

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

Workplace Solutions Engie (GDF Suez)

Introduction

1. Unite the Union (the Union) submitted an application to the CAC dated 25 May 2016 that it should be recognised for collective bargaining by Workplace Solutions Engie (GDF Suez) (the Employer) for a bargaining unit comprising “All manual workers up to and including the grades of supervisor, and charge hands employed by Engie - Workplace Solutions within the EDF Nuclear power stations”. The locations of the bargaining unit were given as “All EDF Nuclear power stations in the UK, namely Hartlepool, Heysham 1, Heysham 2, Hinkley Point B, Hunterston B, Dungeness B, Sizewell B and Torness. The application was received by the CAC on 25 May 2016 and the CAC gave both parties notice of receipt of the application on 26 May 2016. The Employer submitted a response to the CAC dated 1 June 2016 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 Kenny Miller, Chairman of the Panel, and, as Members, Ms Virginia

Branney and Mrs Maureen Chambers. The Case Manager appointed to support the Panel was Nigel Cookson.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 9 June 2016. The acceptance period was then extended to 24 June 2016 in order to allow time to conduct a membership check and to allow time for the parties to comment thereon before the Panel arrived at a decision. Time was further extended to 22 July 2016 to enable the Panel to establish whether or not there was an existing agreement in force that covered any of the workers in the Union's proposed bargaining unit.

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.

Summary of the Union's application

5. In its application to the CAC the Union stated that it had originally sent its formal request for recognition to the Employer on 7 March 2016. The Employer responded on 29 March 2016 indicating that it was not prepared to recognise the Union for the bargaining unit and that it was not prepared to negotiate on this. Copies of both these letters were attached to the application. However, because of an error in the wording the Union resent its formal request for recognition to the Employer on 22 April 2016 to which it did not receive a reply. A copy of this letter was also attached to its application. The Union assumed that the Employer had not replied as its position remained unchanged.

6. When asked whether the Union had made a previous application under the Schedule for statutory recognition for workers in the proposed bargaining unit or a similar unit the Union

answered "No"¹. The Union stated that, following receipt of the request for recognition, the Employer had not proposed that Acas should be requested to assist the parties as it refused to negotiate although an Acas officer based in Bury St Edmunds had attempted to contact the Employer on its behalf.

7. When asked for the total number of workers employed by the Employer the Union answered 236,120. The Union stated that there were 759 workers in the proposed bargaining unit, of whom 328 were Union members. When called upon to provide evidence that the majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining, the Union stated that it had circulated a petition in five of the eight stations, namely Heysham 1, Heysham 2, Hinkley Point B, Sizewell B and Torness. This petition had been signed by 363 workers out of a total of 484 who worked in the five stations. The Union saw no reason that if the exercise was repeated across the remaining three stations a similar result would not arise. In any event, the 363 signatures comprised only 16 less than the 379 needed to achieve 50% across the whole bargaining unit. Even allowing for inevitable "churn" the Union contended that this would seem to strongly indicate that a positive result would be achieved in a ballot, particularly given that an additional 275 people would be polled. Clearly, the 328 union membership level was well above the 10% threshold and may seem to be approaching the 50% mark. The Union added that it had not attached the petition with its application but enclosed a copy of its heading for information.

8. The Union stated that the reason for selecting the proposed bargaining unit was that the ENGIE Workplace Solutions nuclear fleet bargaining units were a discrete entity within the company and were divided into two sections, North and South, which were managed by separate HR managers. The coal-fired power stations were dealt with by a third HR manager. Each year an informal "negotiation" takes place between the Union and the Employer at Heysham and the result is used as a benchmark for pay across the bargaining unit which is passed on to local managers and implemented at their discretion. It was an ad hoc arrangement and was not based on any form of union recognition. In this respect the Union's proposed bargaining unit met the

¹ A previous application had been made under reference TUR1/961(2016) but it was withdrawn by the Union before any decision had been taken.

criteria of being “compatible with effective management”. When asked whether the bargaining unit had been agreed with the Employer the Union answered “No - employer refuses to negotiate”.

9. Asked whether there was any existing recognition agreement which covered any of the workers in the bargaining unit the Union stated that an agreement was proposed at Heysham when the workers were employed by Balfour Beatty but this agreement was never signed and the Employer had consistently maintained that any discussions took place as a courtesy, not as part of any formal process.

10. Finally, the Union confirmed that it held a current certificate of independence and stated that it had copied its application and supporting documents to the Employer on 9 May 2016.

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

11. In its response to the Union’s application the Employer stated that it received a formal letter on 4 December 2015 and a follow up letter was received on 22 February 2016. However, it added that the Union’s letter of 22 February 2016 had been returned to sender from the EDF head office in Barnwood, Gloucester and so it was some time before the Employer received a copy.

12. Asked for its response to the request for recognition the Employer stated that a national agreement was declined and it referred to letters attached to its completed response form. One of these letters was dated 6 January 2016 and was by way of a holding letter as it concluded “The team has just got back together following Christmas and New Year and a more detailed response will be sent in the near future”. The second of the letters attached to its response was dated 29 March 2016 and was by way of reply to the Union’s letter of 22 February 2016. This letter informed the Union that the Employer was not prepared to agree to the request set out in its letter, nor to negotiate over it.

13. The Employer stated that it had received a copy of the application form from the Union on 11 May 2016.

14. The Employer stated that it had not, before receiving a copy of the application form from the Union, agreed the bargaining unit with the Union and that it did not agree it. The Employer said that a representation had not been obtained from all sites and it was aware that other unions represented employees at other power stations. In addition, the Union's own area officers for the North West and South West were not aware of the application, which the Employer found to be of concern.

15. When asked if, following receipt of the Union's request, it had proposed that Acas should be requested to assist, the Employer answered in the affirmative adding that it would be more than happy for Acas to assist. Asked to provide details it stated that it had received an email on 23 May 2016 from Acas giving the name of the contact dealing with the application.

16. The Employer stated that it employed a total of 884 workers. Asked whether it agreed with the number of workers in the proposed bargaining unit as defined in the Union's application the Employer stated that the correct number was 838 excluding managers. This excluded the three coal and gas fired power stations in the GMB application². The Employer's payroll figures confirmed that the Union's figure was incorrect.

17. Asked whether there was an existing agreement for recognition in force covering workers in that bargaining unit the Employer stated "yes, there is an agreement that is adhered to in Heysham 1 and 2 although appears to be a draft and never signed. However, the Company honours it." A copy of the draft agreement was attached to the Employer's response.

18. In answer to the question as to whether it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer said that no names had been shared with the company to enable verification that the signatures were current employees. Asked to give reasons if it did not believe that a majority of workers in the bargaining unit were likely to

² See case reference: TUR1/956(2016) GMB & Workplace Solutions (Engie).

support recognition the Employer stated that there was a mix of unions that currently represented its employees across the power stations i.e. GMB, Unison as well as the Union. Furthermore, it already had a representative Employee Forum in place at local and national level.

19. When asked if it was aware of any previous application under the Schedule for statutory recognition by the Union in respect of this or a similar bargaining unit the Employer answered "n/a"³. Finally, when asked if it had received any other applications under the Schedule for recognition in respect of any of the workers in the proposed bargaining unit the Employer answered "not if the proposed bargaining unit only comprises the nuclear fleet"⁴.

The membership check

20. 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 are 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 independent checks of the level of union membership in the proposed bargaining unit and the number of workers in that unit who had signed the Union's petition in support of recognition. It was agreed with the parties that the Employer would supply to the Case Manager a list of the full 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 the full names and dates of birth of the paid up union members within that unit and a copy of the petition. The information from the Union was received by the CAC on 8 June 2016 and the information from the Employer was received by the CAC on 10 June 2016. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and the petition would not be copied to the other party and that agreement was confirmed in a letter from the Case Manager to both parties dated 2 June 2016. The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

³ See footnote 1 above.

⁴ See footnote 2 above.

21. The list supplied by the Employer showed that there were 784 workers in the proposed bargaining unit. The list of members supplied by the Union contained 335 names. According to the Case Manager's report the number of Union members in the proposed bargaining unit was 281, a membership level of 35.84%.

22. The Union provided a petition which took the form of 5 pdf files relating to each of the following power stations - Heysham A, Heysham B, Torness, Sizewell B and Hinkley Point. Each page of the petition, which was dated between 17 June 2015 and 13 October 2015, carried the following proposition:

Unite the Union at Workplace Solutions, EDF Nuclear Power Stations

PETITION FOR UNION RECOGNITION

We the undersigned employees of GDF Cofely Workplace Solutions working in EDF Nuclear Power Stations request that Workplace Solutions recognises our trade union, Unite the Union for the purposes of collective bargaining.

THIS PETITION WILL NOT BE SHOWN TO WPS MANAGEMENT – IT WILL BE PRESENTED TO ACAS OR THE CAC AND THEY WILL VERIFY THE NUMBERS, NOT THE NAMES.

23. The Case Manager's report showed that the petition was signed by 300 workers in the proposed bargaining unit, a figure which represents 38.27% of the bargaining unit. Of those 300 signatories 189 were members of the Union (24.11% of the proposed bargaining unit) and 111 were non-members (14.16% of the proposed bargaining unit).

24. A report of the result of the membership and support check was circulated to the Panel and the parties on 13 June 2016 and the parties were invited to comment on the results by the close of business on 17 June 2016.

Parties' comments on the result of the membership check

25. In a letter dated 16 June 2016 the Employer stated that its numbers were accurate as of 10 June 2016 when a real time report was run and then forwarded to the CAC, which would reflect any starters and leavers as per that date. Two of the relevant sites held a majority of GMB members, therefore the Employer would advise that a Union recognition agreement would have an adverse impact on the workforce at these sites. Further, the test laid out in Paragraph 36 (1)(b) would not be met based on the data provided in the report.

26. Further, the Employer had been informed by Acas that the Union wished to go down the voluntary route to begin with and Acas was happy to facilitate any discussions. The Employer's intention was to agree at this stage as it was open to having talks with the assistance of Acas to discuss the practicalities around a voluntary agreement.

27. The Employer's comments on the membership check were copied to the Union and both parties were informed that the Panel, before deciding whether or not to accept the application, sought confirmation as to whether there was in force a collective agreement under which a union, whether it be the GMB, Unite or Unison, was recognised as entitled to conduct collective bargaining on behalf of any workers falling within the bargaining unit as proposed by the Union.

28. In an email dated 24 June 2016 the Union responded to both the comments made by the Employer and the Panel's call for confirmation as to the status of the draft agreement. Regarding the Employer's comments on the Case Manager's report the Union said firstly, it was not disputing the accuracy of the Employer's figures. Secondly, that there were GMB members in two sites is not surprising and it should have no effect on the Panel's view as to whether a majority of workers in the bargaining unit were likely to favour recognition. The Union would not seek to recruit GMB members and could see no circumstances under which recognition would have an adverse effect on them. Thirdly, the Union had shown that at least 50% of workers favour recognition through the petition and membership. This was against a background of an improvised national campaign with very few resources, and no access to two stations with the petition being circulated by stewards. The Union would expect that many more workers

would sign up to the idea if it was able to demonstrate the benefits of union membership on a level playing field.

The matter of the existing agreement

29. With regard to the issue of whether there was an existing agreement, the Union's email went on to say that it did not believe that this was the case on any site. The so called agreement from Heysham was drafted when Balfour Beatty had the contract and had never been signed, and indeed no one from the Union at Heysham was aware of its existence.

30. On 28 June 2016 the Employer confirmed in an email that there was no agreement in place across the bargaining unit other than the previously highlighted one at Heysham 1 and Heysham 2. The Employer honoured the agreement even though it had never been signed and was in draft format.

31. On 7 July 2016 the Panel informed the parties that it was of the view that the question of whether there was in force an agreement that covered workers in the proposed bargaining unit may not be settled without a hearing and therefore felt it prudent to set a date for a hearing to determine whether the application should be accepted. The Panel also called for the early production of evidence in support of the Employer's assertion that the agreement was in force. However, before any such evidence was received by the CAC, the Employer, in an email dated 13 July 2016, stated that after speaking with the Union and Acas, it was now of the view that the Heysham 1 and Heysham 2 agreements were not agreed upon formally and therefore would no longer be referred to.

Considerations

32. 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.

33. The Panel is satisfied that the Union made a valid request to the Employer for recognition within the terms of paragraphs 5 to 9 of the Schedule and that its application was made in accordance with paragraph 11 in that before the end of the “first period”⁵ the Employer failed to respond to the request. Furthermore the Panel is satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 34 and paragraphs 37 to 42 of the Schedule.

34. The Panel is also satisfied that, given the parties’ submissions on the issue, there is no existing agreement in force covering any of the workers in the proposed bargaining unit and so the application is not rendered inadmissible because of the provisions in paragraph 35. The remaining issues for the Panel to decide are whether the admissibility criteria set out in paragraph 36(1)(a) and paragraph 36(1)(b) are met.

Paragraph 36(1)(a)

35. 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. The membership check conducted by the Case Manager (described in paragraphs 20 to 24 above) showed that 35.84% of the workers in the proposed bargaining unit were members of the Union. As previously stated, 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)

36. 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

⁵ The “first period” is defined in paragraph 10(6) of the Schedule as “the period of 10 working days starting with the day after that on which the employer receives the request for recognition”.

the bargaining unit. The check conducted by the Case Manager showed that 38.27% of the workers in the proposed bargaining unit had signed the petition in support of recognition. Of this percentage, 24.11% of the workers in the proposed bargaining unit were union members and 14.16% were non-members. The Employer, although given the opportunity to do so, has not challenged the validity of the petition. The Union, in its email of 24 June 2016, submitted that it had shown that at least 50% of workers favoured recognition through the petition and membership. The Union appeared to have arrived at this figure by adding the percentage of members in the proposed bargaining unit to the percentage of non-members that had signed its petition - viz 35.84% of workers in the proposed bargaining unit were union members and 14.16% of the proposed bargaining unit were non-members who signed the petition for union recognition. This equates to exactly 50%. The Union also made the point that it had not had full access to all of the power stations in the proposed bargaining unit and that it believed its support would be greater if it had the opportunity to put its case forward. From its perspective, the Employer submitted that the Union had not satisfied the requirements of this test based on the results of the Case Manager's comparison.

37. In arriving at its decision as to whether the test under paragraph 36(1)(b) is satisfied the Panel would remind the parties that this is not a strict arithmetical test such as the outcome of a ballot or referendum but rather a hypothetical test of 'likely' support based on consideration of the evidence provided. Here the Panel notes the level of union membership in the proposed bargaining unit and the outcomes of the petition. The Panel also takes note of the submissions of the Union and finds persuasive its assertion that it would have obtained a greater number of signatures for its petition if it had had unfettered access to all eight power stations, rather than relying purely on the views of the five power stations that it did poll. The Panel believes the Union has provided sufficient strength of evidence to persuade us that it is likely that a majority of the workers would support recognition of the Union. Indeed, using the Union's formula to measure support the number of additional petition signatures to tip the balance in the Union's favour would be very few and form a small percentage of those workers in the proposed bargaining unit yet to be canvassed.

38. Accordingly, 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

39. For the reasons given above, the Panel's decision is that the application is accepted by the CAC.

Panel

Professor Kenny Miller, Chairman of the Panel

Ms Virginia Branney

Mrs Maureen Chambers

22 July 2016