

**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:**

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. The CAC Panel has extended the acceptance period in this case. The initial period expired on 12 April 2018. The acceptance period was extended to 26 April 2018 in order to allow time for a membership and support check to be carried out by the Case Manager, for 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 8 February 2018. A copy of that letter was attached to the application. The Employer responded by letter dated 13 February 2018 in which it stated "Please let me know a convenient time you like to visit." A copy of that e-mail also attached to its application. The Union attached a further copy of an e-mail it sent to the Employer on 2 March 2017 in which the Union had set out its availability to the Employer to "discuss a collective agreement between Mitie and Unite."

6. The Union stated that there were approximately 80 workers employed by the Employer, of whom 59 were in the proposed bargaining unit. Of the 59 workers in the proposed bargaining unit the Union stated that 34 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 its members had requested collective bargaining. The Union further stated that it had met its members at a meeting held at the Union's Crawley office, during which "Mitie members voted unanimously into pursuing recognition through the CAC."

7. The Union stated that the reason for selecting the proposed bargaining unit was because “collective bargaining is the preference.”

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 27 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 8 February 2018. The Employer responded by letter dated 13 February 2018 in which it acknowledged receipt of the Union’s request and “agreed to meet to discuss.” A copy of that letter was attached to its response. The Employer did not confirm the date on which it had received a copy of the application form from the Union.

10. The Employer stated that following receipt of the Union's request it had not proposed that Acas be requested to assist.

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. The Employer was asked whether it agreed with the proposed bargaining unit, and whether it agreed with the number of workers in the bargaining unit as set out in the Union’s application, to this it responded “Unknown”.

12. When asked to give reasons for disagreeing with the Union's estimate of its membership in the proposed bargaining unit, the Employer answered “Unknown”. The Employer did not respond to question 11 on the response form: “If you do not consider that a majority of the workers in the bargaining unit are likely to support recognition, please indicate your reasons for taking this view with any available evidence.”

13. When asked if it was aware of any existing recognition agreement in place covering any of the workers in the proposed bargaining unit, the Employer again responded “Unknown”.

14. Finally, the Employer left blank the question asking whether it was aware of any previous application under the Schedule by the Union in respect of this or a similar bargaining unit.

### **The membership and support check**

15. 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 13 April 2018 from the Case Manager to both parties. The information required from the Union was received by the CAC on 13 April 2018 and from the Employer on 18 April 2018.

16. The Union provided a list of 35 members and the Employer provided a list of 46 workers.

17. The membership check established that there were 26 members of the Union within the bargaining unit which constituted a membership level of 56.52%. The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

18. A report of the result of the membership and support check was circulated to the Panel and the parties on 18 April 2018 and the parties were invited to comment on the results by noon on 23 April 2018.

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

19. The Union provided its comments by e-mail dated 9 April 2018. It was the Union's view that it had met the criteria as set out in paragraph 36(1)(a) and paragraph 36(1)(b) of the

Schedule, as the membership report showed that the proportion of union members in the bargaining unit was 56.52%. The Union stated that it therefore asked that the Panel considered its claim for “statutory recognition for collective bargaining on pay, holidays and hours.” It further stated that “Unite believes the percentage of union membership to be higher but this is dependent on the information provided by Mitie.”

20. The Employer did not provide any comments on the result of the membership and support check.

### **Considerations**

21. 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.

22. 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)*

23. 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.

24. The membership check conducted by the Case Manager (described in paragraphs 15-17 above) showed that 56.52% of the workers in the proposed bargaining unit were members of the Union which the Employer did not contest. As stated in paragraph 17 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 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)*

25. 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.

26. The membership check conducted by the Case Manager indicated a paid up membership constituting 56.52% of the bargaining unit of 46 workers. The Panel needs to be satisfied that a majority of the workers in the Union's proposed bargaining unit are *likely* to support recognition of the Union for the purposes for collective bargaining. In the Panel's experience, being a member of a Union can be taken as indicative of support for collective bargaining unless there is evidence to the contrary. Therefore, 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.

**Decision**

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

**Panel**

Mr James Tayler, Chairman of the Panel

Mr David Coats

Mr Simon Faiers

26 April 2018