

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:

NUJ

and

Macmillan Publishers Ltd (part of the Springer Nature group)

Introduction

1. NUJ (the Union) submitted an application to the CAC dated 12 March 2018 that it should be recognised for collective bargaining by Macmillan Publishers Ltd (part of the Springer Nature Group) (the Employer) in respect of a bargaining unit comprising “Editorial and Production staff in content creation roles (as opposed to those working in purely administrative roles) employed in Nature Research Group at the London Campus”. The application was received by the CAC on 12 March 2018. The CAC gave both parties notice of receipt of the application on 13 March 2018. The Employer submitted a response to the CAC dated 19 March 2018 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, Miss Mary Canavan and Ms Judy McKnight. 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 26 March 2018. The acceptance period was extended to 10 April 2018 in order to allow time for a membership and support check to be carried out by the Case Manager. It was further extended to 23 April 2018 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 June 2017. A copy of that letter was attached to the application. The Union explained that the Employer responded "to deny the request for recognition", which triggered the 20 day negotiation period from 22 June 2017. This period was then extended "by mutual agreement" and regular meetings continued until 2 February 2018 "when the NUJ concluded that the negotiation period was exhausted."

6. The Union stated that there were approximately 1699 workers employed by the Employer, of whom 418 were in the proposed bargaining unit. Of the 418 workers in the proposed bargaining unit the Union stated that 210 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 offered to supply evidence of membership to the CAC on a confidential basis.

7. The Union stated that the reason for selecting the proposed bargaining unit was because “the employees all undertake creation roles on an identifiable group of products within the company’s output (those products working under the Nature Research brand).”

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 proposed 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 12 March 2018.

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

9. The Employer confirmed that it had received the Union’s written request letter on 7 June 2017. The Employer stated that it responded by letter dated 20 June 2017. A copy of that letter was attached to its response.

10. The Employer confirmed that it had received a copy of the application form from the Union on 12 March 2018. The Employer stated that following receipt of the Union's request “Acas offered their assistance and we met on a number of occasions.”

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, stating that it was not compatible with effective management. It was the Employer’s view that it was “overly complex, illogical and fragmented”. The Employer further explained why it believed that the Union’s proposed bargaining unit was unsuitable. However this is an issue that will, if necessary, be considered by the Panel at a later stage of the statutory recognition process.

12. The Employer stated that it employed 1301 workers but it did not agree with the number of workers in the bargaining unit as set out in the Union’s application. It stated that the bargaining unit was “insufficiently clear or defined” to enable it to calculate the number of workers but it believed the approximate number of workers in the proposed bargaining unit was 421.

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 “despite a number of requests” it was unable to confirm as the union had not provided the membership numbers nor any evidence to support these numbers. The Employer stated that it had “considerable reservations” concerning the estimates provided by the Union.

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 the Employer responded that it had previously requested information from the Union concerning its level of membership. The Employer also stated that it had “offered to permit Acas to conduct an assessment of support” but that the Union had not accepted this offer. It was the Employer’s view that independent verification of the level of union membership and support for recognition was essential.

15. The Employer stated that, although it was not aware of any existing recognition agreement in place covering any of the workers in the proposed bargaining unit, it was to be noted that “we successfully operate an Information and Consultation (I&C) Forum, in conjunction with the relevant Trade Union”.

16. Finally, when asked whether it was aware of any previous application under the Schedule by the Union in respect of this or a similar bargaining unit, the Employer stated “N/A”.

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

17. By letter dated 23 March 2018 the Union stated that for a considerable amount of time the Employer had resisted its attempts to agree an appropriate bargaining unit and that the Employer had not suggested an alternative bargaining unit to that proposed by the Union. The Union also explained why it believed its proposed bargaining unit was compatible with effective management. However as stated in paragraph 11 above, this is a matter to be considered at a later stage.

18. The Union stated that the Employer was “well aware” that there were 418 workers in the bargaining unit as the roles which it had included was discussed at a number of meetings. The Union explained that in its view there had been agreement on the number of roles in the

bargaining unit it was proposing and it was unclear as to why the Employer was asserting that the number had risen to 421.

19. The Union noted that there was no suggestion that the I&C forum as referred to by the Employer would bar the Union's application.

20. Finally, the Union maintained that it had majority membership within the proposed bargaining unit consisting of 418, as agreed by the Employer.

The membership and support check

21. 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). It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists would not be copied to the other party. These arrangements were confirmed in a letter dated 26 March 2018 from the Case Manager to both parties. The information required from the Union was received by the CAC on 28 March 2018 and from the Employer on 29 March 2018.

22. The Union provided a list of 210 members and the Employer provided a list of 418 workers.

23. The membership check established that there were 194 members of the Union within the bargaining unit which constituted a membership level of 46.4%. The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

24. A report of the result of the membership and support check was circulated to the Panel and the parties on 5 April 2018 and the parties were invited to comment on the results by noon on 9 April 2018.

25. On 5 April 2018 the Union requested from the Case Manager the names of the 16 individuals on the list provided by the Union who did not appear on the Employer's list. In line with CAC policy the Case Manager provided this information to the Union.

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

26. By letter dated 6 April 2018 the Employer stated that as it had not seen the Union's list it could not comment on its accuracy. The Employer considered that, as it had no information about subscription or membership rules, an independent verification of the Union's membership figures was required.

27. The Employer stated that, based on the information submitted by the Union, it appeared that the Union had satisfied the first statutory requirement in respect of Paragraph 36(1)(a). The Employer further stated that it did not, however, believe that the Union had satisfied the second requirement in respect of Paragraph 36(1)(b). The Employer considered that membership of the Union "represents the high water mark of support for recognition within the bargaining unit." In its view over the previous 6 months the Union had embarked on a lengthy campaign within the Employer in which "recognition has been the central plank." The Employer stated that "in those circumstances, it is a reasonable inference to draw that those who are not members, and who have resisted joining despite the recruitment campaign based on the recognition issue, are unlikely to favour union recognition." The Employer argued that the Union had been given the opportunity for an "independent assessment of support for recognition" to be conducted by Acas but the Union did not accept the offer. The Employer stated that it remained its position that an "independent verification of the level of support for recognition" was required.

28. The Union provided its comments on the result of the membership and support check by e-mail dated 9 April 2018. It noted that the list provided by the Employer consisting of 418 employees appeared to correlate to the list it had sent previously to the Union. The Union stated, in respect of the 16 names who did not appear on the Employer's list, after carrying out

an investigation, it was the Union's view that only 2 individuals fell outside its proposed bargaining unit. The Union explained that those 2 workers were no longer in the proposed bargaining unit but all of the others occupied the roles identified by the Employer. The Union stated that it had not provided the names of those individuals it maintains are within its proposed bargaining unit "as we are mindful it is likely this correspondence will be copied to the Employer".

29. It was the Union's view that there were 207 members of the Union within its proposed bargaining unit. The Union stated that the Employer appeared to contend that "13 of those individuals are not in the bargaining unit we proposed and it has named 13 other employees as fulfilling those roles." The Union stated that it was, however, unable to comment on this contention without knowing who those individuals were. The Union considered that, if its position was correct, it had a membership density of 49.52% rather than the 46.4% as stated in the report.

30. It was also the Union's view that, even using the Employer's figures, it had met the admissibility tests as set out in paragraph 36 of the Schedule. The Union further stated that it believed a majority of workers in the bargaining unit would be likely to favour recognition and made a point that the Panel must consider the "bandwagon" effect of any application. The Union considered that the "imminent recognition of the union will generate additional support." Over the last 8 weeks it had recruited additional members, with 11 new members since 6 February. The Union considered this was due to it openly discussing the application in order to achieve this aim and would continue over the next few weeks. The Union stated that there was a new member since the membership check. The Union considered that this was despite the "obstructive approach" by the Employer, who it contended maintains that the bargaining unit is not appropriate but refused to present any alternatives and refused to agree to any voluntary arrangement during the extended period.

Considerations

31. 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.

32. 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 12. 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)

33. 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.

34. The membership check conducted by the Case Manager (described in paragraphs 21 - 23 above) showed that 46.4% of the workers in the proposed bargaining unit were members of the Union. As stated in paragraph 23 above, the Panel is satisfied that this check was conducted properly and impartially and in accordance with the arrangements agreed with the parties. The Panel notes the Employer's comments concerning the verification of the Union's membership figures, and the Union's comments in relation to those individuals who did not appear on the Employer's list. However, the system of membership and support checks employed to determine whether the admissibility tests are satisfied relies on the good faith and honesty of both parties in supplying information and the Panel has not received any evidence from the parties which casts doubt on the information provided. Further, the Panel cannot take further the process of verifying the level of union membership within the proposed bargaining unit where the Union will not disclose those names to the other party. On the basis of the 46.4% membership density figure established by the membership check, the Panel has 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)

35. 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. The Panel is satisfied on the basis of the membership check that the union membership density level is 46.4%. The Union did not provide any additional evidence of support for recognition, such as a petition, but the Panel considers that, in the absence of cogent evidence to the contrary, union membership provides a legitimate indicator of the views of the workers in the proposed bargaining unit as to whether they would be likely to favour recognition of the Union. In the Panel's view no sufficient evidence to the contrary was provided in this case. It is also the Panel's experience that there will be workers who are not members of the Union who would be likely to favour recognition of the Union. 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. The Panel is satisfied that this requirement of the Schedule is satisfied on the basis of the union membership density level of 46.4% disclosed by the membership check without having to determine the issue of whether the level of union support is the higher figure of 49.6% argued for by the Union.

Decision

36. For the reasons given in paragraphs 32 to 35 above, the Panel's decision is that the application is accepted by the CAC.

Panel

Mr Charles Wynn-Evans, Chairman of the Panel

Miss Mary Canavan

Ms Judy McKnight CBE

24 April 2018