

**CENTRAL ARBITRATION COMMITTEE**

**TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992**

**SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION**

**DECLARATION OF RECOGNITION WITHOUT A BALLOT**

**The Parties:**

Unite the Union

and

Mitie Property Services Limited

**Introduction**

1. Unite the Union (the Union) submitted an application to the CAC dated 27 March 2018 that it should be recognised for collective bargaining by Mitie Property Services Limited (the Employer) in respect of a bargaining unit comprising “Gas engineer, multi trader, fencer, plasterer, electrician, roofer, plumber, painter & decorator, lead ops”. The stated location of the proposed bargaining unit was “Crawley Borough Council Contract – social housing repairs and maintenance.” The application was received by the CAC on 27 March 2018. The CAC gave both parties notice of receipt of the application on 28 March 2018. The Employer submitted a response to the CAC dated 9 April 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 James Tayler, Chairman of the Panel, and, as Members, Mr David Coats and Mr Simon Faiers. The Case Manager appointed to support the Panel was Kate Norgate.

3. By a decision dated 26 April 2018, the Panel accepted the Union's application. On 21 May 2018, the Employer wrote to the CAC confirming that it agreed with the Union's proposed bargaining unit as stated in its application.

4. As the agreed bargaining unit was the same as that proposed by the Union in its application, the Panel moved to the next stage in the statutory process.

### **Issues**

5. Paragraph 22 of Schedule A1 to the Act (the Schedule) provides that if the CAC is satisfied that a majority of the workers constituting the bargaining unit are members of the union, it must issue a declaration of recognition under paragraph 22(2) unless any of the three qualifying conditions specified in paragraph 22(4) applies. Paragraph 22(3) requires the CAC to hold a ballot even where it has found that a majority of workers constituting the bargaining unit are members of the union if any of these qualifying conditions is fulfilled. The three qualifying conditions are:

- (i) the CAC is satisfied that a ballot should be held in the interests of good industrial relations;
- (ii) the CAC has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union (or unions) to conduct collective bargaining on their behalf;
- (iii) membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the union (or unions) to conduct collective bargaining on their behalf.

Paragraph 22(5) states that "membership evidence" is:

- (a) evidence about the circumstances in which union members became members, or
- (b) evidence about the length of time for which union members have been members, in a case where the CAC is satisfied that such evidence should be taken into account.

## **The Union's claim to majority membership and submission it should be recognised without a ballot**

6. In a letter dated 23 May 2018 the Union was asked by the CAC whether it claimed majority membership within the bargaining unit and, if so, whether it submitted that it should be granted recognition without a ballot. The Union, in an e-mail dated 29 May 2018, stated that it did claim to have majority membership within the bargaining unit and therefore submitted that it should be granted recognition without a ballot.

## **The Employer's submissions**

7. On 31 May 2018 the CAC copied the Union's e-mail to the Employer and invited it to make submissions on the Union's claim that it had majority membership within the bargaining unit and on the three qualifying conditions specified in paragraph 22(4) of the Schedule.

8. In a response to the CAC sent on 5 June 2018 the Employer stated that it was unable to confirm or challenge the Union's claim of majority membership as it had no specific knowledge of the Union's membership for those workers within the bargaining unit. The Employer stated it therefore requested that, in the interests of good industrial relations, a ballot is conducted to establish whether a majority membership exists.

## **Considerations**

9. The Act requires the Panel to consider whether it is satisfied that a majority of the workers constituting the bargaining unit are members of the Union. If the Panel is satisfied that a majority of the workers constituting the bargaining unit are members of the Union, it must declare the Union recognised as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit unless it decides that any of the three qualifying conditions set out in paragraph 22(4) is fulfilled. If the Panel considers that any of them is fulfilled it must give notice to the parties that it intends to arrange for the holding of a secret ballot.

10. In this case the membership check issued by the Case Manager on 18 April 2018 showed that 54.35% of the workers in the bargaining unit were members of the Union. The

Panel is satisfied that this check was conducted properly and impartially and, in the absence of evidence to the contrary, is satisfied that a majority of the workers in the bargaining unit are members of the Union.

11. The Panel has considered carefully the submissions of both parties and all the evidence in reaching its decision as to whether any of the qualifying conditions laid down in paragraph 22(4) of the Schedule is fulfilled.

12. The first condition is that the Panel is satisfied that a ballot should be held in the interests of good industrial relations. The Panel notes the Employer's claim that it would be in the interests of good industrial relations for a ballot to be held to establish whether the Union has majority membership. The Employer has not explained why it argues a ballot would be in the interest of good industrial relations, save that it stated it had no specific knowledge of the Union's membership within the bargaining unit. However, the panel is wholly satisfied that a valid membership check was undertaken that established that 54.35% of the workers in the bargaining unit are members of the Union. The Employer has not put forward any evidence to challenge this or otherwise to support its contention that a ballot should be held in the interests of good industrial relations. The Panel is satisfied that this condition does not apply.

13. The second condition is that the CAC has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union to conduct collective bargaining on their behalf. No such evidence has been produced and the Panel is satisfied that this condition does not apply.

14. The third condition is that membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the Union to conduct collective bargaining on their behalf. No such evidence has been produced and the Panel is satisfied that this condition does not apply.

### **Declaration of recognition**

15. The Panel is satisfied in accordance with paragraph 22(1)(b) of the Schedule that a majority of the workers constituting the bargaining unit are members of the Union. The Panel is satisfied that none of the conditions in paragraph 22(4) of the Schedule is met. Pursuant to

paragraph 22(2) of the Schedule, the CAC must issue a declaration that the Union is recognised as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit. The CAC accordingly declares that the Union is recognised by the Employer as entitled to conduct collective bargaining on behalf of the bargaining unit comprising “Gas engineer, multi trader, fencer, plasterer, electrician, roofer, plumber, painter & decorator, lead ops”.

**Panel**

Mr James Tayler, Panel Chair

Mr David Crowe

Mr Simon Faiers

15 June 2018