

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DECISION ON WHETHER THE APPLICATION IS VALID FOLLOWING
DETERMINATION OF THE BARGAINING UNIT

The Parties:

NUJ

and

Buzzfeed (UK) Limited

Introduction

1. The National Union of Journalists (the Union) submitted an application to the CAC dated 14 March 2017 that it should be recognised for collective bargaining by BuzzFeed (UK) Limited (the Employer) for a bargaining unit comprising "Editorial staff currently working at BuzzFeed UK Limited at 40 Argyll Street, 2nd Floor, London, W1F 7EB excluding senior management defined as those who manage managers". The CAC gave both parties notice of receipt of the application on 14 March 2017. The Employer submitted a response to the CAC dated 21 March 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 Professor Lynette Harris, Chair of the Panel, and, as Members, Ms Lesley Mercer and Mr Roger Roberts. The Case Manager appointed to support the Panel was Kate Norgate.

3. By a decision dated 3 May 2017 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. No agreement was reached on the appropriate bargaining unit and a hearing to determine the issue was held in London on 6 October 2017. The Panel decided that the appropriate bargaining unit was “Editorial staff working in News and Buzz and staff supporting editorial work on the service desks at BuzzFeed UK Ltd, 40 Argyll Street, 2nd floor, London, WWF 7EB who have U.K. contracts and U.K. reporting lines but exclude senior management (defined as those who manage managers) and editorial staff who have UK contracts but US reporting lines.”

Issues

4. Paragraph 20 of the Schedule states that where an application has, as in the present case, been accepted under paragraph 11 and the CAC has determined an appropriate bargaining unit that differs from the proposed bargaining unit then the CAC must, within the decision period, decide whether the application is invalid within the terms of paragraphs 43 to 50 of the Schedule. The tests that the Panel must consider under these paragraphs are:-

- is there an existing recognition agreement covering any of the workers within the new bargaining unit? (*paragraph 44*)
- is there 10% union membership within the new bargaining unit? (*paragraph 45(a)*)
- are the majority of the workers in the new bargaining unit likely to favour recognition? (*paragraph 45(b)*)
- is there a competing application, from another union, where their proposed bargaining unit covers any workers in the new bargaining unit? (*paragraph 46*)
- has there been a previous application in respect of the new bargaining unit? (*paragraphs 47 to 49*)

Summary of the parties' comments

5. In a letter to the Case Manager dated 8 December 2017 the Employer made the following comments on the validity tests:

- 1) There are 13 employees, who were originally included in the Union's proposed

bargaining unit, who now fall outside of it. This may have an effect on the validity of the new bargaining unit and a fresh membership check is therefore required to determine an accurate level of union membership.

- 2) The last membership check was carried out in April 2017. BuzzFeed is a fast moving and evolving organisation; 7 employees within the proposed bargaining unit had left within the last eight months and 4 new employees who fall within the proposed bargaining unit had joined. This along with the matters raised in point 1 inevitably means that the Panel's information is out of date and a fresh check is necessary.
- 3) Even if a membership check showed that 10% or even a majority were members of the Union, this would not necessarily indicate majority support for the Union. As previously informed, more than 25 employees, including a number of union members informed BuzzFeed that they do not support recognition of the Union. For example, one member stated that they do not believe collective bargaining was right for BuzzFeed as it would cause divisions within the office and alter BuzzFeed's DNA. Another union member had stated that they did not believe any working conditions at BuzzFeed would necessitate union recognition and they did not support it. A third member expressed their opposition to union recognition without a ballot as they were concerned that the Union organisers were pushing ahead despite the fact that most of the staff either did not support the move or were not very engaged.

It is therefore unreasonable to assume that, even with majority membership within the new bargaining unit, a majority of the workers would support union recognition. BuzzFeed wants to avoid a situation where automatic recognition is imposed on a workforce that is not in favour of it.

- 4) BuzzFeed recently announced a global restructuring, including in the UK. The current proposal potentially involves 22 roles in the News and Buzz teams being made redundant. This is an additional reason for the CAC to order a ballot as it would give employees the opportunity to express their views about recognition in light of the restructure. A further membership check should therefore be carried out to take into account the substantial and ongoing changes to the workforce since

April 2017.

6. In a letter to the Case Manager dated 8 December 2017 the Union gave the following comments on the validity tests:

- 1) There is no existing agreement covering any of the workers within the newly determined bargaining unit.
- 2) There are more than 10% union members in the new bargaining unit.
- 3) A majority of the workers in the new bargaining unit are likely to favour recognition. The membership check confirmed a majority of 54.4%. Since the check the Union has received an additional application for membership which increases the percentage to 56.14%.
- 4) There is no competing application from another union in respect of the proposed bargaining unit.
- 5) There has been no previous application in respect of the new bargaining unit.

7. By a further letter dated 20 December 2017 the Employer re-iterated the point it made in paragraph 5 above regarding the current process of restructuring its global business, and how it believed this process would have a significant impact on the proposed bargaining unit. It believed the redundancies would reduce the bargaining unit to 34, representing a 40% reduction. The Employer requested that, in view of the changes to the size of the bargaining unit in the coming weeks, the Panel delay the membership check until after the redundancy process had concluded in January.

8. In a letter dated 22 December 2017 the Panel Chair informed the Employer that it was not possible to postpone the membership check and reminded the parties that the Panel makes its decisions on the evidence available to it at the time the decision is required. Furthermore, that the statute does not allow for future events to be taken into account and that the objective of a membership and support check is to give a snapshot at that moment in time.

The membership check

9. To assist the determination of the two admissibility tests under paragraph 45 (a) and 45 (b) of Schedule A1, namely whether 10% of the workers in the new bargaining unit are

members of the Union and whether a majority of the workers in this bargaining unit are likely to favour recognition of the Union, the Panel instructed that the Case Manager carry out checks on the level of union membership within the determined bargaining unit and the number of workers who had indicated support for recognition of the Union for the purposes of collective bargaining.

10. The parties agreed that the Employer would supply, to the Case Manager, a list of the names of workers within the determined bargaining unit and that the Union would supply, to the Case Manager, a list of its union members within that unit to enable a comparison to be undertaken. 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 dated 13 December 2017. The information from both parties was received by the CAC on 18 December 2017.

11. The Union provided a list of 31 union members in the determined bargaining unit and the Employer provided a list of 57 workers.

12. The result of the membership and support check showed that 31 workers in the bargaining unit were members of the Union, giving a membership level of 54.4%. The Panel is satisfied that the check was undertaken appropriately.

13. The report of the result from the membership and support check was circulated to the Panel and the parties on 22 December 2017. Both parties were then invited to comment on the check and the further tests.

The Employer's comments on the result of the membership check

14. By letter dated 11 January 2018 the Employer stated that it notes there is no mention within the report on whether the list of members provided by the Union are subscription paying members and are up to date with their subscriptions. If this was the case they could be excluded from the calculation of union membership within the bargaining unit.

15. The Employer stated that whilst the CAC had originally asked for a list of names and dates of birth of the Union's paid up members, the Union's response made no reference to, or

confirmation of, this status. The Employer stated that it therefore questioned whether the status of its “paid-up” members had been verified.

16. The Employer stated that it had previously raised concerns that the Union had a wide definition of which members it regards as being “up to date”. It stated that its concerns were more pertinent for the reasons set out in its submission dated 21 April 2017 and its position remained unchanged. It further stated that the current restructuring of the business would inevitably create an unstable working environment for many employees who fall within the proposed bargaining unit. It was the Employer’s view that given this uncertainty it was highly likely that a number of employees may have sought some level of support from the Union and it was aware of the Union actively recruiting among the proposed bargaining unit on this basis. The Employer stated that this may either have involved employees signing up as a member of the Union or having a level of interaction that may have been deemed by the Union as registration for membership, when this was not in fact the case. The Employer stated that in either of these circumstances it may be that employees were included in the Union’s list of members despite either never having paid a subscription or having no intention to become fully paid-up members.

17. The Employer further explained how it believed its comments and the outcome of the membership check further strengthened its position that a secret ballot should be held to determine the level of support and to ensure that union recognition is not imposed on its employees without strong evidence for the majority being in favour. This final point concerning a ballot is not relevant to the issue to be determined in this decision.

The Union’s comments on the result of the membership check

18. By letter dated 12 January 2018 the Union stated that it was pleased to note that the membership check confirmed that the Union has a majority in membership in the new bargaining unit.

19. The Union referred to its letter of 8 December 2017 and its comments on the validity tests. It also stated that the membership check confirms a majority of 54.4%. The Union explained that since the membership check the Union had received an additional application for membership which increases the percentage to 56.14%.

20. The Union further stated that as the conditions were satisfied and the Union has majority membership in the bargaining unit, it asked the CAC to grant automatic recognition without a ballot as it did not believe any of the qualifying conditions in paragraph 22(4) applied. As stated in paragraph 17 above, this point is not relevant to the issue to be determined in this decision.

21. Finally, the Union stated that it was aware a redundancy exercise was being conducted at the present time but the process was ongoing and as of today's date, no employee had left.

The Employer's response to the Union's comments

22. By letter dated 18 January 2018 the Employer stated that the level of union membership was a very slim majority by two or three people and should a small number of the Union members listed not be in favour, the requirements for recognition would not be met. It stated that it had already provided evidence to the Panel to demonstrate this and it intended to provide further evidence when invited to do so.

23. The Employer responded to the Union's claim that following the membership check it had received an application for membership and expressed its concerns stating "this person is not a fully paid up member of the Union and yet is deemed by the NUJ to be relevant for the purposes of determining density of union members."

24. The Employer further stated that the Union had claimed that as of the date of their letter, no employee had left BuzzFeed. The Employer explained that 9 employees in the proposed bargaining unit who had asked for voluntary redundancy, left the business on or before 12 January 2018. More workers in the proposed bargaining unit have requested redundancy and left since left the business.

25. The Employer stated that the restructuring process was completed today and as of the close of business a total of 22 people within the company had left BuzzFeed. The Employer believed that a number of those who left the business after requesting voluntary redundancy, were members of the Union. The Employer further stating that "this fundamental change to the proposed bargaining unit may have a significant impact on the density of union members and support within the proposed bargaining unit for recognition."

26. Finally, the Employer submitted that it therefore strongly disagreed with a number of points made by the Union with their submission that automatic recognition should be granted and it believed all three qualifying conditions in paragraph 22(4) applied.

27. By letter dated 31 January 2018 the Employer sent to further update to the Panel concerning of the current status of the bargaining unit following the conclusion of its internal restructuring and the result of the redundancies that occurred.

28. The Employer also re-iterated its point that, if the Panel finds that the bargaining unit is valid, a secret ballot be held to establish the level of support and in the interests of good industrial relations.

The Union's response to the Employer's comments

29. By letter dated 18 January 2018 the Union clarified that it had restricted its response to the matters which only relate to the validity tests and it will comment in due course in relation to whether recognition should be granted without the requirement of a ballot.

30. The Union stated that in respect of whether the Union's applications meets the validity tests, the only point raised by the Employer appears to concern the status of the 54.4%, or 56.14% if you include the additional application, of membership within bargaining unit. It also confirmed, for the avoidance of any doubt that all of the 54.4%, or 56.14% if you include the extra member, are full current members of the Union. Finally, the Union stated that there was one member on the list whose subscriptions are not fully up to date, who has been notified of this as general housekeeping.

Considerations

31. The Panel is satisfied on the evidence available that the application is valid in terms of the tests laid down in paragraphs 44 and 46 to 49 of the Schedule, namely that there is no existing recognition agreement in force, that there is no competing application and that there has been no previous CAC application in respect of the new bargaining unit. The remaining tests before the Panel are whether, in accordance with paragraphs 45(a) and (b) of the Schedule, 10% of the workers constituting the new bargaining unit are members of the union and whether

a majority of the workers constituting the new bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit.

Paragraph 45(a)

32. The membership and support check established that there was a membership level of 54.4%. If, as notified by the Union, the Union member in arrears was excluded then membership would stand at 52.6%. 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 is therefore satisfied that the test set out in paragraph 45(a) of the Schedule is met and that at least 10% of the workers constituting the new bargaining unit are members of the Union.

Paragraph 45(b)

33. Under paragraph 45(b) of the Schedule, an application is invalid unless the Panel decides that a majority of the workers constituting the agreed bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit.

34. The membership check conducted by the Case Manager (described in paragraphs 9 to 12 above) showed that 54.4% of the workers in the proposed bargaining unit are members of the Union, or 52.6% if the member in arrears is excluded. The Panel regards union membership as indicative of support for recognition and is therefore satisfied that the majority of 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 and that the test set out in paragraph 45(b) of the Schedule is met.

Decision

35. The decision of the Panel is that the application is valid for the purposes of paragraph 20 of the Schedule and the CAC will therefore proceed with the application.

Panel

Professor Lynette Harris, Chairman of the Panel

Mrs Lesley Mercer

Mr Roger Roberts

5 February 2018