

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:

RMT

and

Interserve FS (UK) Ltd

Introduction

1. RMT (the Union) submitted an application to the CAC dated 11 July 2014 that it should be recognised for collective bargaining by Interserve FS (UK) Ltd (the Employer) for a bargaining unit comprising “Cleaners and cleaning supervisors employed on the Interserve - Initial Network Rail managed stations contract”. The CAC gave both parties notice of receipt of the application on 15 July 2014. The Employer submitted a response to the application on 21 July 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 Paul Davies QC FBA, as chair of the Panel, and, as Members, Mr Bob Hill and Ms. Gail Cartmail. 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 28 July 2014. The acceptance period was extended to 11 August 2014 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 of the Schedule; and therefore should be accepted.

The Union's application

5. The Union stated that it had sent its request for recognition to the Employer on 17 January 2014 a copy of which was enclosed. The Union stated that the Employer replied on 4 February 2014 expressing their willingness to enter talks in respect of voluntary recognition but after some months of constructive talks the Employer decided that they were not prepared to agree to a voluntary agreement. The Union enclosed copies of e-mails between the parties confirming the Employer's agreement to negotiate a voluntary agreement and their subsequent refusal.

6. The Union stated that there were a total of 500 workers in the proposed bargaining unit of which 254 were union members. Regarding evidence demonstrating that the majority of workers in the bargaining unit were likely to support recognition for collective bargaining, the Union stated that workers had joined the Union specifically to gain collective bargaining rights similar to their colleagues on other company contracts who had previously achieved collective bargaining rights. The Union stated that it could supply membership lists to the CAC Panel on a confidential basis if required.

7. The Union stated that the reason for selecting the proposed bargaining unit was that all those workers were employed on the same national contract with similar terms and conditions of employment.

8. The Union stated that the bargaining unit had 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

9. In its response dated 21 July 2014 the Employer confirmed that it had received the Unions' written request for recognition on 17 January 2014 and had responded on 4 February 2014 and 8 May 2014. The Employer stated that recognition was not something they wanted to pursue at the present time.

10. The Employer confirmed that it had received a copy of the application form from the Union via email on 15 July 2014 and by post on 21 July 2014.

11. The Employer stated that Interserve FS: Commercial Division employed 35,800 workers with 638 within the bargaining unit. The number differed to that specified by the Union and the Employer stated that the reason for the difference was unknown.

12. The Employer stated that the Union's membership figures were unknown and that evidence was required.

Membership Check

13. 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 are likely to support 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 and support in the proposed bargaining unit.

14. 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 agreed bargaining unit, and that the Union would supply to the Case Manager a list of their members within that unit to enable comparisons to be undertaken. 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 23 July 2014 from the Case Manager to both parties.

15. The Case Manager carried out the membership check using the information that was received by the Employer and Union on 28 July 2014. A report of the check was issued to the Panel and to the parties for comment on 30 July 2014. The Panel is satisfied that the check was undertaken appropriately.

16. The membership check established that there were 617 workers in the proposed bargaining unit of which 213 were members of the Union; a membership level of 31.74%. In a covering letter the Union stated that workers had joined the Union to achieve collective bargaining rights, not least because they were aware that RMT had achieved recognition on other Interserve (previously Initial) contracts and wanted to have the same rights for themselves. The Union stated that it believed that the level of membership itself demonstrated that a majority of workers would be likely to support RMT recognition and that previous experience of those grades of workers within the company, and other similar companies where it had gained recognition, lead them to believe that the majority of workers would favour recognition. Finally the Union stated that they were unable to supply a comprehensive petition of support at this time as to cover all locations and shifts would be very difficult to organise as it involved eight of their Regions and fifteen of their local branches.

17. The parties were invited to comment on the results of the membership check and to bear in mind the two admissibility tests set out in para 36 (1)(a) and para 36 (1)(b) in so doing.

Comments on the Case Manager's report

18. No comments were submitted by either party.

Considerations

19. 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.

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 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.

21. 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)

22. 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 Union's proposed bargaining unit. The check of Union membership in the proposed bargaining unit as conducted by the Case Manager on 30 July 2014 established that Union membership stood at 31.7%. The Panel is therefore satisfied that this test is met.

Paragraph 36(1)(b)

23. The test in paragraph 36(1)(b) is whether 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 31.7%.

24. In this case the Union for reasons stated in paragraph 16 did not put forward a petition or any other evidence of likely support and so, in deciding whether a majority of workers in the bargaining would be likely to favour recognition, the Panel must rely on the figures of membership density only. Whilst the Panel is of the view that, in the absence of evidence to the contrary, union membership does provide a legitimate indicator of the views of the workers in the proposed bargaining unit as to whether they would be likely to favour recognition of the Union, it is also mindful of the fact that, as stated above, membership in the proposed bargaining unit stands at only 31.7%. The Panel can therefore only be confident that slightly over 30% of the proposed bargaining unit would be in favour of union recognition. The Panel has not been provided with any evidence as to the views of the remaining 68.3% of the bargaining unit who are not members of the Union. In this situation the Panel is simply left to guess whether there would be majority support for the application. Given the low level of union density and the absence of any other evidence supporting the application, the Panel is unable to conclude that the test set out in paragraph 36(1)(b) has been satisfied.

Decision

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

Panel

Professor Paul Davies QC FBA

Mr Bob Hill

Ms. Gail Cartmail

| 7 August 2014