

21 January 2016

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DECLARATION OF RECOGNITION WITHOUT A BALLOT

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 Malcolm Wing and Mr Peter Martin who for the purposes of this decision was replaced by Mr Simon Faiers. The Case Manager appointed to support the Panel was Miss Sharmin Khan.

3. By a decision dated 11 December 2015 the Panel accepted the Union's application. The parties then entered a period of negotiation in an attempt to reach agreement on the appropriate bargaining unit. By its e-mail to the CAC on 16

December 2015 the Employer confirmed that the agreed bargaining unit was that proposed by the Union in its application. The Employer clarified that the manual workers were sub-categorised into warehouse and packing. The full breakdown of the categories and job roles within the agreed bargaining unit was as follows:

- Packing – Supervisor, Team Leader, Factory Operator
- Warehouse – Supervisor, Team Leader, Factory Operator
- Technical – Team Leader, Process Engineer, Engineers

4. By e-mail to the CAC dated 18 December 2015, the Union concurred that the appropriate bargaining unit was agreed (as described in the above paragraph). On 21 December 2015 the CAC wrote to the parties stating that it was understood by the Panel that the parties had agreed that the appropriate bargaining unit was as proposed by the Union namely, “Manual Workers (warehouse and packing) and Technical Staff” located at “Cinram Operations, Ransomes Europark, 2 Central Ave, Ipswich, IP3 9SL.” and that in the event that either party did not agree with this description, the CAC should be contacted immediately.

Issues for the Panel

5. Paragraph 22(2) of Schedule A1 to the Act (the Schedule) requires the CAC to issue a declaration that a union is recognised as entitled to conduct collective bargaining on behalf of a group of workers constituting the bargaining unit if it is satisfied that a majority of the workers constituting the bargaining unit are members of the applicant union, unless any of the three qualifying conditions set out in Paragraph 22(4) are fulfilled. If any of these conditions are met, or the CAC is not satisfied that a majority of workers in the bargaining unit are members of the applicant union, the CAC must give notice to the parties that it intends to arrange for a secret ballot to be held. The qualifying conditions in paragraph 22(4) are as follows:

a) the CAC is satisfied there should be a ballot in the interests of good industrial relations;

b) that the CAC has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union (or unions) to conduct collective bargaining on their behalf;

c) membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of union members within the bargaining unit want the union to conduct collective bargaining on their behalf.

The Union's claim to majority membership

6. In its e-mail to the CAC of 18 December, the Union stated that, as it had a majority membership level within the bargaining unit it could trust, the parties could move forward and establish collective bargaining without a ballot. On 21 December 2015 the Union's email was copied to the Employer and the Employer was invited to make submissions on the Union's claim to majority membership within the bargaining unit and on the three qualifying conditions specified in paragraph 22(4) of the Schedule.

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

7. By letter to the CAC dated 23 December 2015 the Employer submitted that it did not believe that a majority of the workers constituting the relevant bargaining unit would be likely to favour recognition of Unite the Union as entitled to conduct collective bargaining on behalf of the bargaining unit.

8. The Employer believed that the Panel should consider recognition in the context of its current redundancy process. The Employer had already conducted collective redundancy consultation with an established group of employee representatives and by way of individual consultation. Redundancies had taken effect since 22 December 2015 and the bargaining unit had now reduced from 117 to 58 workers. There was a high possibility that the remaining workforce would only be kept for a short interim period. Consequently it was unaware whether the balance of members and non-members within the bargaining unit had shifted as a result of the recent redundancies. It believed that Union membership would not be sustained

beyond the cessation of the manufacturing operations at Ipswich. Of the 56 workers who were scheduled to leave due to redundancy, only one worker had asked to be accompanied to their redundancy consultation by a Union official.

9. In its view there was sufficient evidence to cast doubt as to whether a significant number of Union members wanted the Union to conduct collective bargaining on their behalf. It therefore believed that a ballot should be held to determine the level of actual support for the proposed Union recognition. Holding a ballot would be within the best interest of good industrial relations.

Summary of the Union's response to the Employer

10. On 24 December 2015 the Employer's submissions were copied to the Union by the CAC and its comments invited. The Union responded by e-mail on 29 December 2015 stating that it believed that support for Union recognition had remained post redundancy, as the majority of the retained workers were members of Unite the Union. The potential future closure of the site as alluded to by the Employer was not a plausible reason to oppose Union recognition.

11. The Union also stated that the Union members on site were not provided with the facility of external representation until the final stage of the Employer's redundancy process. By this stage the redundancy package had been enhanced and few Union members had requested representation.

The Case Manager's membership and support check

12. To assist with its decision on whether to arrange for a secret ballot, the Panel directed the Case Manager to conduct an independent check of the level of union membership in the bargaining unit. The information from both parties was received by the CAC on 5 January 2015. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists would not be copied to the other party and that agreement was confirmed in a letter from the Case Manager to both parties on the same date 2015.

13. The list provided by the Union contained the details of 44 Union members and the list provided by the Employer contained the details of 58 workers in the bargaining unit. The Case Manager's check established that there were 58 workers in the bargaining unit of whom 30 were members of the Union, a membership level of 52%. The Case Manager's report was issued to the parties on 7 January 2016 and their comments invited.

Revised membership check

14. The Union responded by e-mail on 7 January 2016 explaining that it had checked its records and that it was assured that the Employer presently employed all 44 individuals on its list. The Union asked that the accuracy of the Employer's list be checked to reflect this. The CAC copied the Union's e-mail to the Employer and asked the Employer to double check whether workers who were put on notice but still working for the Employer had been excluded from the list in error. In response the Employer by e-mail on 8 January 2016 confirmed to the CAC that it had indeed incorrectly assumed that workers who had been given their notice need not be included on the list for the membership check and attached a corrected list for the Case Manager to check.

15. On 11 January 2016 the Case Manager issued to the Panel and the parties a revised membership check report, which established that of 76 workers within the bargaining unit, 44 were Union members, a membership level of 58%.

Summary of the parties' comments following the membership check

16. On 11 January 2016 the Employer wrote to the CAC reiterating to the Panel its previous comments in respect of paragraph 22(4) of the Schedule but also bringing to the attention of the Panel that of those workers made redundant, the majority were already leaving and others were to leave at the end of January and that the remaining workforce may only be kept for a short interim period. The Employer's final comments were copied to the Union and its responding comments invited.

17. The Union responded on 12 January 2016 by e-mail to the CAC in which it stated that it continued to claim majority membership. It did not believe that there was any evidence to suggest that Union members were opposed to the Union conducting collective bargaining on their behalf. It did not dispute that the Employer carried out collective consultation in respect of the recent redundancies. However, as demonstrated by the continuing level of Union activity and membership, in its view, the workforce had a preference for direct Union involvement which was a facility not afforded by the Employer until the “appeal against dismissal” Stage. Union members on site were in the majority both before and after the redundancy process. The majority of the workforce wanted collective bargaining to be established without further delay because of the continued uncertainty about the future of the site.

18. In further comments to the CAC by e-mail dated 13 January 2016 the Employer, stated that 58% was a slim majority of the bargaining unit. The Employer disputed the Union’s assertion that membership would remain as a majority after this round of redundancies. According to the Employer it was likely that membership of the Union was likely to fall to a minority following Engineers leaving at the end of January.

19. Furthermore at all stages of the redundancy process, employees had the right to request trade union representation/assistance during the individual consultation process, a right that was not exercised. Meaningful and thorough consultation took place on a collective level with the already established employee representative group. The Union acknowledged this and did not dispute this.

20. With regard to the Union’s claim that support for the Union was demonstrated by the continuing level of Union activity, the Employer did not recognise or see any “level of union activity” apart from the current application for recognition.

21. The Employer reiterated its belief that in these circumstances a ballot should be held in the in the interests of good industrial relations.

22. The CAC duly copied the Employer's comments of 13 January 2016 to the Union for its final responding comments. The Union submitted its response by e-mail on 14 January 2016. The Union stated that even once those engineers who were on notice had left the business, Union members would still be in the majority and this was clearly demonstrated by the membership check report where the Employer had failed to include them.

23. Finally the Employer's statement that "at all stages of the redundancy process, all employees had the right to request trade union representation" was factually incorrect. In the redundancy Q & A issued by the Employer, which included questions raised from 19 to 21 October 2015, in answer to the question "Can I have Union representation?" it was clearly stated by the Employer that employees would only be afforded the facility to Trade Union representation at the appeal against dismissal stage. The Union provided a copy of the Employer's Q & A document to the CAC on 18 January 2016 referring the Panel to the relevant question and answer. This was copied to the Employer for information.

Considerations

24. The Schedule requires the Panel to consider whether it is satisfied that the majority of the workers in the bargaining unit are members of the Union and if the Panel is satisfied that the majority of the workers in the bargaining unit are members of the Union, it must declare the Union recognised by the Employer, unless it decides that any of the three conditions in paragraph 22(4) are fulfilled. If the Panel considers any of the conditions are fulfilled it must give notice to the parties that it intends to arrange for the holding of a secret ballot.

25. The Union asked the Panel to declare recognition of the Union for collective bargaining without a ballot. The Case Manager's membership check including the workers on notice for redundancy reasons established a membership level of 58% and the check excluding the workers on notice established a membership level of 52%. The Panel does not disagree with the Employer that this could be considered a "slim majority". Nevertheless, the Panel is mindful that the Schedule does not set out for the Panel by how far a Union must gain a majority membership level within the

relevant bargaining unit to request recognition without a ballot when claiming its majority membership. The Panel must accept that the majority of the workers in the bargaining unit are members of the Union.

26. Having accepted this, it now falls to the Panel to consider whether any of the three qualifying conditions stated in paragraph 22(4) (described in paragraph 5 of this decision) applies in this case. In deciding these matters the Panel has considered fully the submissions received from the parties.

27. Is the Panel satisfied that a ballot should be held in the interests of good industrial relations?

28. The Panel accepts the Employer's concern that some of the workers in the bargaining unit have left the company through redundancy and that it is a possibility that more redundancies will take place that could subsequently affect the number of members within the bargaining unit. However the Panel must decide on the matter with the evidence put forward by the parties at the time the decision is required.

29. The Panel relies to an extent on a numerical check of membership level within a bargaining unit as it considers that membership of a union can be indicative that an individual is likely to support recognition of a Union for the purposes of collective bargaining. Indeed it was on this basis (a membership level of 60% at the time) that the Union's application was accepted. The Panel asked for another membership check to be carried out to assess the current member/non member balance in the bargaining unit in view of the Employer's reference to redundancies being carried out and its case that this may have affected the Union's level of membership and therefore support for recognition of the Union. At a current 58% and then 52% excluding those who are in their notice period, establishes that the Union still enjoys a majority membership within the bargaining unit.

30. The Panel can see that the Employer has sought to maintain positive industrial relations in difficult circumstances and notes that it has taken steps to consult individually and collectively with workers regarding the current redundancy process. However, the Employer has not supplied the Panel with any evidence that

demonstrates that recognition of the Union for collective bargaining purposes would cause any disharmony amongst or between the workers left in the bargaining unit upon which recognition is 'imposed' and workers that desire recognition of the Union.

31. The Employer has not argued how or what the consequences would be for industrial relations or on the performance of the business other than to cite that there may be an impact on the level of members should likely redundancies happen. The concerns of the Employer remain unsubstantiated, notwithstanding that further redundancies are at this stage still only a possibility. Therefore in the absence of any evidence to the contrary the Panel cannot conclude that a ballot is required in the interests of good industrial relations.

32. Does the Panel have evidence, which it considers credible, from a significant number of union members in the bargaining unit that they do not want the union to conduct collective bargaining on their behalf?

33. The Panel has received no evidence from the Union members in the bargaining unit that they do not want the Union to conduct collective bargaining on their behalf.

34. Has membership evidence been produced which leads the Panel to conclude there are doubts whether a significant number of union members in the bargaining unit want the union to conduct collective bargaining in their behalf?

35. The Panel has received no evidence of this nature.

Decision

36. For the reasons provided above the Panel is satisfied in accordance with paragraph 22(1)(b) of the Schedule that the majority of the workers constituting the bargaining unit are members of the Union. The Panel is satisfied that none of the conditions in paragraph 22(4) of the Schedule is fulfilled. Pursuant to paragraph 22(2) of the Schedule the CAC must issue a declaration that the Union is recognised

as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit. The CAC accordingly declares that the Union is recognised by the Employer as entitled to conduct collective bargaining on behalf of the bargaining unit comprising “Manual Workers (warehouse and packing) and Technical Staff” currently located at “Cinram Operations, Ransomes Europark, 2 Central Ave, Ipswich, IP3 9SL.”

Professor Lynette Harris – CAC Deputy Chairman

Mr Simon Faiers

Mr Malcolm Wing

21 January 2016