

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:

RMT

and

Peterson (United Kingdom) Limited

Introduction

1. RMT (the Union) submitted an application to the CAC dated 20 April 2017 that it should be recognised for collective bargaining by Peterson (United Kingdom) Limited (the Employer) in respect of a bargaining unit comprising “All employees/workers excluding management at Heysham Port”. The application was received by the CAC on 26 April 2017. The CAC gave both parties notice of receipt of the application on 27 April 2017. The Employer submitted a response to the CAC dated 3 May 2017 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 Mr Charles Wynn-Evans, Chairman of the Panel, and, as Members, Mr Roger Roberts and Mr Paul Gates OBE. The Case Manager appointed to support the Panel was Kate Norgate.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 11 May 2017. The acceptance period was extended to 25 May 2017 in order to allow time for a membership and support check to be carried out by the Case Manager. It was further extended to 30 May 2017 for the parties to comment on the subsequent report, 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 7 March 2017. A copy of that letter was attached to the application. The Union explained that that by letter dated 20 March 2017, also attached to its application, the Employer had declined its request to voluntarily recognise the Union.

6. The Union stated that there were approximately 520 workers employed by the Employer, of whom 26 were in the proposed bargaining unit. Of the 26 workers in the proposed bargaining unit the Union stated that 18 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 the level of union membership within its proposed bargaining unit was currently 69.2% and it therefore believed the majority were in favour of RMT recognition. The Union held two organising meetings in Heysham and many employees and members attended, with a strong desire for recognition of the Union. The Union stated that it would be willing to disclose on a confidential basis, a list of its members and a petition in support of recognition.

7. The Union stated that the reason for selecting the proposed bargaining unit was because Heysham Port had high levels of membership for the Union.

8. The Union stated that the bargaining unit had not been agreed with the Employer and that it was not aware of any other existing recognition agreement which covered any of the workers in the bargaining unit. 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 20 April 2017.

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

9. The Employer confirmed that it had received the Union's written request letter on 13 March 2017. By letter dated 20 March 2017, a copy attached to response, the Employer declined the Union's request.

10. The Employer confirmed that it had received a copy of the application form from the Union on 27 April 2017, as the Employer was out of the country when it was delivered.

11. 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, nor did it agree with the proposed bargaining unit.

12. The Employer stated that it did not agree with the number of workers as set out in the Union's application. There were 28 people employed on site, two of whom were managers. The proposed bargaining unit states all with the exception of Management. The Employer classed Supervisors as part of the Management Team.

13. When asked to give reasons for disagreeing with the Union's estimate of its membership in the proposed bargaining unit, the Employer stated that it had no evidence to suggest that the majority of its workers were in favour of recognition.

14. The Employer was asked to give reasons if it did not consider that a majority of the workers in the bargaining unit were likely to support recognition. To this it responded that it had taken measures to address some concerns of its employees. One of those issues considered was how holiday pay was calculated and the Employer had received a collective grievance. Subsequently it changed the calculation for the whole company, and the employees in Heysham benefited in this regard. The collective grievance was also withdrawn. The Employer stated

that it had taken steps to improve terms and conditions and a mutual understanding had been reached. The Employer offered to submit those contracts of employment as evidence to demonstrate this. The Employer further stated that it had brought in another experienced manager to support the positive changes on the site. The Employer explained that it could work with its employees without the need for a third party as the company did not recognise the Union in any other part of the business and ultimately it wanted consistency in this regard.

15. The Employer stated that it was not aware of any existing recognition agreement in place covering any of the workers in the proposed bargaining unit. The Employer also stated that, following receipt of the Union's request, it had not proposed that Acas be requested to assist.

16. Finally, the Employer stated that it was not aware of any previous application under the Schedule by the Union in respect of this or a similar bargaining unit.

Union's comments on the Employer's response to the application

17. By e-mail dated 8 May 2017 the Union stated that there were high levels of RMT membership within "Base Supervisors" employed by the Employer and therefore it was reasonable for them to be included in its proposed bargaining unit. The Union considered that these levels of support demonstrated that Base Supervisors wished the Union to be recognised for collective bargaining purposes.

18. The Union further stated that its proposed bargaining unit was reasonable and at 26, covered all grades proposed. On its case, overall, RMT membership was more than sufficient for automatic recognition under the statutory process and the Union was willing to disclose, on a confidential basis, membership details and a petition.

The membership and support 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 names and dates of birth) and a copy of its petition. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and petition would not be copied to the other party. These arrangements were confirmed in a letter dated 10 May 2017 from the Case Manager to both parties. The information from the Employer was received by the CAC on 10 May 2017 and from the Union on 12 May 2017. Following a query raised by the Case Manager, on 15 May 2017 the Employer re-submitted a list excluding two managers, who were included in error.

20. The Union provided a list of 18 members and the Employer provided a list of 24 workers.

21. The Union’s petition consisting of 19 names/signatories was set out as follows:

“RMT RECOGNITION PETERSON (UNITED KINGDOM) LIMITED

We the undersigned wish to be recognised for collective bargaining by the RMT Trade Union for pay, terms and conditions and all other matters relating to our employment.

The bargaining unit to include all employees/workers excluding management at Heysham Port

Name (Print)	Grade	Signed	Date

Please return to Darren Ireland, RMT Regional Organiser, 2 Temple Square, Temple Lane, Liverpool, Merseyside, L2 5BB.

This petition will remain confidential.”

22. The membership check established that there were 17 members of the Union within the bargaining unit which constituted a membership level of 70.8%. The result of the comparison of the Union’s petition with the Employer’s list of workers revealed that a total of 18 workers had indicated that they wanted the Union to be recognised which corresponded to 75% of the

bargaining unit. 17 of the 18 were union members (70.8%) and 1 was a non-member (4.2%). The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

23. A report of the result of the membership and support check was circulated to the Panel and the parties on 18 May 2017 and the parties were invited to comment on the results by close of business on 22 May 2017.

The parties' comments on the result of the membership and support check

24. By e-mail dated 22 May 2017 the Union stated that it had met the statutory requirement in respect of Paragraph 36(1)(a), with more than 10% of the bargaining unit being members of the Union. In respect of Paragraph 36(1)(b) the Union stated that, in light of the level of membership being 70.8%, and the petition in favour of union recognition, which gave a figure of 75%, the majority of the bargaining unit favoured recognition of the Union for collective bargaining purposes. Finally, the Union requested that the CAC award automatic recognition without a ballot.

25. The Employer provided its comments on the result of the membership and support check, by e-mail dated 26 May 2017. First, the Employer indicated its view that a group petition was not sufficient "for such a vote on the basis it was not independent or anonymous", the Employer also stating that it had been noted in conversation that "some of the group are going along with others". The Employer wished there to be a confidential and independent ballot of the proposed bargaining group to ensure a fair vote which the Employer would respect. Second, the Employer also did not find the timescales sufficient as it considered that it had achieved improved terms and conditions for its people "by working with them since that date" and indicated that it will "continue to work with them and believe our people recognise the significant improvements." This second point is not relevant to the issue to be determined in this decision.

Considerations

26. 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 the evidence referred to above in reaching its decision.

27. 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 remaining issues for the Panel to decide are therefore whether the admissibility criteria contained in paragraph 36(1)(a) and paragraph 36(1)(b) are met.

Paragraph 36(1)(a)

28. 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.

29. The Panel is satisfied that the check conducted by the Case Manager (described in paragraphs 19 - 22 above), which showed that 70.8% of the workers in the proposed bargaining unit were members of the Union and which the Employer did not contest, was conducted properly and impartially and in accordance with the arrangements agreed with the parties and that the Employer's stated concerns about the group petition did not undermine the cogency of the check conducted by the Case Manager. 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)

30. 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.

31. As well as establishing that 70.8% of the workers in the proposed bargaining unit were union members, the Case Manager's check of the Union's petition against the list of workers

provided by the Employer indicated that 18 of the 19 petition signatories were identifiable as workers within the bargaining unit, a support level of 75%. Of those there were 17 union members (70.8%) and 1 non-member in the bargaining unit (4.2%). The Employer's comments did not, as referred to above, undermine the reliability of the petition as an indicator of the views of those workers. Given the level of union membership and support demonstrated by the petition, and in full consideration of the evidence made available, the Panel decides that the majority of the workers would be likely to favour recognition of the Union for the purposes of collective bargaining. The Panel is therefore satisfied that the test required by paragraph 36(1)(b) of the Schedule has been met.

Decision

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

Panel

Mr Charles Wynn-Evans, Chairman of the Panel

Mr Roger Roberts

Mr Paul Gates

30 May 2017