

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

Aeroprofessional Ltd

Introduction

1. Unite the Union (the Union) submitted an application to the CAC that it should be recognised for collective bargaining by Aeroprofessional Ltd (the Employer) in respect of a bargaining unit comprising “Cabin crew community specifically employed by Aeroprofessional to carry out work on behalf of/for Norwegian Air Shuttle” based at London Gatwick. The application was received by the CAC on 10 December 2014. The CAC gave both parties notice of receipt of the application on 10 December 2014. The Employer submitted a response to the CAC dated 22 December 2014 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, chairing the Panel, and, as Members, Mr Bob Hill and Mr Keith Sonnet. The Case Manager appointed to support the Panel was Linda Lehan.

3. By a decision dated 16 January 2015, 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.

4. In correspondence received from the Employer dated 13 and 19 February 2015 it confirmed that following a meeting with the Union it had decided not to contest the proposed bargaining unit described as:

“Cabin crew community specifically employed by Aeroprofessional to carry out work on behalf of/for Norwegian Air Shuttle”

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

6. In a letter dated 19 February 2015 the Union stated that it believed that it still had majority membership within the bargaining unit and therefore submitted that it should be granted recognition without a ballot.

7. On 19 February 2015 the Union was informed that, given the contents of its letter of 19 February 2015, the Panel would proceed on the understanding that the Union was claiming majority membership within the bargaining unit and was therefore submitting that it should be granted recognition without a ballot. The Employer was then asked for its views on the Union's claim to majority membership and the qualifying conditions set out in paragraph 5 above.

The views of the Employer

8. In a letter dated 3 March 2015 the Employer stated that it had evidence, freely volunteered by employees within the bargaining unit, that it could provide on a confidential basis which confirmed that there were

- union members who had membership specifically for reasons other than collective bargaining;
- some non-union members who were not seeking union membership or recognition for collective bargaining purposes; and
- union members who did not wish to have recognition for collective bargaining purposes.

9. The Employer stated that given the initial membership check undertaken by the CAC indicated a membership level of 60.78% within the proposed bargaining unit, it had been engaging with employees to discuss the current recognition application and to gain an understanding why employees had chosen to become trade union members. The Employer confirmed that correspondence it had with employees was instigated via an e-mail and then through face to face verbal communications, followed up by email statements. The Employer stated that it had obtained feedback from 65 employees within the bargaining unit of 210 (nearly a 31% response within 7 days) of which 41 (65%) had indicated one of the above three bullet points.

10. The Employer stated that once the CAC had carried out a further membership check on the now agreed bargaining unit, should Unite membership levels still be above 50%, it considered that it would be appropriate for the CAC to exercise its discretion and order a ballot of the bargaining unit to determine whether Unite should be recognised for collective bargaining purposes.

11. The Employer went on to address the qualifying conditions as specified in paragraph 22(4) of the Schedule:

The CAC is satisfied that a ballot should be held in the interests of good industrial relations;

12. The Employer said that the confidential evidence it could provide from employees established that the majority of those who had so far responded indicated that they did not wish Unite to enter into collective bargaining on their behalf. The Employer stated that it would, therefore, not promote good industrial relations if employees within the bargaining unit were having their terms and conditions collectively bargained by Unite, when the majority did not want this and it would likely create friction amongst the workforce. It was the Employer's view that all employees would be aware that the decision reached was a democratic decision based on each employee having a vote if a ballot was held and there would be a far greater chance of the group moving forward as one.

The CAC has evidence from a significant number of union members within the bargaining unit, that they do not want the union to conduct collective bargaining;

13. The Employer stated that whilst they were unable to distinguish between those employees who were or were not trade union members, the evidence it could provide clearly established that a significant majority of employees did not want Unite to conduct collective bargaining. It was their view that the actual number of individuals that wanted collective bargaining was only be established by a ballot being granted.

Membership evidence is produced regarding the circumstances in which workers joined the union which leads the CAC to conclude that there are doubts whether a significant number of union members within the bargaining unit want the union to conduct collective bargaining on their behalf.

14. The Employer stated that evidence so far received from employees indicated that for the majority their motivation for joining Unite the Union was not in fact for collective bargaining but for the individual benefits union membership would offer, such as access to a union representative for employment relations matters (e.g., disciplinary or grievance issues). The Employer stated that it was, therefore, their feeling that the level of union membership among the bargaining unit did not proportionally represent a desire to enter into recognition for Unite the Union to conduct collective bargaining on their behalf.

15. Finally the Employer stated that should the CAC feel it not appropriate to order a ballot based on the reasons set out in their letter, it asked that the matter be listed for an oral hearing so that the Company could set out further its position on the issue.

The membership check

16. To furnish it with the latest information on Union membership levels and to summarise the evidence of the Employer, the Panel asked the Case Manager to conduct a membership check. The Employer agreed to supply a list of the names of workers within the determined bargaining unit and the e-mails received from Employees and the Union agreed to supply a list of Union members. The information from the Union and the Employer was received by the CAC on 5 March 2015. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and e-mails from employees would not be copied to the other party and that agreement was confirmed in a letter dated 5 March 2015 from the Case Manager to both parties. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties. A report of the results of the check was circulated to the Panel and parties on 11 March 2015. The results of the check showed that there were 196 workers in the bargaining unit of whom 123 were Union members; a membership level of 62.76%. The Employer submitted copies of 28 e-mails from Employees, 16 (8.16%) from union members and 12 from non union members. Of the 12 non members who submitted e-mails none of them expressed support for the Union being recognised for collective bargaining purposes.

17. In respect of the 16 e-mails received from union members the following is a summary of their comments:

10 members stated that had joined the Union for either legal advice, protection or for personal representation, 2 of whom said they did not feel the need for the Union to be recognised.

2 members stated they had joined for personal reasons.

1 person stated that they had joined the Union before their employment with Aeroprofessional and their decision was not directly related to their work there.

1 person said they were really happy with Aeroprofessional conditions and would be leaving the union.

2 members said that they had felt pressurized into joining the Union.

Union's comments on the membership report and the Employer's submissions

18. In a letter dated 16 March 2015 the Union stated that it maintained that its membership levels met the CAC statutory requirements for automatic recognition to be awarded. Mainly that they held more than 50% plus one of those in the bargaining group as members of Unite. The Union pointed out that even with the removal of those Unite members who claimed that they did not wish Unite to be recognised for collective bargaining purposes, the criteria was still surpassed. The Union stated that it did not believe that the qualifying conditions to necessitate a ballot had been met by the Employer and therefore there was no need for a ballot. The Union stated that their members clearly wished for recognition having joined a trade union whilst in employment at Aeroprofessional and the evidence supplied by the employer did not undermine that belief.

19. The Union stated that the majority of Aeroprofessional employees who joined Unite did so between June 2014 and November 2014 and based on their membership figures 118 out of 132 joined during that period. The Union stated that logic alone said that where there was such a surge of employees joining a trade union over a relatively short period of time it was not because the workforce had suddenly become interested in the side benefits of being a union member, it was because they wished the union of their choice to represent their interests and provide support in their engagement with their employer and that would include for collective bargaining purposes.

20. The Union advised that members had conveyed their unhappiness over what they believed to be their employer's attempts at frustrating their request for recognition. The Union felt that further delays caused by the instigating of a ballot would only serve to undermine the work required on establishing good industrial relations moving forward should recognition be awarded.

21. The Union asked the CAC to note that due to the working patterns of the bargaining group, and that direct access to the workplace was limited to those with an airside pass, they have not had the same opportunity as the employer to directly engage with the bargaining group. Due to security restrictions this situation was unlikely to change.

The Employer's comments on the membership check

22. In a letter received from the Employer dated 16 March 2015 they stated they would like to comment on the report's statistics which showed that the proportion of e-mails received from workers who were Union members in the bargaining unit was 8.16%. The Employer stressed that over the short period of time they were collating feedback, out of the 65 responses it received, 41 of them were not in favour of recognition and that unfortunately only a proportion felt comfortable responding to the queries in writing and that 57% of those that did were union members. The Employer stated that if they magnified the response across the bargaining unit it believed that it would demonstrate that the majority felt negatively about recognition. The Employer held that the only way to determine that properly was by a private, anonymous ballot conducted by a third party.

23. The Employer drew our attention to the part of the report which stated that 2 union members had said they felt pressurized into joining the Union and were concerned how many more employees had been coerced into membership without any desire to be part of the union and were not confident in coming forward. The Employer said that it threw into doubt the true meaning and value of the current membership numbers.

24. Given the points above the Employer felt it would be difficult to maintain good employee relations without a true understanding of whether the majority of the bargaining unit actually desired Unite the Union to act on their behalf for collective bargaining. The

Employer again reiterated that the only real way to catch the opinion of the bargaining unit was through a private, anonymous ballot conducted by a third party. The Employer stated that if a private ballot was held, all employees would be aware that the decision reached was a democratic decision based on each employee having a vote, and there would be a far greater chance that the group will move forward as one.

25. Finally the Employer said that should the CAC feel it not appropriate to order a ballot based on the reasons set out in their letter, they would ask that the matter be listed for an oral hearing so that the Company could set out further its position on the issue.

Considerations

26. As set out in paragraph 5 above, the Schedule requires the Panel to consider whether it is satisfied that the majority of the workers in the bargaining unit are members of the Union. If the Panel is satisfied that the majority of the workers in the bargaining unit are members of the Union, it must declare the Union recognised by the Employer unless it decides that any of the three conditions in paragraph 22(4) are fulfilled. If the Panel considers any of the conditions are fulfilled it must give notice to the parties that it intends to arrange for the holding of a secret ballot.

27. The Panel, under paragraph 22(1)(b) of the Schedule has to be satisfied that a majority of workers constituting the bargaining unit are members of the Union. On 11 March 2015 the check conducted by the Case Manager established that membership in the bargaining unit stood at 62.76%.

28. As pointed out by the Union in their letter dated 16 March 2015, even with the removal of the e-mails submitted by the Employer from 16 Unite members (8.16% of the bargaining unit) who potentially claimed that they did not wish Unite to be recognised for collective bargaining purposes the criteria is still surpassed.

29. The Panel, therefore, accepts that the majority of the workers in the bargaining unit are members of the Union. Having found that this is the case, the Panel must now consider whether any of the three qualifying conditions in paragraph 22(4) applies given the circumstances of this particular case.

Paragraph 22(4) (a)

30. The first condition is that the Panel is satisfied that a ballot should be held in the interests of good industrial relations.

31. The Employer, in its letter of 3 March 2015, made reference to evidence it could provide from employees who did not wish the Union to enter into collective bargaining on their behalf. Further, the Employer stated that it was in the interests of good industrial relations for a secret ballot of the bargaining unit to be held so that employees would then be aware that the decision reached was a democratic decision based on each employee having a vote. Employer's position was that there would be a far greater chance that the group would then move forward as one.

32. The Union, in its letter of 16 March 2015, argued that it did not believe that the qualifying conditions had been met and that members had conveyed their unhappiness over what they believed to be the Employer's attempts at frustrating their request for recognition. The Union felt that by instigating a ballot would only serve to undermine the work required on establishing good industrial relations moving forward should recognition be awarded.

33. The Panel is not persuaded by the arguments put forward by the Employer on this point, no evidence has been put forward to show any possible detriment that an award of recognition without a ballot would bring to the company and the Panel is, therefore, satisfied that this condition does not apply.

Paragraph 22(4) (b)

34. The second condition to be considered 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.

35. The Panel has considered the Employer's comment that the evidence it could provide clearly established that a significant majority of employees did not want Unite to conduct collective bargaining. In the evidence provided the 16 e-mails expressed varying views and,

whilst noting this point, the Panel concludes that this qualifying condition is not fulfilled on the grounds of lack of a significant number of Union members actually indicating they did not want collective bargaining, as detailed in paragraph 17 above, and therefore this condition does not apply.

Paragraph 22(4) (c)

36. 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. "Membership evidence" is defined by the Schedule as evidence about the circumstances in which union members became members, or 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.

37. The Employer stated in their letter of 3 March 2015 that evidence it could provide clearly established that a significant majority of employees did not want Unite to conduct collective bargaining. As stated by the Union in their letter of 16 March 2015 the majority of employees who had joined Unite had done so between June 2014 and November 2014 and logic alone said that a surge of employees joining within such a short period of time was not because the workforce had suddenly become interested in the side benefits of being a union member it was because they wished the union of their choice to represent their interests and provide support in their engagement with their employer for collective bargaining purposes.

38. The Employer's argument about the motivation of employees joining the Union not being for collective bargaining does not find favour with the Panel. People join a union for many reasons, looking at the full package of what the union has to offer. the Panel has not been presented with evidence to indicate the motivation for joining the Union is overwhelmingly for reasons other than collective bargaining. The argument of the Employer that members had joined for the individual benefits did not prove that they did not want collective bargaining.

39. The Panel noted the request by the Employer to hold a hearing but the Panel did not feel a hearing would produce any material which would add to, or subtract from, the quantified

evidence it already had. Therefore, the Panel concludes that this condition does not apply.

Declaration of recognition

40. The Panel is satisfied, in accordance with paragraph 22(1)(b) of the Schedule, that the majority of the workers in the bargaining unit are members of the Union. The Panel is satisfied that none of the conditions in paragraph 22(4) of the Schedule are 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, “Cabin crew community specifically employed by Aeroprofessional to carry out work on behalf of/for Norwegian Air Shuttle”.

Panel

Professor Lynette Harris, Chairman

Mr Bob Hill

Mr Keith Sonnet