

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
Senior Aerospace BWT Poynton

Introduction

1. Unite the Union (the Union) submitted an application to the CAC dated 11 April 2017 that it should be recognised for collective bargaining by Senior Aerospace BWT Poynton (the Employer) for a bargaining unit comprising “production operatives across all areas of BWT Poynton site”. The application was received by the CAC on 11 April 2017. The CAC gave both parties notice of receipt of the application on 11 April 2017. The Employer submitted a response to the CAC dated 25 April 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 Kenny Miller, Chairman of the Panel, and, as Members, Mr Bill Lockie and Mr Gerry Veart. The Case Manager appointed to support the Panel was Linda Lehan.

3. The CAC Panel extended the acceptance period in this case. The initial period expired on 27 April 2017. The acceptance period was extended to 13 May 2017 and

then to 26 May 2017 in order to allow time for a membership check to take place, 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 confirmed that it had made a previous application under the Schedule A1 for statutory recognition for workers in this bargaining unit on 2 November 2016 and that the application was denied due to an ambiguous petition.

6. The Union stated that it had sent a letter to the company requesting recognition on 23 January 2017 and that the company declined recognition but offered a meeting which took place on 17 February 2017 with a further meeting taking place on 28 February 2017. The Union stated that a meeting took place with the Company and ACAS on 27 March and feedback to them was that the company had sent an email outlining its way forward in the form of an agreement on a ballot; the terms of which were unacceptable to the Unite. The Union stated that it sent the company alternative changes that could be agreeable. The Union stated that on 30th March supervisors asked all employees whether they would favour a 'yes' or 'no' vote in a ballot for Unite to gain recognition. The Union stated that breakdown of the employee figure given to them by email was 339 being 288 production operatives and 51 staff employees. The Union stated that on 10th April the Company was again sent an email rejecting the bargaining unit in favour of a production only bargaining unit of 288.

7. The Union stated that there were 373 workers employed by the Employer, of whom 288 were in the proposed bargaining unit. Out of the 288 workers in the proposed bargaining unit 110 were members of the Union. The Union stated that the

Employer did not agree with the number of workers in the proposed bargaining unit. 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 it had a petition which they would be willing to share with the CAC Panel in confidence if needed.

8. The Union stated that the reason for selecting the proposed bargaining unit was because all the production operatives were on the same or similar terms, conditions and rates of pay and were also flexible and moved within the boundaries of the different areas of the site when required with adequate training. The Union stated that the workers were managed as a group or groups of individuals and were subject to the same disciplinary and grievance procedure and company handbook. The Union stated that representation of them by a Union would be entirely consistent with their management by the company.

9. The Union stated that the bargaining unit had not been agreed with the Employer and that, as far as it was aware, there was no existing recognition agreement in force covering any of the workers in the proposed bargaining unit. The Union confirmed that it held a current certificate of independence.

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

10. The Employer confirmed that it had received the Union's written request letter on 23 January 2017 and that the letter requested recognition for all "production operators across all of BWT Poynton site".

11. The Employer stated that the company had responded to the Union in writing on 3 February 2017 declining the request for recognition but had invited the Union to attend a meeting to discuss their request further. The Employer stated that an initial meeting was held with the Union on 17 February and a further more detailed meeting took place on 28 February. The Employer enclosed a copy of a letter dated 10 March 2017 addressed to the Union which followed the meeting on 28 February 2017. The Employer explained that the company had indicated a willingness to engage in constructive dialogue with the Union to attempt to bring the matters to a head and

allow employees to vote in secret on whether or not they wanted Unite to be recognised. The Employer stated that it proposed a secret ballot process based on rules mirroring the CAC process including granting the Union reasonable access. The Employer stated that on 20 March 2017 the company provided a draft ballot agreement to Unite and discussions commenced with ACAS which included the company meeting with ACAS and further discussions with Unite on the proposed ballot agreement. The Employer stated that ultimately it had not been possible to reach an agreement on the bargaining unit albeit the company were of the opinion that dialogue was continuing immediately prior to the latest CAC application. The Employer attached a copy of an email trail from them to the Union explaining the Company's position dated 10 April 2017 which the Employer stated eventually led to the Union submitting its latest application to the CAC.

12. The Employer stated that it had received the application and supporting documents from the CAC on 11 April 2017. The Employer stated that it had not, before receiving a copy of the application from the Union, agreed the bargaining unit and still did not agree it. The Employer stated that the company considered that the bargaining unit should be all employees employed by Senior Aerospace BWT, Adlington excluding managers and team leaders (managers and team leaders defined as employees who were members of the leadership team and./or were responsible for disciplinary and grievance matters). The Employer stated that the issue and dispute with the Union appeared to centre on the Union's desire to exclude 51 employees from the bargaining unit namely engineering and office workers. The Employer stated that it believed it would be divisive to exclude those individuals from a bargaining unit and could provide further information in due course. The Employer confirmed that, following receipt of the Union's request, the Union proposed engaging ACAS and they had been working with ACAS to attempt to agree a voluntary agreement but regrettably no agreement had been reached.

13. The Employer stated that it employed 391 workers and confirmed that it agreed with the number of workers in the proposed bargaining unit as defined in the union's application of 288.

14. The Employer stated that there was no existing agreement for recognition in

force covering workers in the proposed bargaining unit.

15. In answer to the question whether it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer referred to a previous application made by the Union in October 2016¹ and gave comparisons noting that 6 months later the Union membership had, if anything, marginally declined.

16. As to whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer stated that it was evident that Union membership was not increasing and considered that in fact it was decreasing. The Employer stated that over 60% of the production operatives across the site were not union members and their employees continued to tell managers and team leaders during team briefings that they disliked union pressure and gate-leafleting and did not want to join the union and/or did not support the ongoing campaign for recognition. The Employer stated the pressure for union recognition had been going on for 18 months and was proving distracting to the business given the length of the campaign. The employer stated that the stagnant union membership levels, despite the length of the union's campaign, demonstrated that the majority of employees were not in favour of recognition and they had yet to see a copy of the union's latest petition. The Employer stated that there was also no detail provided as to how many signatures they had obtained in support of the application, and over what period of time. In respect of the Union's petition the Employer stated that it was not able to comment on the latest petition in terms of its credibility or reliability. The Employer asked that the CAC scrutinised any new petition carefully and to be satisfied that any new petition was in fact genuine and not a reincarnation of the old petition which the CAC did not accept as a reliable indicator that the majority of employees were likely to favour recognition.

17. The Employer stated that the Company continued to operate a well-established Works Council which met on a monthly basis, covering the whole workforce and discussed a range of topics. The Employer stated that the Works Council representatives had received positive feedback from employees and there was a

¹ TUR1 975 (2016) Unite the Union & Senior Aerospace BWT Poynton

genuine view that employees did not feel a Union was needed on site.

18. As to whether the Employer was aware of any previous application under Schedule A1 the Employer referred us to an application in 2016 which the CAC decided on 3 November 2016 was not admissible and an earlier application in January 2017 which was withdrawn by the Union on the basis that they had failed to submit a request for recognition in respect of their proposed bargaining unit.

The Membership and support Check

19. 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, date 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 name and date 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 28 April 2017 from the Case Manager to both parties. The information from both parties was received by the CAC on 4 May 2017. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

20. The list supplied by the Employer indicated that there were 285 workers in the proposed bargaining unit. Alongside the name of each worker the Employer listed their function description and job role and these details were described in an Appendix attached to the membership check. The list of members supplied by the Union contained 103 names. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was 95, a membership level of 33.33%.

21. The Union’s petition was set out on their headed paper as follows:

**Unite the Union
Recognition Petition
BWT Senior Aerospace
Poynton**

Unite the Union is asking your employer to recognise it for collective bargaining. We have to show the Central Arbitration Committee that a majority of workers favour recognition. If you want your employer to recognise Unite for collective bargaining please sign the petition.

I support recognition of Unite as entitled to conduct collective bargaining on pay, hours and holidays:

PRINT NAME	SIGNATURE	DEPT	DATE

22. According to the Case Manager’s report the petition contained 161 names/signatures. Of these 152 were on the Employer’s list of names, representing 53.33% of the proposed bargaining unit. The number of petition names/signatures who were Union members was 89 (31.23% of the proposed bargaining unit) and the number of petition names/signatures who were non-members was 63 (22.11% of the proposed bargaining unit).

23. A report of the result of the membership check was circulated to the Panel and the parties on 8 May 2017 and the parties were invited to comment on the result. A further letter was sent to the parties on 12 May confirming that the dates of the petition signatories ranged between 25 November 2016 and 4 December 2016.

Union’s comments on the result of the first membership and support check

24. The Union in a letter received by the CAC on 11 May 2017 stated that it

believed that the figures shown by the report demonstrated that it had more than 10% membership of the said bargaining unit and that the petition showed that a clear majority of the said bargaining unit supported Unite's request for recognition. The Union stated that it was of the view that the figures demonstrated that recognition should be awarded to Unite and given the level of support a ballot was not necessary.

Employer's comments on the result of the membership and support check

25. The Employer in a letter dated 11 May 2017 stated that having considered the report carefully was of the opinion that the application was not admissible. The Employer stated that, in their view, the CAC could not be satisfied that the majority of workers in the relevant bargaining unit were likely to favour recognition of Unite as entitled to conduct collective bargaining on behalf of the bargaining unit.

26. The Employer stated that it was not the first application that had been made by the Union and attached a comparison table contrasting the two membership and support checks from 10 October 2016 and the most recent CAC report dated 8 May 2017. The Employer stated that the Union had 95 members in the proposed bargaining unit which was 4 less than they had in October 2016.

27. In respect of the petition the Employer stated that they had not seen that but were aware that the Union had continued to campaign for support for recognition. The Employer stated that since its campaign in August 2015 the Union had published nearly 50 flyers, on a weekly/bi-weekly basis, of which 14 alone had been circulated between January and April 2017 since their first unsuccessful application. The Employer stated that Union organisers had gate-leafleted with prominent Union banners at shift-changeover times on a similar frequency, distributed membership packs and conducted off site meetings to seek to persuade employees to sign a petition in support of their application. The Employer said that despite the visibly high profile campaign what was clear to them was that fewer people seemed to have signed the second petition than was initially claimed in the first petition which was relied upon in October 2016. The Employer questioned the Union's petition asking if it could truly be said to be supportive of collective bargaining particularly in circumstances where membership was declining despite the fact that the Union had been campaigning for

recognition for at least 18 months. The Employer stated that they had no way of verifying the accuracy of the petition or whether employees had indeed signed the petition as claimed.

28. The Employer stated that it appeared to them that nothing had particularly changed since the Union's first application for voluntary recognition in March 2016 and its CAC application in August 2016. The Employer stated that the Union was still seeking to claim that the majority of employees would be likely to support recognition even though their membership was only 33% and was in fact reducing. The Employer stated that over 65% of employees had chosen not to join Unite despite a protracted, highly visible and drawn out recognition campaign. The Employer stated that all their information from employees indicated that they were satisfied with their employee Works Council and they were strongly of the view, based on conversations, briefings and long term engagement, that the majority of their employees did not favour recognition. The Employer explained that they had sought to engage in positive voluntary discussions with the Union to arrange an ACAS supported ballot but the union seemed determined to continue to use the CAC legal process even when they had been unable to show any upward trend in union membership. The Employer stated that in light of the circumstances of the matter, the only evidence that the union had submitted in support of their claim was, they would say, a flimsy petition which in no way reflected the feedback and views of the majority of their employees in the bargaining unit.

29. Finally the Employer stated that in the circumstances they would ask the CAC to reaffirm their decision that they made last November and rule the latest application as inadmissible.

30. In a letter dated 16 May 2017 the Employer stated that they had not scrutinised the petition or the signatures but they would ask that the CAC satisfy themselves that the petition signatures obtained had in fact been obtained for the latest petition and were not simply sheets of signatures initially intended for the earlier 2016 petition. The Employer stated that it wished to highlight to the Panel that the Union's second petition contained 14 fewer signatures than its first petition.

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 all the evidence 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 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 paragraph 20 above) showed that 33.33% of the workers in the proposed bargaining unit were members of the Union which the Employer did not contest. As stated in paragraph 19 above, the Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached 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)

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. As discussed in the previous paragraph, the level of union membership identified by the membership check is 33.33%. The Union also provided a petition, described in paragraphs 21 and 22 above, in support of its submission that the test in paragraph 36(1)(b) was met.

36. Based on those numbers provided by the Case Manager's check of the Union's petition against the list of 285 workers provided by the Employer, this indicated that 152 of the 161 petition signatories were identifiable as workers within the bargaining unit, a support level of 53.33%. Of those there were 89 union members (31.23%) and 63 non-members in the bargaining unit (22.11%). If the non-union members who signed the petition were added to the number of Union members within the bargaining unit this would equate to 158 workers (55.44%) of the bargaining unit.

37. The Panel notes the Employer's comments in paragraphs 25 – 30 above and must make its decision based upon the evidence provided. The Panel notes that in paragraph 28 above that the Employer stated that all their information from employees indicated that they were satisfied with their employee Works Council and they were strongly of the view, based on conversations, briefings and long term engagement, that the majority of their employees did not favour recognition but no evidence to support this statement was provided. The Panel reminds the parties that this is not a definitive test of support and that, for this test to be met, the Panel must only be satisfied that a majority of the workers in the bargaining unit would be *likely* to favour recognition. It is not a test as to whether the Union has majority membership within the bargaining unit. 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

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

Panel

Professor Kenny Miller, Chairman of the Panel

Mr Bill Lockie

Mr Gerry Veart

18 May 2017