their members and to call upon them to picket the main university campus in furtherance of industrial action.

30. The asset test it is contended on the plaintiff's behalf is the timing of the secret ballot and what was proposed and who was included.

31. Section 14(2)(a) of the Industrial Relations Act 1990, states as follows:-

"(a) The union shall not organise, participate in, sanction or support a strike or other industrial action without a secret ballot. Entitlement to vote in which shall be accorded equally to all members whom it is reasonable at the time of the ballot for the union concerned to believe will be called upon to engage in the strike or other industrial action."

32. Mr. Connaughton contends that it was clearly the intention of the defendant unions to escalate the dispute, in effect, involving not only those members of the defendant unions who were employees employed at the Tyndall institute but all members as they were now in a desperate situation, and asking all members to lend their support to the Tyndall staff and that the general employee members of both defendant unions solidarity would be deeply appreciated and they in turn would be committed to supporting you at any stage in the future should you so request.

33. In essence, Mr. Connaughton submits that by the escalation of the action in the placing of pickets by the Tyndall employees at some of the main entrances to the campus of UCC, and the request for support in return for future support at any stage that because those employees who are members of the defendant trade unions working in the main campus were not involved in the secret ballot, both unions are not entitled to the protection of s. 19 because a secret ballot has not properly been held or alternatively, that a serious issue has been raised as to whether or not s. 14(2)(a) has been complied with and that in the particular circumstances, it is a matter for the defendants to convince the court that the appropriate ballot has been held and that the proposed industrial action for this coming Wednesday at several of the gates of the main campus is in accordance with law.

34. Mr. Keane, on behalf of the first named defendants, submits to the court that the plaintiff's action is alarmist and that the President of the Students Union has confirmed to the various students who will be sitting exams that there will be no interference as a result of the pickets that will be placed at several of the entrances by the defendants trade union members.

35. In principal, Mr. Keane submits to the court s. 19(1) and (2) have been complied with in that a secret ballot has been held in which the entitlement to vote was accorded equally to all members whom it was reasonable at the time of the ballot for the defendants to believe would be called upon to engage in the strike or other industrial action and that accordingly, the plaintiff cannot, in the circumstances where the appropriate notice has been given to the plaintiffs secure an injunction restraining the proposed industrial action. Further, Mr. Keane submits that the plaintiff's application to the court for interlocutory relief is misconceived in law and that simply because an indication has been given that the strike is being escalated and/or that pickets will be placed at several of the entrances to the main campus, does not bring about a situation where those other members of the first named defendants trade union are being called upon to engage in industrial action. They are simply being asked to support their colleagues and this could be done by bringing food to those on the picket, the sounding of car horns as motorists pass by the pickets or, perhaps, a financial donation and the like.

36. It is submitted that the correspondence goes no further than a call for support as a result of an escalation of the action, and that the first named defendants have not called upon their members who are employed by the plaintiffs on the main campus to engage in industrial action.

37. Mr. Connaughton in reply submits that the defendants in fact are dancing on the head of a pin in trying to draw a distinction between their members being called upon to engage in industrial action as against their members being told that industrial action is being escalated and calling upon them for their support in return for future support from those employee members working in the main campus area if at any stage such support was requested.

38. This Court notes that subsequent to the correspondence of 23rd April, 2015, the defendants in correspondence of 1st May, 2015, to their members have advised that "this dispute currently involves only the Tyndall members of SIPTU, hence all other union members are requested to attend for work as normal. In particular, we wish to highlight that the industrial action at main campus is not designed to interfere in any way with the examinations taking place on 13th May, 2015, and all staff involved in examinations should ensure that these proceed as scheduled".

39. It accordingly appears that what the defendant trade unions now have in mind is the placing of pickets at several entrances to the main campus of UCC, but the examinations which are to take place within the main campus are not to be interfered with in any way and everybody is to pass the pickets, and the purpose of the pickets is only to highlight the fact of the dispute between the Tyndall workers and the management of the plaintiff university.

40. Following the various clarifications as issued on behalf of both defendant unions, I find it difficult to understand the necessity to proceed ahead with the placing of pickets at several entrances to the main campus of the university on a day when students will be sitting their exams, as clearly as is accepted by everybody involved they are probably under enough pressure without having to be concerned in any way as regards pickets that are going to be placed at several of the main entrances to the institution where they are studying.

41. The initial official notification of the taking of industrial action did not make it clear that over the four days pickets would actually be placed at any of the entrances to the main campus, and it was only when the Director of Human Resources of the plaintiff sought

clarification that it became apparent that in fact pickets were going to be placed on Wednesday 13th May, at several of the entrances to the main campus. It also only became apparent subsequent to the notice that the industrial action with pickets was to be escalated to include picketing at UCC main campus and all members were asked to lend their support to the Tyndall staff on 13th May, the members solidarity being deeply appreciated by your colleagues in Tyndall and they are committed to supporting you at any stage in the future should you so request. Nowhere in this correspondence of 23rd April, 2015, from Mr. Mulcahy is it indicated that the activities within the main campus are not to be hampered or that members of the defendant unions are to pass the pickets or that in fact there is to be no disruption in any way of the working s of the main campus this coming Wednesday. This is all against a background where as of 23rd April, 2015, Mr. Mulcahy taking into account the hard line approach of UCC management and the Department of Education and Skills was "now escalating the industrial action to include picketing...at the main campus, that the Union Members at Tyndall were 'now in a desperate situation' and asking all members to lend their support. This set of circumstances has to be weighed against the taking of a secret ballot before it appears there was any proposal to picket the main UCC campus or to seek the support of their fellow employee members of the defendant trade unions employed on the plaintiffs' main campus."

42. The relevant legal principles applicable have been already fully set out in my earlier judgment in *Dublin Airport Authority Plc & Anor v. Services Industrial Professional Technical Union* [2014] IEHC 644.

43. The central issue arising is that as the defendants' members who are employees of the plaintiff on the main campus at UCC were not involved in the secret ballot which has led to the industrial action have they been called upon to engage in the industrial action as proposed for this coming Wednesday at the main campus of UCC. In this regard, the plaintiffs only have to raise a serious issue to be tried in respect of the secret ballot and its consequences with regard to s. 14(2)(a) of the Industrial Relations Act 1990. In this regard, I am influenced by the terminology as used on the defendants' behalf on 23rd April, 2015, wherein the defendants took the view that they had no option but to reinstate industrial action with pickets being placed...that given the hard line approach of UCC management and the Department of Education and Skills, the industrial action would have to be escalated to include picketing at the main campus of UCC this coming Wednesday, 13th May, commencing at 7:00am and concluding at 5:30pm.. that the Union Members at Tyndall are now in a desperate situation... and the asking of all members to lend their support to the Tyndall staff on 13th May, 2015, clearly at a time when the Tyndall members will be picketing the main campus of UCC at several of its entrances.

44. In my view, the plaintiffs raise a serious issue for determination as to whether or not on 23rd April, 2015, the defendant unions were calling upon their members working on the main campus to engage in industrial action or does the alterative situation prevail whereby it was intended that there would be no interference with the students' examinations, no interference with anybody passing the pickets even though they would, at least, in part, constitute members of the defendants' trade unions and all that was being requested was for passers by to blow their horns in support or to bring food to the picketers or the like.

45. Once this hurdle has been passed, I am satisfied that the Campus Oil principles apply and in the particular circumstances where the workings of the university could be affected to include those students taking their end of year examinations, I am not satisfied that damages would be an adequate remedy and in the particular circumstances, I am further satisfied that the balance of convenience favours the granting of the relief as sought, particularly bearing in mind that the proposed action on the defendants' behalf only relates to this coming Wednesday when student examinations are taking place.

46. Accordingly, I will grant interlocutory relief to the plaintiffs in the terms as set out in paras. (1) and (2) of the notice of motion.