

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

E&M Horsburgh Ltd

Introduction

1. Unite (the Union) submitted an application to the CAC dated 11 March 2014 that it should be recognised for collective bargaining by E&M Horsburgh Ltd (the Employer) for a bargaining unit comprising "Drivers". The location of the bargaining unit was given as: "Nasmyth Square, Houston Industrial Estate, Livingston, West Lothian, EH54 5GG". The CAC gave both parties notice of receipt of the application on 13 March 2014. The Employer submitted a response to the CAC dated 19 March 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 Kenny Miller, Chairman of the Panel, and, as Members, Mrs Maureen Shaw and Mr Dennis Cameron. The Case Manager appointed to support the Panel was Kate Norgate.

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; and therefore should be accepted.

The Union's application

4. In its application the Union stated that it had sent its formal request for recognition to the Employer on 20 February 2014. No explanation was given as to the how the Employer responded to the request. The Union also attached to its application a letter dated 21 January 2014 in which it had invited the Employer to discuss recognition, and the Employer's response by letter dated 6 February 2014 in which it declined the Union's offer.

5. According to the Union, a total of 160 workers were employed by the company, of whom 120 were in the proposed bargaining unit, a unit which had not been agreed with the Employer. The Union stated that it had 37 members within the proposed bargaining unit. The Union did not state whether it had any evidence to demonstrate that a majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining. The Union also stated that it did not have a current certificate of independence but later clarified in its e-mail to the Case Manager, dated 17 March 2014, that this was an error and it was a certified union.

6. The Union stated that its reason for selecting the proposed bargaining unit was that various drivers had joined the Union because of issues concerning their employment.

7. The Union did not state whether there was an existing recognition agreement that covered any of the workers in the proposed bargaining unit but stated that there had been no previous application in respect of this or a similar bargaining unit.

The Employer's response to the Union's application

8. In its response to the Union's application the Employer stated that the Union had approached it informally by letter dated 21 January 2014 and then made its formal request for recognition by letter dated 20 February 2014. The Employer stated that it had responded to the Union's informal request by its letter dated 6 February 2014. The Employer confirmed that it had received a copy of the application form from the Union on 14 March 2014.

9. The Employer confirmed that it had not agreed the proposed bargaining unit prior to its receipt of the application form but it did agree with the proposed bargaining unit.

10. The Employer stated that it currently employed 137 workers. Asked whether it agreed with the number of workers in the bargaining unit, the Employer explained that there were 54 Contract Drivers and 43 Service Drivers, a total of 97 Drivers.

11. The Employer stated that there was no existing agreement for recognition in force that covered workers in the proposed bargaining unit.

12. In answer to the question as to whether it disagreed with the Union's estimate of membership in the proposed bargaining unit the Employer stated that it was surprised by what it considered to be a high membership as the Union has had very little involvement in the disciplinary and grievance process to date. When asked for its reasons if it considered that a majority of the workers in the proposed bargaining unit would not be likely to support recognition, the Employer explained that its workers had always approached management directly and, as per the terms of its letter sent to the Union on 6 February 2014, upon hearing of the Union's intentions, the Employer expressed its desire to deal with matters directly with its workers. It therefore felt confident that the majority of staff would not support recognition.

13. Finally, the Employer did not contend that the Union's application failed to meet any of the other admissibility or validity criteria.

The Membership Check

14. 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 the 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 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 20 March 2014 from the Case Manager to both parties. The information from both parties was received by the CAC on 24 March 2014. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

15. The Employer provided a spreadsheet with the names, dates of birth and job titles for 98 individuals and the Union provided a spreadsheet with the membership details of 31 individuals.

16. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was 22, a membership level of 22.4%. A report of the result of the membership check was circulated to the Panel and the parties on 10 April 2014 and the parties were invited to comment thereon.

Summary of the parties' comments on the result of the membership check

17. In a letter dated 31 March 2014 the Employer stated that it accepted the first test had been met. It did however wish to refute that a majority of the workers in the bargaining unit would be likely to favour recognition as it stated Directors had been approached by staff concerned about the union's application for recognition.

18. No comments on the membership check were received by the CAC from the Union.

Considerations

19. In determining 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. 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 it for collective bargaining in respect of the bargaining unit as described in paragraph 1 of this decision in its letter of 20 February 2014.

20. The Panel is also satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 35 and paragraphs 37 to 42 and that it was made in accordance with paragraph 11 of the Schedule in that, before the expiry of the first period of 10 working days starting with the day after that on which the Employer received the request for recognition, the Employer failed to respond to the request.

Paragraph 36(1)(a)

21. 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.

22. The membership check conducted by the Case Manager (as set out in paragraphs 14 - 15 above) showed that 22.4% of the workers in the proposed bargaining unit were members of the Union. This figure was not challenged by the Employer and no comments were received from the union. As stated above, the Panel is satisfied that the check of membership was conducted properly and impartially and in accordance with the agreement reached with the parties. The Panel therefore finds 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)

23. 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 stated in the preceding paragraph, the Case Manager's check established that the level of Union membership within the proposed bargaining unit is 22.4%. The Union relied on this finding alone as evidence that the majority of workers in the proposed bargaining unit would be likely to favour recognition. The Panel has not been provided with any evidence as to the views of the remaining 77.6% of the bargaining unit who are not members of the Union and it must rely on the figures of membership density only. Given the low level of union density and the absence of any other evidence supporting the application, the Panel is therefore unable to conclude that the test set out in paragraph 36(1)(b) has been satisfied.

Decision

24. For the reasons given above, the Panel's decision is that the application is not accepted by the CAC.

Panel

Professor Kenny Miller, Chairman of the Panel

Mrs Maureen Shaw

Mr Dennis Cameron

03 April 2014