

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

Skanska

Introduction

1. Unite the Union (the Union) submitted an application dated 18 September 2017 to the CAC that it should be recognised for collective bargaining purposes by Skanska (the Employer) in respect of a bargaining unit comprising "General Operatives, Traffic Management, Aborist, Road Worker, Ganger, Groundman, Highways Operative, Electrician, Storeman, Overhead Lineman, Labourer, JCB Driver, Supervisor, Truck Driver and Apprentice." The location of the bargaining unit was given as "Hampshire County Council Contract – street and highways maintenance." The application was received by the CAC on 19 September 2017 and the CAC gave both parties notice of receipt of the application on 20 September 2017. The Employer submitted a response to the CAC dated 28 September 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 Gillian Morris, Panel Chair, and, as Members, Mr Simon Faiers and Mr Malcolm Wing. 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 3 October 2017. The acceptance period was extended to 17 October 2017 in order to allow time for a membership and support check to be carried out by the Case Manager and to provide more time for the Panel to consider all the evidence.

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.

Summary of the Union's application

5. In its application to the CAC the Union stated that it had sent a formal request to the Employer on 1 August 2017. The Union stated that the Employer had responded to this request on 7 August 2017. A copy of the Union's request, the Employer's response, and subsequent correspondence between the parties was attached to the Union's application. In its response to the Union's request the Employer's Business Director, Mr Riches, stated that the Employer welcomed the opportunity to discuss and explore the matter further with the Union but that it wished to involve its Employee Relations Manager, Mr Raza, who was currently on leave until 24 August 2017. Mr Riches asked for the Union's availability to meet on Mr Raza's return. The Union sent an e-mail to Mr Riches on 9 August 2017 in which it gave dates on which it was available to meet. In an e-mail to the Union dated 6 September 2017, following a meeting between the parties that day, Mr Raza said that he had found the discussion both forthright and constructive and said that the Employer had appreciated the Union coming equipped with a proposed document. Mr Raza said that the Employer would be writing to the Union shortly to arrange a first joint meeting and to submit a proposed agenda and asked the Union to consider any items it would wish to have included on that agenda. The Employer expressed the wish that the Union's members would agree to defer any formal application for recognition until after the first inaugural meeting with the Hampshire management team. In an e-mail to the Employer dated 15 September 2017 the Union stated that its members and representatives at each depot would like a recognition agreement with the Employer and said that if the Employer could sign up to the Voluntary Recognition Agreement the Union had provided on the day the

parties met then the Union's representatives would engage with Mr Riches' team. The Union stated that if it was unsuccessful with a Voluntary Recognition Agreement it would go down the statutory route with the CAC.

6. When asked whether the Union had made a previous application under the Schedule for statutory recognition for workers in the proposed bargaining unit or a similar unit the Union answered "no". The Union stated that, following receipt of the request for recognition, the Employer had not proposed that Acas should be requested to assist the parties.

7. The Union stated that the total number of workers employed by the Employer was 150. The Union stated that there were 110 workers in the proposed bargaining unit, of whom 76 were union members. When asked to provide evidence that the 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 stated that a petition with 73 signatures was available and could be sent to the CAC in confidence to verify.

8. The Union stated that the reason for selecting its proposed bargaining unit was that employees did not wish to have individual pay review and that collective bargaining was the preference. 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.

9. The Union confirmed that it held a current certificate of independence. The Union stated that it had copied its application and supporting documents to the Employer on 18 September 2017. Proof of posting of the application to the CAC and the Employer dated 18 September 2017 was attached to the Union's application.

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

10. In its response to the Union's application the Employer stated that it had received the Union's written request for recognition on 1 August 2017. The Employer stated that it responded to the Union on 7 August 2017. The Employer attached to its response a copy of the Union's request and its response to that request.

11. The Employer confirmed that it had received a copy of the Union's application form on 19 September 2017. 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, and that it did not agree the proposed bargaining unit. The Employer stated that it did not employ "Electrician or Overhead Lineman"; that it did not wish to have supervisors included; and that it had separate arrangements for its apprentices. The Employer stated that, following receipt of the Union's request, it had not proposed that Acas should be requested to assist.

12. The Employer stated that it employed a total of 165 workers. The Employer stated that it did not agree with the number of workers in the proposed bargaining unit as set out in the Union's application and said that there were 116 workers in the proposed bargaining unit. The Employer stated that there was an existing agreement for recognition in force covering workers in the proposed bargaining unit, the CIJC. When asked to provide a copy of the agreement the Employer stated that the "CIJC Group was part of TUPE Transfer. We are waiting for further information from Transferor."

13. In answer to the question whether it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer said that it was aware of 30 payroll deductions for union membership subscription. When invited to give its reasons if it did not consider that a majority of the workers in the bargaining unit would be likely to support recognition the Employer responded "don't know."

14. The Employer answered "N/A" when asked it was aware of any previous application under the Schedule by the Union in respect of this or a similar bargaining unit and when asked if it had received any other applications in respect of workers in the proposed bargaining unit.

Summary of the Union's Comments on the Employer's Response

15. On 29 September 2017 the CAC copied the Employer's response to the application to the Union and invited its comments, in particular relating to the Employer's statement that there was an existing agreement for recognition in force. By an e-mail to the CAC dated 29 September 2017 the Union stated that it could categorically confirm that there was no agreement in place with the Employer. The Union stated that the CIJC was a national agreement where terms and conditions were guidelines for minimum standards. The Union

stated that approximately 50% of its members were on CIJC contracts but that there was no formal recognition agreement in place with the Employer, which was not a signatory to this agreement. The Union stated that it was keen to get recognition in place as soon as possible as it had already been contacted by its members whose terms and conditions were being altered for winter maintenance and that, as it stood, the Employer was not engaging with the Union.

16. By a letter dated 2 October 2017 the Case Manager copied the Union's comments to the Employer and informed both parties that the Panel wished to proceed with a membership and support check. The parties were also informed that they would have an opportunity to comment on the results of the membership and support check and could at that point also comment further on any of the other admissibility criteria.

The membership and support check

17. 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 and of a petition compiled by the Union. 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) and a copy of its petition. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and petition would not be copied to the other party and that agreement was confirmed in a letter dated 2 October 2017 from the Case Manager to both parties.

18. The information from the Union was received by the CAC on 2 October 2017. The information from the Employer was received by the CAC on 3 October 2017. The Panel is satisfied that this check was conducted properly and impartially and in accordance with the agreement reached with the parties.

19. The list supplied by the Employer indicated that there were 133 workers in the Union's

proposed bargaining unit. The list of members supplied by the Union contained 67 names. According to the Case Manager’s report, the number of Union members in the proposed bargaining unit was 56, a membership level of 42.1%.

20. The petition supplied by the Union contained 73 names and signatures, of which 63 were in the proposed bargaining unit, a figure that represents 47.4% of the proposed bargaining unit. Of those 63 signatories, 28 were members of the Union (21.1% of the proposed bargaining unit) and 35 were non-members (26.3% of the proposed bargaining unit). The petition consisted of five A4 sheets each headed with the Unite the Union logo and was set out as follows:

“Recognise UNITE the Union

We, the undersigned, being employees of SKANSKA (Hampshire County Council Contract) Request that the company recognise Unite the Union for collective bargaining purposes. We wish the Union to act for us in respect of any negotiation on pay and conditions.

Immediately we insist that our elected Unite reps should be the sole negotiation body for all negotiations on the TUPE transfer from AMEY to SKANSKA.”

NAME	SIGNATURE	CONTACT DETAILS	JOB DESCRIPTION	DATE

At the bottom of each page it stated “JUNE/JULY 2017”.

21. A report of the result of the membership and support check was circulated to the Panel and the parties on 6 October 2017 and the parties were invited to comment on the results and on any of the other admissibility criteria by 10 October 2017.

The parties’ comments following the membership and support check

22. In an e-mail to the CAC dated 6 October 2017 the Employer stated that it seemed that “the

stats provided do not automatically provide for Unite to gain automatic recognition, without resorting to an independent ballot of the workplace.” The Employer further stated that it was still prepared to seek a voluntary, rather than compulsory, recognition agreement and to this end would await the Union establishing contact.

23. In an e-mail to the CAC dated 9 October 2017 the Union stated that it considered that it had met the test of members of the union constituting at least 10% of the workers in the proposed bargaining unit, with a membership level of 42.1%. It further stated that it considered that the majority of the workers would be likely to favour recognition for collective bargaining based upon its petition whereby 47.4% of the union members and 26.3% of the non-members had expressed this view.

24. The Union stated that it had been informed by its representatives that in the month since the original request had been submitted around 15 extra operatives had been taken on which had reduced the percentages of its original bargaining unit. These representatives had also asked the Union to highlight that alterations to terms and conditions had recently started without any consultation with the Union or the Employer’s employee forum. The Union stated that the Employer had been presented with a Voluntary Recognition Agreement to sign up to on 6 September 2017 and reiterated the opinion of its representatives that the Union should proceed with the application for statutory recognition through the CAC.

Considerations

25. 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.

26. 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, 34 and 37 to 42 of the Schedule. The Panel notes that in its response to the application the Employer stated that there was an existing recognition agreement in force covering workers in the bargaining unit in the form of the CIJC;

that the CIJC group was part of a TUPE transfer; and that the Employer was waiting for further information from the transferor. The Union responded to this submission by stating that the CIJC was a national agreement where terms and conditions were guidelines for minimum standards and asserting that there was no recognition agreement in force with the Employer (see paragraph 15 above). The Panel notes that the Employer did not reiterate that there was a recognition agreement in force when invited to comment further on the admissibility criteria for acceptance of the application following the membership check (see paragraph 22 above) nor did the Employer provide any evidence in support of its initial statement that there was such an agreement. The Panel has therefore concluded that, on the basis of the evidence before it, the Panel is not satisfied that there is already in force a collective agreement under which a union is recognised as entitled to conduct collective bargaining on behalf of any workers falling within the proposed bargaining unit. The application is not, therefore, rendered inadmissible by the provision in paragraph 35 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)

27. 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.

28. The membership check conducted by the Case Manager (described in paragraphs 17 - 19 above) showed that 42.1% of the workers in the proposed bargaining unit were members of the Union. As stated in paragraph 18 above, the Panel is satisfied that this 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)

29. 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.

30. The Panel notes that the support check conducted by the Case Manager showed that 47.4% of the workers in the proposed bargaining unit (63 out of 133 workers) had signed a petition in support of recognition of the Union (see paragraphs 17-20 above). Of those who had signed the petition 28 were union members (21.1% of the proposed bargaining unit) and 35 were non-members (26.3%). For the reasons given in paragraph 28 above the level of Union membership is 42.1%. The Panel considers that, in the absence of evidence to the contrary, union membership provides a legitimate indicator of the views of workers in the proposed bargaining unit as to whether they would be likely to favour recognition of the Union. No such evidence to the contrary was submitted by the Employer or is otherwise before the Panel in this case. The Panel considers that the level of union membership and the fact that 35 non-members have signed the Union's petition in support of recognition, taken together, constitute sufficient evidence for the Panel to conclude that, on the balance of probabilities, a majority of the workers in the proposed bargaining unit would be likely to favour recognition.

31. 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

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

Panel

Professor Gillian Morris, Panel Chair

Mr Simon Faiers

Mr Malcolm Wing

16 October 2017