

Case Number: TUR1/887/ (2014)

5 November 2014

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:

Bakers Food and Allied Workers Union
(BFAWU)

and

Aryzta Bakeries UK Limited

Introduction

1. The Bakers Food and Allied Workers Union (the Union) submitted an application to the CAC dated 4 September 2014 which was received by the CAC on 8 September 2014 that it should be recognised for collective bargaining purposes by Aryzta Bakeries UK Ltd (the Employer) formerly known as Honeytop Speciality Foods Ltd. The application was for a bargaining unit consisting of "All units on site, consisting of all hourly paid Production /Hygiene/Despatch/team Leaders, excluding Management/Senior Staff/ HR Staff, working in all units on site". The Union stated that the location of the proposed bargaining unit was "Across the company's units located at Woodside Industrial Estate, Dunstable LU5 4TT". The CAC gave the parties notice of receipt of the application on 9 September 2014. The Employer submitted a response to the application on 12 September 2014.

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 Ms Mary Stacey, Panel Chairman, and, as Members, Mr Christopher Ball and Mr David Crowe. The Case Manager appointed to support the Panel was Miss Sharmin Khan.

Issues

3. 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 of the Schedule; and therefore should be accepted.

Summary of the Union's application

4. The Union confirmed in its application that it had a current certificate of independence and attached a copy of its formal written request for recognition to the Employer dated 2 April 2014. A copy of the Employer's response, dated 16 April 2014 rejecting the request was also attached.

5. The Union stated that there were 450+ workers employed by the Employer and that there were 450 workers in the proposed bargaining unit of which 150 were Union members. It had selected the proposed bargaining unit as the Employer organised its business in this manner as a coherent whole and this was where the Union had its membership. The Union stated that it had held several well – attended meetings at which staff had made the Union aware that there was strong support for recognition of the Union from members and Union members. However, there was a recent collective grievance regarding an adverse change to terms and conditions of employment which the Employer responded to by meeting with individuals to undermine support for the Union rather than to address the grievance. Therefore the Union reserved their right to keep their evidence of support confidential according to the CAC guidelines.

6. Finally, the Union confirmed that the bargaining unit was not agreed by the Employer and that it had not made a previous application for workers in the proposed bargaining unit or a similar unit. It also confirmed that it was not aware of any existing recognition agreement that covered any of the workers in the proposed bargaining unit.

Summary of the Employer's response to the Union's application

7. In response to the Union's application, the Employer completed the CAC's Employer's response questionnaire which it submitted to the CAC on 12 September 2014. The Employer confirmed that it had received the Union's formal written request for recognition on 2 April 2014. The Employer stated that it declined the Union's request on the basis that it did not believe that the Union had sufficient membership within the proposed bargaining unit and that in its view the bargaining unit was not appropriately defined. The Employer confirmed that it received a copy of the Union's application on 7 September 2014 by recorded delivery.

8. The Employer stated that it employed 1003 workers of which 636 were in the Union's proposed bargaining unit. According to the Employer the Union did not appear to have accurate information.

9. The Employer did not agree with the Union that there was sufficient level of Union membership within the proposed bargaining. No employees were paying membership subscriptions by payroll. The Employer had engaged directly with the workforce and had local works councils set up. At least 62% of the complaints in respect of the grievance the Union referred to were from individuals who were not affected by the proposed changes. These individuals were advised that it was misconceived and invited to resubmit if they disagreed but none of them did. The total number of grievances submitted was just slightly more than 10% of the workforce and there was no evidence that they were members of the Union. The grievance was dealt with appropriately and the outcome was acceptable to all.

10. The Employer did not consider that a majority of the workers in the bargaining unit were likely to support recognition of the Union. Outside of those submitting a grievance there was no evidence that employees wished to support the Union and this was despite the Union presence on site on many occasions for the past few months. The indication at works council meetings was that employees were happy with direct communication that now took place between staff and management.

11. Finally, the Employer confirmed that it had not received any other application for statutory recognition under the Schedule in respect of any of the workers in the proposed bargaining unit and that there was no existing agreement for recognition in force covering any of the workers in the proposed bargaining unit.

Membership and support check

12. To assist the Panel in its determination of two of the admissibility criteria specified in the Schedule, namely, whether 10% of the workers in the relevant bargaining unit are members of the Union (paragraph 36(1)(a)) and whether a majority of the workers in the relevant bargaining unit are likely to support recognition of the Union as entitled to conduct collective bargaining on behalf of the relevant bargaining unit (paragraph 36(1)(b)), the Panel proposed independent checks of the level of union membership and support in the proposed bargaining unit.

13. The Case Manager conducted the check on a confidential basis, the arrangements for which were confirmed in a letter to the parties dated 22 September 2014. The agreement stated that the Employer would supply to the Case Manager a list of the full names, addresses, dates of birth and job titles of the workers in the proposed bargaining unit and that the Union would supply a list of the full names, addresses and dates of birth of its paid up members in the proposed bargaining unit as well as a copy of its petition signed by workers in the proposed bargaining unit in favour of recognition. The Case Manager was to compare the Employer's information with the Union's and to preserve confidentiality would not copy to the other party the respective lists and petition. The Case Manager's checks established the level of Union membership and support for recognition of the Union the results of

which were issued to the parties and the Panel in a report from the Case Manager dated 20 October 2014.

Results of the membership and support check

14. The comparison of the Union's list of members with the Employer's list of workers established that there were 599 workers within the proposed bargaining unit of which 123 were members of the Union; a Union membership level of 20%.

15. The comparison of the Union's petition with the Employer's list of workers established that 275 (46%) of the workers in the proposed bargaining unit were in favour of recognition of the Union of which 84 (14%) of the proposed bargaining unit were Union members and 191 (32%) of the proposed bargaining unit were non-Union members. 74 entries on the Union's petition were reported by the Case Manager to be illegible or duplicate signatures.

The parties' comments

16. In an e-mail dated 24 October the Union noted that the membership and support check clearly showed that the 10% threshold had been met. Whilst the Union recognised that there was not a clear majority at this stage, it was in its view just 25 names away from being so and the 74 names that were excluded because they were found to be illegible or possible duplicates was 3 times that amount. The Union was confident that despite their exclusion from the calculation, they nevertheless did represent a significant amount of the bargaining unit electorate. Many signatories shared the same names for cultural reasons, and many had literacy levels which may have impaired the legibility of their contribution to the petition. These issues would not affect a ballot and the Union was confident that the difference would come from this group and from a "bandwagon" effect. Therefore, the Union believed that a majority would be likely to support recognition and invited the CAC Panel to agree with that assessment and accept the Union's application. The Union was confident that Union members and non-members would vote "yes" to have Union recognition on site.

17. In the same e-mail to the CAC, the Union asked if it was possible for the Employer to clarify whether or not workers employed in “unit 12” were included in the list of 599 workers supplied by the Employer for the membership and support check. Unit 12 workers were not included in the Union’s proposed bargaining unit.

18. By e-mail to the CAC dated 27 October 2014 the Employer confirmed that it did not have any comments in respect of the report of the membership and support check. The Employer did however clarify for the Union that 30 workers from Unit 12 were in fact included on the list provided to the CAC for the membership and support check in error, and should be excluded as they did not form part of the proposed bargaining unit. The Employer stated that it would provide a full and updated list prior to any ballot taking place.

Considerations

19. In deciding whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 3 of this decision are satisfied. The Panel has considered all the evidence submitted by the parties in reaching its decision.

20. The Panel is satisfied that the Union made a valid request to the Employer within the terms specified in paragraphs 5 to 9 of the Schedule to recognise them for collective bargaining in respect of the proposed bargaining unit as described in paragraph 1 of this decision. The request was made in writing and identified the Union, the proposed bargaining unit and that the request was made under the Schedule. The Panel is also satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 35 and 37 to 42 and that it was made in accordance with paragraph 11 of the Schedule.

Paragraph 36(1)(a)

21. In accordance with paragraph 36(1)(a) of the Schedule the Panel must determine whether or not members of the Union constitute at least 10% of the workers in the relevant bargaining unit. The result of the check carried out by the Case

Manager established that 20% of the workers in the proposed bargaining unit were members of the Union and in the absence of any evidence to the contrary, the Panel is therefore satisfied that this test is met.

Paragraph 36(1)(b)

22. Paragraph 36(1)(b) of the Schedule states that, for an application to be admissible, the CAC must be satisfied that a majority of the workers constituting the relevant 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 therefore required to determine likely, not actual, majority support for recognition of the Union. Based on its knowledge and experience of industrial relations, the Panel accepts that being a member of a union is often indicative of an individual's support for that same union to represent them in matters of collective bargaining. The Panel accepts the figures established by the Case Manager's check of the information declared by the parties that there was a membership level of 20% within the proposed bargaining unit as there was no evidence produced to contradict the actual level of membership.

23. In this case there was petition evidence from the Union which established a support level of 32% from non-Union member workers in the proposed bargaining unit. The Panel is mindful that the Case Manager was unable to identify and therefore compare a number of the Union's signatories with the Employer's list of workers in the bargaining unit but regardless of this obstacle, when the figure showing the level of Union membership is taken together with the percentage of non-member signatories in support of recognition, the Panel can reasonably conclude that at least 52% of the proposed bargaining unit would be likely to favour recognition of the Union for the purposes of collective bargaining. The Panel also notes that the Employer has not contested these findings and is prepared for a ballot at the relevant stage of the statutory process. For these reasons the Panel concludes that there is sufficient evidence demonstrating that a majority of the relevant bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit and so the requirements of paragraph 36(1)(b) of the Schedule are met.

Decision

24. The Panel is satisfied that the application is valid within the terms of paragraphs 5 to 9, is made in accordance with paragraph 11(2) and is admissible within the terms of paragraphs 33 to 42 of the Schedule. The application is therefore accepted by the CAC.

Panel

Ms Mary Stacey– Panel Chairman

Mr Christopher Ball

Mr David Crowe

05 November 2014