

CENTRAL ARBITRATION COMMITTEE

TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992

SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION

DECISION ON WHETHER TO ACCEPT THE APPLICATION

The Parties:

Unite the Union

and

Gate Gourmet London Ltd

Introduction

1. Unite the Union (the Union) submitted an application to the CAC dated 1 October 2014 that it should be recognised for collective bargaining by Gate Gourmet London Ltd (the Employer) for a bargaining unit comprising “Tarmac ACES/Flight Co-Ordinators” based at LHR West and LHR North. The application was received by the CAC on 2 October 2014. The CAC gave both parties notice of receipt of the application on 3 October 2014. The Employer submitted a response to the CAC dated 7 October 2014 which was copied to the Union.

2. In accordance with section 263 of the Trade Union and Labour Relations (Consolidation) Act 1992 (the Act), the CAC Chairman established a Panel to deal with the case. The Panel consisted of Professor Gillian Morris, Chairman of the Panel, and, as Members, Mr Rod Hastie and Mr. Malcolm Wing. The Case Manager appointed to support the Panel was Linda Lehan.

3. The CAC Panel has extended the acceptance period in this case. The initial period

expired on 16 October 2014. The acceptance period was extended to 24 October 2014 in order to allow time for the parties to comment on the results of a membership check and for the Panel to consider these comments before arriving at a decision.

Issues

4. The Panel is required by paragraph 15 of Schedule A1 to the Act (the Schedule) to decide whether the Union's application to the CAC is valid within the terms of paragraphs 5 to 9; is made in accordance with paragraphs 11 or 12; is admissible within the terms of paragraphs 33 to 42; and therefore should be accepted.

The Union's application

5. The Union stated that it had sent its formal request for recognition to the Employer on 11 August 2014. A copy of that letter was attached to the application. The Union stated that there had been no response from the Employer apart from an e-mail dated 12 August 2014, a copy of which was attached, stating that it would talk about the letter at a meeting planned for 13 August 2014. The Union stated that no such discussion had taken place and there had not been any further response from the Employer.

6. The Union stated that there were 1500 workers employed by the Employer, of whom 60 were in the proposed bargaining unit. Out of the 60 workers in the proposed bargaining unit the Union stated that 34 were members of the Union. When asked to provide evidence that a majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining, the Union stated that it had a majority of workers in the bargaining unit in membership. It also stated that membership had increased in the expectation that recognition could be achieved and that its members had elected two shop stewards for the bargaining unit. The Union stated that members supported the recognition campaign as they were very unhappy with the current process by which their pay was determined.

7. The Union stated that the reason for selecting the proposed bargaining unit was because that group of workers had previously had collective bargaining, The group had lost the right to collective bargaining in 2007 and wished to reinstate it.

8. The Union stated that the bargaining unit had not been agreed with the Employer and that there had been an agreement which had been signed with AMICUS in 2002. The Union confirmed that it held a current certificate of independence. The Union stated that it had copied the application made to the CAC, and supporting documents, to the Employer on 1 October 2014.

The Employer's response to the Union's application.

9. The Employer confirmed that it had received the Union's written request letter of 11 August 2014 via e-mail. The Employer stated that the Union had asked to increase the existing collective bargaining unit in the 2014 pay negotiation meetings for Heathrow (North and West). The Employer stated that the Union had verbally requested that a number of roles should be included in the collective bargaining unit and in those meetings management had encouraged the Union to make a formal request via the statutory recognition procedure. The Employer confirmed that it had acknowledged the Union's request letter via e-mail on the 12 August 2014 and had advised the Union that it would be discussed in the formal consultation meeting planned for the following day. The Employer stated that the meeting on 13 August 2014 had been a pay negotiation meeting and that, at that meeting, the Union had not raised the recognition request. The Employer stated that for management the meeting focussed on trying to agree a pay deal for 2014 and that these negotiations remained ongoing.

10. The Employer stated that it had received a copy of the application form from the CAC on 3 October 2014 and that a copy of the application form had not been shared prior to that date.

11. The Employer confirmed that it had an existing bargaining unit for 'Direct' staff only. The Employer stated that these staff were hourly paid workers whereas the staff in the Union's recognition request were salaried workers and defined as management grades and were, therefore, outside the current bargaining unit.

12. The Employer stated that it agreed in principle to the proposed bargaining unit but would want to have evidence that there was 50% or more Union membership within that group of workers. The Employer stated that for 2014 the proposed grouping of employees had been assessed as part of the PA&P process and some had received a pay rise for 2014

based on performance. The Employer stated that current employees in the collective bargaining unit had not had a pay rise and it was currently in negotiation with the Union on that matter. The Employer stated that if it accepted the recognition request it would be on the understanding that the salary raise for 2014 would not form part of the current negotiations and that it would be happy to accept recognition based on these conditions.

13. The Employer stated that the headcount for Gate Gourmet UK and Ireland was 2276 and the headcount for the Gate Gourmet Sites in Heathrow West and North was 1500. The Employer confirmed that it agreed with the number of workers in the Union's proposed bargaining unit, which totalled 60: 33 ACE and 27 Flight Co-Ordinators

14. The Employer stated that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit.

15. In answer to the question whether it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer said that it had no evidence of union membership and would want to view that before agreeing to the revision of the bargaining unit. The Employer stated that it had checked the salary deductions for the staff and from its records only 23 staff, which equated to 38%, were members of the union.

16. As to whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer stated that management obtained salary raises through a PA&P system that was linked to performance and that in 2014 several staff had received a pay rise. The Employer stated that in 2014 management had replied to a grievance from the Union for a group of staff who had come into the Employer's employment via TUPE whom the Union felt should be part of the collective bargaining unit for salary increases etc. The Employer attached the report, minutes and outcome letter that stated the findings in relation to that issue. The Employer stated that the affected individuals did not appeal the outcome or progress their grievance through the internal process and did not take the offer of the payment for 2013/14 and that the matter had been concluded internally in June 2014. The Employer stated that on 29 September 2014 HR had contacted the lead representative of the grievance to invite them to a meeting to discuss the matter and that the meeting request had been declined.

17. The Employer confirmed that it was not aware of any previous application in respect of the proposed bargaining unit.

Union's comments on the Employer's response

18. In a letter to the CAC from the Union dated 14 October 2014, which the Union copied to the Employer, the Union commented on the Employer's statement in paragraph 10 above that a copy of the application to the CAC had not been sent to it by the Union. The Union stated that on 1 October 2014 it had e-mailed and posted a copy of the application to the Employer's HR Director. The Union stated that it understood from speaking to the Employer's Senior HR Business Partner that the recipient of the e-mail and letter had been on annual leave on 1 October 2014, and would be returning on 15 October 2014, and stated that this probably explained why the Employer's response had stated that it had received a copy of the application only from the CAC.

The Membership Check

19. To assist the determination of two of the admissibility criteria specified in the Schedule, namely, whether 10% of the workers in the proposed bargaining unit are members of the union (paragraph 36(1)(a)) and whether a majority of the workers in the proposed bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit (paragraph 36(1)(b)), the Panel proposed an independent check of the level of union membership within the proposed bargaining unit. It was agreed with the parties that the Employer would supply to the Case Manager a list of the names, dates of birth and job titles of workers within the proposed bargaining unit, and that the Union would supply to the Case Manager a list of its paid up members within that unit (including their full name and date of birth). It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists would not be copied to the other party. These arrangements were confirmed in a letter dated 13 October 2014 from the Case Manager to both parties. The information from the Union and Employer was received by the CAC on 13 October 2014. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

20. The list supplied by the Employer indicated that there were 60 workers in the proposed

bargaining unit. The list of members supplied by the Union contained 35 names. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was 35, a membership level of 58.33%.

21. A report of the result of the membership check was circulated to the Panel and the parties on 14 October 2014 and the parties were invited to comment on the result.

The parties' comments on the result of the membership check

22. The Employer, in an e-mail dated 17 October 2014, stated that having reviewed the membership check it had no objections to the outcome reached. The Employer stated that it was willing to accept the staff in the collective bargaining unit on the understanding that the salary raise for 2014 would not form part of the current negotiations. A copy of the e-mail was sent to the Union by the CAC on 21 October 2014. No comment on the result of the membership check was received from the Union.

Considerations

23. In determining whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 4 above are satisfied. The Panel has considered carefully the submissions of both parties and all the evidence in reaching its decision.

24. The Panel is satisfied that the Union made a valid request to the Employer within the terms of paragraphs 5 to 9 of the Schedule and that its application was made in accordance with paragraph 11. Furthermore, the Panel is satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 35 and paragraphs 37 to 42 of the Schedule. The Panel notes that, under paragraph 34 of the Schedule, the Union is required to give the Employer a copy of the application to the CAC and any supporting documents and the Employer's statement in paragraph 10 of this decision that it did not receive a copy of the application form sent to the CAC from the Union. However the Panel also notes the Union's letter of 14 October 2014, summarised in paragraph 18 above, in which it confirmed that it had sent the application to the Employer by e-mail and post. The Employer did not dispute the version of events set out in this letter and the Panel is satisfied that, on the

balance of probabilities, the requirements of paragraph 34 of the Schedule have been met. The remaining issues for the Panel to decide are whether the admissibility criteria contained in paragraph 36(1)(a) and paragraph 36(1)(b) are met.

Paragraph 36(1)(a)

25. Under paragraph 36(1)(a) of the Schedule an application is not admissible unless the Panel decides that members of the union constitute at least 10% of the workers in the proposed bargaining unit.

26. The membership check conducted by the Case Manager (described in paragraphs 19 and 20 above) showed that 58.33% of the workers in the proposed bargaining unit were members of the Union. As stated in paragraph 19 above, the Panel is satisfied that this check was conducted properly and impartially and in accordance with the arrangements agreed with the parties. The Panel has therefore decided that members of the union constitute at least 10% of the workers in the proposed bargaining unit as required by paragraph 36(1)(a) of the Schedule.

Paragraph 36(1)(b)

27. Under paragraph 36(1)(b) of the Schedule, an application is not admissible unless the Panel decides that a majority of the workers constituting the proposed bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit. For the reasons given in the previous paragraph the level of union membership is 58.33%. The Union did not provide any additional evidence of support for recognition, such as a petition, but the Panel considers that, in the absence of evidence to the contrary, union membership provides a legitimate indicator of the views of the workers in the proposed bargaining unit as to whether they would be likely to favour recognition of the Union. No evidence to the contrary was provided in this case. It is also the Panel's experience that there will be workers who are not members of the Union who would be likely to favour recognition of the Union. On the basis of the evidence before it, the Panel has decided that, on the balance of probabilities, a majority of the workers in the proposed bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit, as required by paragraph 36(1)(b) of

the Schedule.

Decision

28. For the reasons given in paragraphs 24 to 27 above, the Panel's decision is that the application is accepted by the CAC.

Panel

Professor Gillian Morris, Chairman of the Panel

Mr. Rod Hastie

Mr. Malcolm Wing

22 October 2014