Case Number: TUR1/869/2014
17 July 2014

CENTRAL ARBITRATION COMMITTEE

TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992

SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION

DECLARATION OF RECOGNITION WITHOUT A BALLOT

The Parties:

Unite the Union

and

Primopost

Introduction

1. Unite the Union (the Union) submitted an application which was received by the CAC on 27 March 2014 that it should be recognised for collective bargaining by Primopost (the Employer) for a bargaining unit comprising "Print, PMR, Finishing, Warehouse, Lamination and Maintenance, Apprentices and Temporary Workers therein". The CAC gave the parties notice of receipt of the application on 28 March 2014. The Employer submitted a response to the application on 3 April 2014 which was duly 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 Lynette Harris, Chairman of the Panel, and, as Members, Mr David Bower and Mr. Paul Gates OBE. The Case Manager appointed to support the Panel was Linda Lehan.

3. By a decision dated 6 May 2014, the Panel accepted the Union's application. The parties then entered a period of negotiation in an attempt to reach agreement on the appropriate bargaining unit.

4. In correspondence received from the Union it confirmed that agreement had been reached as to the appropriate bargaining unit. It confirmed that the agreed bargaining unit was the same as that originally proposed by the Union, albeit in different terms, plus the roles of Finishing Administrator and Factory Cleaner. The agreed bargaining unit was described thus:

> "All direct and indirect operations based employees at Primopost, Buxton in either permanent, temporary, trainee or apprentice employment, with the following job titles: No.1 Printer, No.2 Printer (Assistant Printer), PMR Operative or Assistant, Ink Technician, Factory Operative - Lamination/Coldseal, Slitting, Core Cutting or Warehouse, Finishing Administrator, Maintenance Engineer & Factory Cleaner but not including Shift or Team Leaders, Office based employees or Company Management".

5. As the agreed bargaining unit was different from that proposed by the Union in its application, the Panel was required by paragraph 20 of Schedule A1 to the Act (the Schedule) to decide whether the Union's application was valid or invalid within the terms of paragraphs 43 to 50 of the Schedule. By its decision dated 25 June 2014 the Panel decided that the application was not invalid for the purposes of paragraph 20 and that the CAC would proceed with the application.

Issues

6. Paragraph 22 of the Schedule provides that if the CAC is satisfied that a majority of the workers constituting the bargaining unit are members of the Union, it must issue a declaration of recognition under paragraph 22(2) unless any of the three qualifying conditions specified in paragraph 22(4) applies. Paragraph 22(3) requires the CAC to hold a ballot even where it has found that a majority of workers constituting the bargaining unit are members of the Union if any of these qualifying conditions is fulfilled. The three qualifying conditions are:

> **(i) the CAC is satisfied that a ballot should be held in the interests of good industrial relations;**

(ii) the CAC has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union (or unions) to conduct collective bargaining on their behalf;

(iii) membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the union (or unions) to conduct collective bargaining on their behalf. Paragraph 22(5) states that "membership evidence" is (a) evidence about the circumstances in which union members became members, or (b) evidence about the length of time for which union members have been members, in a case where the CAC is satisfied that such evidence should be taken into account.

The Union's claim to majority membership

7. In a letter dated 23 June 2014, when asked to comment on the results of a check of membership in the agreed bargaining unit which showed a membership density of 50.72%, the Union said that it believed that having demonstrated on three separate occasions (once with Acas, that it had exceeded the CAC requirement for recognition, and given the lack of any cogent argument against from the Employer, the CAC should proceed to agree to recognition forthwith.

8. On 25 June 2014 the Union was informed that, given the contents of its letter of 23 June 2014, the Panel would proceed on the understanding that the Union was claiming majority membership within the bargaining unit and was therefore submitting that it should be granted recognition without a ballot. The Employer was then asked for its views on the Union's claim to majority membership and the qualifying conditions set out in paragraph 4 above.

The views of the Employer

9. In an email dated 30 June 2014 the Employer stated that it wished to rely on the contents of its letter of 23 June 2014 as its submission in response to the Union's claim to majority membership. This letter was submitted by the Employer by way of comment on the results of the membership check conducted against the agreed bargaining unit and which established that membership stood at 50.72%.

10. In its letter of 23 June 2014 the Employer said that although it would appear that there was a majority membership in the bargaining unit, it was currently recruiting to fill three vacancies which would likely reduce that proportion by 2% thereby bringing the membership levels below the majority threshold. Indeed, the Employer noted that there had been no increase in membership since 16 April 2014 and the increased proportion of Union members had only been achieved because of employee turnover in the bargaining unit.

11. With regards to the current Union membership level, the Employer questioned whether those employees that had indicated that they had cancelled their subscriptions directly with their own bank had also been accurately captured as they had reported that they were not able to complete leaver information directly with the Union or had the previous list simply been resubmitted.

12. At the Managing Director's business briefing in March 2014, workers strongly expressed concerns about the negative effect the Union would have on the effectiveness of communication within the company. Furthermore, workers in the bargaining unit were canvassed to assess their opinion as to whether the Union should be recognised and 73% did not vote in support of union recognition.

13. The Employer believed that the recognition application was generated in reaction to a period of uncertainty following change of ownership in March/April 2012. This led to a period of considerable change throughout the business including capital investment and organisational structural change. In order to meet increased customer demands factory operatives moved to 24/7 working to align to the shift pattern already operated by the print department. This was completed through a documented consultation process and a pay increase representative of the shift working pattern was awarded to those operatives. In order to facilitate this investment, and in recognition of the wider economic climate in which the Employer's customers trade, the business had had to apply two annual pay freezes across the rest of the organisation.

14. Following acquisition the business had continued to strengthen and evolve its employee engagement practices. To improve communication and employee involvement it had introduced a fully constituted Employee Forum, with elected in house representatives, Team Briefings, business briefing on trading figures and a regular company newsletter which

invited staff suggestions and comment to allow employees a voice to influence on topical issues, along with various other employee inclusive communication initiatives.

15. Following acquisition, the Employer had exercised its firm commitment to investing in improving employee relations and as part of that undertaking, had made significant investment in Health and Safety practices and processes. This had manifested amongst other initiatives, in the appointment of a Health and Safety Manager, improved Health and Safety communication, structured Health and Safety meetings and training, all of which demonstrated the Employer's continued commitment and investment in achieving continuously improved working conditions and therefore improved employee relations.

16. In March 2013 a collective grievance was raised by operations workers on issues including the management of holiday booking and calculation of holiday hours. Adhering to its Grievance Procedure and using elected representatives, the Employer upheld a number of the workers' points. Further clarification was provided on the company rules regarding holiday booking. It was found that the holiday calculation, which had been used prior to acquisition, was flawed and therefore this point was also upheld. The holiday calculation was remedied immediately for all affected employees. This information is provided as further evidence of the democratic culture the Employer was engendering and how it continued to engage all employees.

17. Therefore, the Employer would vehemently argue that a declaration of recognition without a ballot should not be made even though it would appear that the majority of workers of the bargaining unit belonged to the Union as historical data had been used to form this assumption.

18. The Employer respectfully requested that, in the interests of continued good industrial relations, the CAC commissioned a ballot of the bargaining unit. This request was made on the basis of its firm belief that membership evidence regarding the circumstances in which workers joined the union or length of membership was seriously questionable. This led to the Employer's strongly held doubt as to whether a significant number of the Union members in the bargaining unit actually wanted the Union to conduct collective bargaining on their behalf.

Union's comments on the Employer's submissions

19. In a letter dated 2 July 2014 the Union, commenting on the matters raised by the Employer, acknowledged that the Employer was correct when it said that there had been no increase in membership since 16 April 2014. However, the impact of decreasing employment and maintenance of the level of membership was to increase membership density within the bargaining unit. This density had been further increased as two new members had joined the Union since the membership check was conducted.

20. At the point of the membership check the numbers were agreed by the CAC. The Employer had not employed the three extra staff that it mentioned in its letter. Taking into account recent recruitment, the percentage threshold had increased, even if the Employer included workers yet to be employed.

21. The Employer offered no evidence that employees who had indicated to them that they had not been allowed to leave the Union may have been included in the Union's figures. This assertion was totally fallacious. The figures sent to the CAC accurately captured membership at the appointed date.

22. Any employee would be entitled to become members of the Union and any worker within the bargaining unit would be able to influence negotiating positions by becoming a member. The Union would of course canvass the views of non- members prior to any negotiation.

23. The establishment of the employee forum was only considered after the Union had made its initial request for voluntary recognition. It did not and could not act as a formal negotiating group and was only a consultative forum. The Employer was again wrong to assert that the changes to holiday hours had been brought about via the forum. The Employer only conceded this after a collective grievance by members of the Union.

24. As for the Employer's criticisms of the Union's petition, the Union did offer to refresh the mandate. What was undeniable, however, was that the Union received no notification from any signatories that they wished to rescind their position. It was also clear that the

Union had increased its membership considerably since the original mandate was signed. It still demonstrated an overwhelming majority in favour of recognition.

25. If the Employer was right in its assertion that a majority within the bargaining unit opposed recognition of the Union then it would have provided evidence. It was the Union's view, supported by on-site intelligence, that a large number of workers did not vote in the company poll for fear of retaliation from the Employer.

26. The Union welcomed, on behalf of its members, any improvements in either working conditions or employee relations and had made it clear throughout that it wanted to assist in good employment practices but through negotiation rather than a paternalistic approach suggested by the Employer. As for the collective grievance referred to by the Employer, it had no bearing on the request for recognition save that it was members of the Union that led the grievance.

27. The Union submitted that the CAC had already determined that the conditions for granting recognition had been met. The Employer had put forward neither evidence nor cogent argument to support its assertions that recognition without a ballot would not be in the best interest of good industrial relations. Indeed, the Union would suggest that continued pontificating by the Employer was in itself causing worse industrial relations.

28. Similarly, despite months of making the same assertions regarding the Union's membership and the validity of its membership, the Employer had provided no evidence to support its erroneous claims.

29. It was therefore contended that, on the basis of the evidence provided to the CAC, the Union had in excess of 50% of the workers in the bargaining unit in membership and an overwhelming majority of workers in the bargaining unit whether members or not, supported the claim for recognition. The CAC should therefore grant recognition forthwith.

Considerations

30. As set out in paragraph 6 above, the Schedule requires the Panel to consider whether it is satisfied that the majority of the workers in the bargaining unit are members of the

Union. If the Panel is satisfied that the majority of the workers in the bargaining unit are members of the Union, it must declare the Union recognised by the Employer unless it decides that any of the three conditions in paragraph 22(4) are fulfilled. If the Panel considers any of the conditions are fulfilled it must give notice to the parties that it intends to arrange for the holding of a secret ballot.

31. On 18 June 2014 the check conducted by the Case Manager established that membership in the bargaining unit stood at 50.72%. In its email commenting on the result of the check the Union simply said that it had shown on three occasion that it has majority membership within the bargaining unit (twice through the CAC and once with Acas) and urged the Panel to proceed to declaring it recognised "forthwith".

32. On the other hand the Employer argued that the level of membership had been static since April 2014 and that it was recruiting to fill three posts and that once these additional workers had been taken on, the membership[density would fall below a majority. The Employer also questioned the accuracy of the Union's membership list as it had been informed that some workers had wanted to resign their membership but had been unable to do so through the Union and had had to resort to cancelling their subscriptions directly with their bank. Commenting on this claim the Union said that the figures it had provided to the CAC "accurately captured membership" on the date in question and the Employer had not been able to provide any evidence to the contrary. It added that it had recently recruited two new members into its fold since the Case Manager had conducted the check on 18 June 2014 and so its membership density, in the absence of any new workers into the agreed bargaining unit, was now greater.

33. Having considered the points made by the parties, the Panel is satisfied that the majority of workers in the bargaining unit are members of the Union. No evidence has been provided since 18 June 2014 that would cause the Panel to doubt the veracity of the information supplied by the Union for the purpose of the membership check and no evidence has been put forward that would persuade the Panel that there has been a decrease in membership density so as to bring it under the majority threshold. Having so decided, the Panel is now required to consider whether any of the three qualifying conditions set out in paragraph 22(4) applies, given the circumstances of this particular case.

Paragraph 22(4) (a)

34. The first condition is that the Panel is satisfied that a ballot should be held in the interests of good industrial relations.

35. In its submissions the Employer said that it was in the interests of continued good industrial relations that a secret ballot of the bargaining unit be held. In support of its position it detailed to the Panel all the positive changes that had taken place since its acquisition of the business. It was explained that it had strengthened and evolved its employee engagement practices which included, inter alia, a fully constituted Employee Forum, with elected in house representatives, team briefings, business briefing on trading figures and a regular company newsletter that invited staff suggestions and comment. It also pointed out that it had exercised its firm commitment to investing in improving employee relations and on this basis had made significant investment in Health and Safety practices and processes which, it claimed, demonstrated its commitment and investment in achieving continuously improved working conditions and therefore improved employee relations.

36. Whilst the Panel commends the Employer on the steps it has taken to engage with its workers it has not demonstrated to its satisfaction how it is in the interests of good industrial relations for a ballot to be held. No evidence has been put forward to show any possible detriment that an award of recognition without a ballot would bring to the company or that the steps the Employer has taken to encourage staff engagement will not be undone by such an award. The Panel is not persuaded by the arguments put forward by the Employer on this point and is, therefore, satisfied that this condition does not apply.

Paragraph 22(4) (b)

37. The second condition to be considered is that the CAC has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union to conduct collective bargaining on their behalf.

38. Having considered the arguments put before it by the parties the Panel is satisfied that there is no evidence that a significant number of Union members do not want the Union to conduct collective bargaining on their behalf and therefore this condition does not apply.

Paragraph 22(4) (c)

39. The third condition is that membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the union to conduct collective bargaining on their behalf. "Membership evidence" is defined by the Schedule as evidence about the circumstances in which union members became members, or evidence about the length of time for which union members have been members, in a case where the CAC is satisfied that such evidence should be taken into account.

40. In its letter of 23 June 2014 the Employer concluded by requesting that "in the interests of continued good industrial relations, the CAC commissioned a ballot of the bargaining unit" adding that this request was made "on the basis of its firm belief that membership evidence regarding the circumstances in which workers joined the union or length of membership was seriously questionable". However, it is difficult to discern from the Employer's comments the basis for this submission. It would seem that the Employer was arguing that the impetus behind the recognition application was a reaction to what the Employer termed "a period of uncertainty following change of ownership in March/April 2012" but in the Panel's view this is not the same as membership evidence as defined in paragraph 22(5). Having examined the submissions very closely it can identify no other issue that could be construed as relevant to this condition and so the Panel is satisfied that this condition does not apply.

Declaration of recognition

41. The CAC accordingly declares that the Union is recognised by the Employer as entitled to conduct collective bargaining on behalf of the bargaining unit comprising "All direct and indirect operations based employees at Primopost, Buxton in either permanent, temporary, trainee or apprentice employment, with the following job titles: No.1 Printer, No.2 Printer (Assistant Printer), PMR Operative or Assistant, Ink Technician, Factory

Operative - Lamination/Coldseal, Slitting, Core Cutting or Warehouse, Finishing Administrator, Maintenance Engineer & Factory Cleaner but not including Shift or Team Leaders, Office based employees or Company Management".

Panel

Professor Lynette Harris, Chairman of the Panel
Mr David Bower
Mr. Paul Gates OBE

17 July 2014