

CENTRAL ARBITRATION COMMITTEE

TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992

SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION

DECISION ON FORM OF BALLOT

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. For the purposes of the decision on whether to arrange for the holding of a secret ballot, and any subsequent stages of the application, Professor Harris was replaced as Panel Chair by Professor Gillian Morris owing to Professor Harris' retirement from the CAC on 31 March 2018.

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, W1F 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."

4. As the appropriate bargaining unit determined by the Panel was different from that proposed by the Union in its application, the Panel was required by paragraph 20 of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992 (the Schedule) to determine whether the Union's application was invalid within the terms of paragraphs 43 to 50 of the Schedule. By a decision dated 5 February 2018 the Panel determined that the application was not invalid and that the CAC would proceed with the application.

5. Paragraph 22(1)-(3) of the Schedule requires the CAC to issue a declaration that a union is recognised as entitled to conduct collective bargaining on behalf of the 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 union, the CAC must give notice to the parties that it intends to arrange for the holding of a secret

ballot in which the workers constituting the bargaining unit are asked whether they want the union to conduct collective bargaining on their behalf. In a decision dated 11 April 2018 the Panel decided that a ballot should be held in the interests of good industrial relations and gave notice to the parties accordingly, pursuant to paragraph 22(3) of the Schedule. In a letter dated 11 April 2018 the Case Manager advised the parties that the Panel would wait until the end of the notification period of ten working days, as specified in paragraph 24 of the Schedule, before arranging a ballot.

6. The notification period ended on 24 April 2018. The CAC was not notified by the Union or by both parties jointly that they did not want the ballot to be held, as envisaged by paragraph 24(2). Accordingly the CAC will proceed with arranging a secret ballot.

Issues

7. Paragraph 25(4) of the Schedule provides that the ballot must be conducted –

- (a) at a workplace or workplaces decided by the CAC,
- (b) by post, or
- (c) by a combination of the methods described in sub-paragraphs (a) and (b),

depending on the CAC's preference.

Paragraph 25(5) provides that, in deciding how the ballot is to be conducted, the CAC must take into account –

- (a) the likelihood of the ballot being affected by unfairness or malpractice if it were conducted at a workplace or workplaces;
- (b) costs and practicality;
- (c) such other matters as the CAC considers appropriate.

Paragraph 25(6) provides that the CAC may not decide that the ballot is to be conducted as mentioned in paragraph (25)(4)(c) unless there are special factors making such a decision appropriate; and special factors include –

- (a) factors arising from the location of workers or the nature of their employment;
- (b) factors put to the CAC by the employer or the union (or unions).

8. The parties were invited, in the Case Manager's letter of 11 April 2018 (see paragraph 5 above), to make representations to the Panel about the form of ballot in the event that the notification period expired without the Union or the parties jointly informing the CAC that they did not want a ballot to be held .

Summary of the Union's submissions on the form of ballot

9. In an e-mail to the Case Manager sent on April 18 2018 the Union said that it had discussed the balloting arrangements with its chapel members at the Employer and that the Union's preference was for a postal ballot. The Union stated that given the nature of their work, staff in the bargaining unit were required to respond to news events and may be required to be away from the office at very short notice. The Union also stated that there were a number of staff who were not normally in the office on any given day as some worked from home and two were currently on maternity leave.

10. The Union stated that concerns had been expressed that workers would be less likely to participate in a workplace ballot because of the antagonistic attitude of management to recognition. The Union said that the chapel felt that staff would be more likely to participate in a postal ballot as there was a perception that being seen to participate in the ballot, were it to be held in the workplace, could be interpreted by management as an indication of being in favour of recognition. The Union also considered that a postal ballot would keep disruption within the workplace and during working hours to a minimum.

Summary of the Employer's submissions on the form of ballot

11. In a letter to the Case Manager dated 18 April 2018 the Employer stated that it believed a workplace ballot would be the obvious and most appropriate form in the circumstances. The Employer said that it had two major reasons for this view: costs and practicalities and participation.

12. In relation to costs and practicalities, the Employer stated that all the employees within the bargaining unit were based in one location - its central London offices - and worked broadly similar hours (ie usual office hours) with no remote or atypical employees. The Employer said that its offices contained suitable meeting rooms to allow both the Union and the Employer to have private meetings with all employees. The Employer said that subject to any workers being on holiday or otherwise absent from the workplace on the date of the ballot (for which the Employer would co-ordinate with the Panel and the Union to make suitable alternative arrangements once the date of the ballot was known) a workplace ballot was the most practical and cost efficient approach for both parties. The Employer submitted that a postal ballot would add unnecessary complication, cost and administrative burden to potentially simple circumstances.

13. In relation to participation, the Employer stated that its primary aim was to ensure that all employees within the bargaining unit could have their say on whether or not the Union should be recognised for collective bargaining purposes. The Employer submitted that a workplace ballot would encourage participation in the balloting process for two reasons. The first was the reduced administrative requirements for a workplace ballot (ie the lack of a need for employees to post their votes ahead of time) which would provide the maximum period possible to both parties to engage with the affected employees; provide them with information; and ensure all their questions were answered. The second reason the Employer gave was that the ease of voting in a workplace ballot would increase the likelihood that those workers would exercise their right to vote.

14. The Employer submitted that there would be no risk of unfairness and/or malpractice taking place in a ballot at its workplace. The Employer said that it understood its obligations and duties under the Schedule and the relevant Code of Practice and intended to ensure that a

fair process was followed during both the campaigning and balloting stages. The Employer said that it would be meeting with the Union to discuss and seek to agree mutually acceptable access arrangements for Union representatives in the workplace.

Considerations

15. Paragraph 25(5) provides that in deciding how the ballot is to be conducted the CAC must take into account –

- (a) the likelihood of the ballot being affected by unfairness or malpractice if it were conducted at a workplace or workplaces;
- (b) costs and practicality;
- (c) such other matters as the CAC considers appropriate.

The Panel has considered carefully the views of the parties and the factors specified in paragraphs 25(5) and has concluded that a postal ballot would be the most appropriate form of ballot in this case. The Panel notes the Employer's submission that a workplace ballot would encourage employee participation in the balloting process and that suitable alternative arrangements can be made for employees who are absent from the office on the day of the ballot. The Panel also notes, however, that the Schedule limits the circumstances in which such arrangements can be made. Paragraph 25(6A) states that workers who are unable, for reasons relating to them as individuals, to cast their votes in a ballot at the workplace may be given the opportunity to vote by post only if they request it far enough in advance of the ballot for this to be practicable. This means that workers who fall sick only a short time before the conduct of a workplace ballot, or are absent from the workplace at short notice for other reasons, may not, in the event, be given the opportunity to vote by post. The Panel considers that this is a material factor in the case of a small bargaining unit where it is possible that the question of whether workers in that unit are in favour of or against recognition may be decided by a relatively small number of votes. The Panel does not consider that the costs of holding a postal ballot will be significantly more (and may, indeed, be less) than the costs of a workplace ballot in this case.

Decision

16. The decision of the Panel is that the ballot be a postal ballot.

17. The name of the Qualified Independent Person appointed to conduct the ballot will be notified to the parties shortly as will the period within which the ballot is to be held.

Panel

Professor Gillian Morris, Panel Chair

Ms Lesley Mercer

Mr Roger Roberts

30 April 2018