

Case Number: TUR1/940/ (2015)

11 December 2015

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

Cinram Operations UK Limited

Introduction

1. Unite the Union (the Union) submitted an application to the CAC dated 9 November 2015 that they should be recognised for collective bargaining purposes by Cinram Operations UK Limited (the Employer) for a bargaining unit consisting of "Manual workers and technical staff". The stated location address was "Cinram Operations, Ransomes Europark, 2 Central Ave, Ipswich, IP3 9SL". The CAC gave the parties notice of receipt of the application on 9 November 2015. The Employer submitted a response to the application on 16 November 2015.

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 Lynette Harris, CAC Deputy Chairman, who chaired the Panel, and, as Members, Mr Peter Martin and Mr Malcolm Wing. The Case Manager appointed to support the Panel was Miss Sharmin Khan.

Issues

3. 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 of the Schedule; and therefore should be accepted.

Summary of the Union's application

4. The Union confirmed in its application that it had a certificate of independence and attached copies of the written requests for recognition sent to the Employer: a letter dated 5 October 2015, its initial request and a letter dated 23 November 2015, its formal written request. The Union also provided a copy of the Employer's written response, dated 27 October 2015, in which the Employer stated that it did not wish to enter into voluntary recognition and its reasons for declining recognition.

5. The Union stated that there were 160 workers employed by the Employer and that there were 140 workers in the proposed bargaining unit of which 71 were Union members. It had selected the proposed bargaining unit because the entire workforce represented the Union membership, excluding clerical and managerial employees. The Union stated that it had held a number of well attended meetings with its members who had joined the Union with the express intention of establishing a collective agreement with their Employer. In its view the volume of workers who had joined the Union within a relatively short time frame demonstrated evidence that the majority of workers in the proposed bargaining unit were likely to support recognition for collective bargaining.

6. The Union stated that the Employer had not proposed seeking the assistance of Acas after receipt of the Union's request. Acas had, however, been in contact in the intervening period and had provided the Union with a copy of the Employer's written response of 27 October 2015 rejecting the Union's request for recognition.

7. Finally, the Union also confirmed that it had not made any previous application for workers in the proposed bargaining unit or a similar unit and it was not aware of any existing recognition agreement that covered any of the workers in the proposed bargaining unit.

Summary of the Employer's response to the Union's application

8. In response to the Union's application, the Employer was asked by the CAC to complete the CAC's Employer's response questionnaire. The Employer submitted its response to the application to the CAC on 16 November 2015 in which it confirmed the following points:

9. The Employer confirmed that it had received the Union's formal written request for recognition on 26 October 2015 and that it had replied to that request in writing by its letter of 27 October 2015. The Employer attached a copy of its letter dated 27 October 2015 for the Panel.

10. The Employer had declined voluntary recognition for two reasons: Firstly, the Employer had completed collective consultation with representatives of the proposed bargaining unit following a notification to employees that they were at risk of redundancy. The consultation took place over the proposal that the manufacturing operations carried out by the Employer in Ipswich was likely to cease at some point before the end of 2015. Its view was that there was no point commencing the process for trade union recognition in respect of employees whom may regrettably be made redundant in the foreseeable future.

11. Secondly, the Employer did not believe there was at least 10% union membership within the proposed bargaining unit and it also believed that the majority of workers in that unit were unlikely to favour recognition of the Union.

12. The Employer confirmed that it had received a copy of the application from the Union on 11 November 2015. It had not agreed the proposed bargaining unit before receiving a copy of the application but it replied "yes" when asked on the CAC's response questionnaire "Do you agree to the proposed bargaining unit?"

13. The Employer stated that it employed 140 workers but, in the light of the proposed redundancies, this figure could reduce to a possible 72 by 1 February 2016 and then even further as operations were discontinued.

14. The Employer did not agree with the Union's figure for the number of workers in the proposed bargaining unit. It stated there were 110 workers due to natural attrition and including workers who were working their notice prior to termination on grounds of redundancy.

15. In respect of the level of Union membership within the proposed bargaining unit the Employer did not believe there was a 10% membership level but believed it to be in single figures as only an isolated number of individuals had ever made their union membership known to management.

16. The CAC's questionnaire asked the Employer to indicate its reasons together with any available evidence if it did not consider that a majority of the workers in the proposed bargaining unit were likely to support recognition. The Employer answered that the site had been established for over 25 years and over these years, the employees had been properly and adequately represented by staff representatives who already dealt with consultation and meetings with management on matters that affected those they represented. The scope and breadth of the involvement these representatives had was wider than that would be provided by union consultation. There had never been a call for union recognition before the current application and it did not believe that recognition of the Union would add anything. The majority of the workers were already happy with the existing arrangements and did not want to be a union member or have the Union negotiate on their behalf.

17. Finally, the Employer confirmed that it had not received any other application for statutory recognition under the Schedule in respect of any of the workers in the proposed bargaining unit and that there was no existing agreement for recognition in force covering any of the workers in the proposed bargaining unit.

Membership and support check

18. To assist the determination of two of the admissibility criteria specified in the Schedule, namely, whether 10% of the workers in the relevant bargaining unit are members of the Union (paragraph 36(1)(a)) and whether a majority of the workers in the relevant bargaining unit are likely to support recognition of the Union as entitled to conduct collective bargaining on behalf of the relevant bargaining unit (paragraph 36(1)(b)), the Panel proposed independent checks of the level of union membership in the proposed bargaining unit.

19. The arrangements for the membership check were confirmed in a letter from the CAC to the parties dated 19 November 2015. It was agreed that the Employer would supply to the Case Manager a list of the names, addresses, and job titles of workers in the proposed bargaining unit and that the Union would supply the same (except job title) details for a list of the paid up members in the proposed bargaining unit. It was also explicitly agreed with both parties that the Case Manager would compare the Employer's information with the Union's information and to preserve confidentiality, the respective lists would not be copied to the other party. The Case Manager carried out a check of the information provided by the parties to establish the level of membership within the proposed bargaining unit.

Summary of the membership and support check

20. The comparison of the Union's list of members with the Employer's list of workers established that there were 117 workers within the proposed bargaining unit of which 70 were members of the Union; a Union membership level of 60%. The full report of the membership check including these results was issued to the parties for comment on 25 November 2015.

21. The Union responded by its e-mail on 26 November 2015 in which it stated that it trusted that the fact that the Union had majority membership within the proposed bargaining unit provided evidence that the majority were in favour of trade union recognition and had no further comments at his stage.

22. The Employer responded by its letter to the CAC dated 30 November 2015. The Employer maintained its belief that the majority of the workers in the proposed bargaining unit would not be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit. Other than the one employee who acted as the Union representative, the employer had had no other employee requests for either trade union involvement or recognition. It believed that the majority of the members were as a result only of a very recent recruitment drive by one individual. The Employer also believed that the union's membership would not be sustained beyond the cessation of the manufacturing operations at Ipswich.

23. The employer believed that the CAC should consider recognition in the context of the current redundancy process; in view that that it had carried out collective consultation already with an established group of employee representatives and individual consultation was in progress. It was likely that redundancies would take effect from 22 December 2015 and there was a high possibility thereafter that the remaining, much reduced workforce might only be kept for a short interim period.

24. The Employer therefore believed that a ballot should be held to determine the level of actual support for the proposed union recognition and that such a ballot would be within the best interests of good industrial relations. In this respect the Employer thought the CAC should be aware that 56 people from the proposed bargaining unit were scheduled to leave due to redundancy on 22 December 2015 and of those 56, only one person had asked to be accompanied to their redundancy consultation by a union official.

25. In view of the circumstances the Employer submitted that the final decision on recognition of the Union should be postponed pending the redundancies, as the constituency and membership level of the employees was likely to change dramatically within the next 23 days.

26. The Employer's final submission was that there was sufficient evidence from which the CAC should doubt whether a significant number of the union members wanted the union to conduct collective bargaining on their behalf.

Considerations

27. In deciding whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 3 of this decision are satisfied. The Panel has considered all the evidence submitted by the parties in reaching its decision. It is satisfied that the membership and support check undertaken by the Case Manager was conducted appropriately.

28. The Panel is satisfied that the Union made a valid request to the Employer within the terms specified in paragraphs 5 to 9 of the Schedule to recognise them for collective bargaining in respect of the proposed bargaining unit as described in paragraph 1 of this decision. The request was made in writing and identified the Union, the proposed bargaining unit and that the request was made under the Schedule. The Panel is also satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 35 and 37 to 42 and that it was made in accordance with paragraph 11 of the Schedule.

29. The remaining issues for the Panel to address are whether the admissibility criteria set out in paragraph 36(1) of the Schedule are met.

Paragraph 36(1)(a)

30. In accordance with paragraph 36(1) (a) of the Schedule the Panel must determine whether or not members of the Union constitute at least 10% of the workers in the relevant bargaining unit. The result of the check carried out by the Case Manager established that 60% of the workers in the proposed bargaining unit were members of the Union. The Panel is satisfied that this test is met.

Paragraph 36(1) (b)

31. Paragraph 36(1)(b) of the Schedule provides that, for an application to be admissible, the CAC must be satisfied that a majority of the workers constituting the

relevant bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit. At this stage, the Panel is tasked with determining likely, not actual, majority support for recognition of the Union.

32. The Case Manager's check of the information provided by the parties demonstrated that there was a membership level of 60% within the proposed bargaining unit. No evidence was provided to indicate that membership of the Union could not be taken as an indicator of support for the recognition of the Union.

33. In its comments to the Panel the Employer made a case that the membership level achieved by the Union was due to a recent membership drive by one individual. It did not believe that a majority of the workers would be likely to favour recognition as only a few people had asked for the Union to accompany them to redundancy meetings. Furthermore, it asked the Panel to consider the imminent changes to the business and its workforce and its stated position that it was not the right time for the Employer to consider a request for union recognition, notwithstanding its belief that its current method of consultation with employees had been sufficient to date until the current application. In its view a ballot was the best way to establish the level of actual support for the Union to be recognised for collective bargaining and this was in the interests of good industrial relations.

34. The Panel has considered fully the Employer's case and the information provided about the pending business changes. The Panel accepts that this is a concern for the Employer when considering the Union's request for recognition. However, the Panel's responsibility is to address what it is required to decide at this initial stage of the statutory recognition process. It is under a duty to address the admissibility of the application by examining whether or not the majority of the relevant bargaining unit is "likely" to favour recognition. To do this the Panel considers the results established by the Case Manager's report. Although the Employer is correct in stating that a ballot may be useful to test support, it is not necessary to establish at this stage by ballot that an actual majority is in favour of recognition of the Union; rather the CAC Panel has to be satisfied that it is likely that a majority would support it. On the evidence before it the Panel is satisfied that it is likely to be supported by the majority in the Union's proposed bargaining unit.

35. In the Panel's view membership of a union can be indicative of an individual's support for recognition of a union to collectively bargain on their behalf and, in this case, there is no evidence from the Employer that the contrary may be the case.

36. For the reasons provided above the Panel concludes that a majority of the Union's proposed bargaining unit would be likely to favour recognition of the Union to conduct collective bargaining on its behalf and that the requirements of paragraph 36(1)(b) of the Schedule are met.

Decision

37. The Panel is satisfied that the application is valid within the terms of paragraphs 5 to 9, is made in accordance with paragraph 11(2) and is admissible within the terms of paragraphs 33 to 42 of the Schedule. The application is therefore accepted by the CAC.

Panel

Professor Lynette Harris – CAC Deputy Chairman

Mr Peter Martin

Mr Malcolm Wing

11 December 2015