

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DECLARATION OF RECOGNITION WITHOUT A BALLOT

The Parties:

GMB

and

Mitie Transport Services Ltd

Introduction

1. GMB (the Union) submitted an application to the CAC dated 17 September 2014 that it should be recognised for collective bargaining by Mitie Services Ltd (the Employer) for a bargaining unit comprising “All staff employed to clean Non Advertising Bus Shelters” located at Unit 3, Valmar Trading Estate, Valmar Road, Camberwell, London SE5 9NW. The application was received by the CAC on 22 September 2014. The CAC gave both parties notice of receipt of the application on 23 September 2014. The Employer submitted a response to the CAC dated 29 September 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 Lynette Harris, Chairman of the Panel, and, as Members, Mr Len Aspell and Mr Bob Purkiss MBE. The Case Manager appointed to support the Panel was Linda Lehan.

3. By a decision dated 23 October 2014, the Panel accepted the Union’s application. The Employer, in its response to the Union’s application, stated that it agreed the proposed bargaining unit namely "All staff employed to clean Non Advertising Bus Shelters". Before proceeding the Panel asked the parties to confirm the categories of workers within the

bargaining unit as put forward by the Union as the Employer had included Managers and Administrators in the bargaining unit when the membership check was conducted. After various correspondence both parties agreed that the bargaining unit would only consist of Operatives and Supervisors and would not include Managers or Administrators which was the same bargaining unit as that proposed by the Union in their application. Following this the Panel instructed the Case Manager to ascertain whether the Union claimed that it had a majority of the workers in the bargaining unit as its members and should therefore be granted recognition without a ballot and, if it did so claim, to seek submissions from the Employer on whether or not a ballot should be held.

Issues

4. Paragraph 22 of Schedule A1 to the Act (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

5. In a letter dated 27 October 2014 the Union was asked by the CAC if it claimed majority membership within the bargaining unit, and if so, whether it submitted that it should

be recognised without a ballot. By an e-mail dated 29 October 2014 the Union asked for clarification as to how many employees were in the bargaining unit as previously the Employer had included Managers and Administrators.

Employer's response

6. In an e-mail dated 2 November 2014 the Employer confirmed that there were 32 cleaning operatives and 2 supervisors currently assigned to the tfl Bus stop clearing contract and a copy of the e-mail was sent to the Union.

Union's response

7. In an e-mail dated 5 November 2014 the Union confirmed that as at noon that day there were 19 GMB members in the bargaining unit. The Union stated that with 19 employees being Union members within the 34 employee bargaining unit they confirmed that they were claiming that they should be granted recognition without a ballot.

8. On 24 October 2014 the Union's e-mail was copied to the Employer and it was invited to make submissions on the Union's claim to majority membership and the three qualifying conditions specified in paragraph 22(4) of the Schedule.

The views of the Employer

9. In an e-mail dated 6 November The Employer confirmed that it had no submissions it wished to make regarding the Union's claim to majority membership.

Considerations

10. As set out in paragraph 4 above, the Act requires the Panel to consider whether it is satisfied that the majority of the workers constituting the bargaining unit are members of the Union. If the Panel is satisfied that the majority of the workers constituting the bargaining unit are members of the Union, it must then decide if any of the three conditions in paragraph

22(4) is fulfilled. If the Panel considers that any of them is fulfilled it must give notice to the parties that it intends to arrange for the holding of a secret ballot.

11. The Employer's confirmation of 34 workers in the bargaining unit and the Union's stated 19 members within the bargaining unit means that out of a total of 34 workers in the bargaining unit there is a union membership level of 55.88%. As the Employer did not dispute the figure of 19 Union members and, in the absence of any evidence to the contrary, the Panel is satisfied that the majority of the workers in the bargaining unit are members of the Union.

12. The Panel has given thorough consideration to each of the qualifying conditions laid down in paragraph 22(4) of the Schedule.

Paragraph 22(4) (a)

13. The first condition is that the Panel is satisfied that a ballot should be held in the interests of good industrial relations. In this case neither party has submitted evidence that holding a secret ballot would be in the interests of good industrial relations. The Panel is therefore satisfied that this condition does not apply.

Paragraph 22(4) (b)

14. The second condition 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. The CAC has no such evidence and this condition does not apply.

Paragraph 22(4) (c)

15. 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. No such evidence has been produced, and this condition does not apply.

Declaration of recognition

16. The Panel is satisfied in accordance with paragraph 22(1)(b) of the Schedule that the majority of the workers constituting the bargaining unit are members of the Union. The Panel is satisfied that none of the conditions in paragraph 22(4) of the Schedule are met. Pursuant to paragraph 22(2) of the Schedule, the CAC must issue a declaration that the Union is recognised as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit. 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 staff employed to clean Non Advertising Bus Shelters”.

Panel

Professor Lynette Harris, Chairman of the Panel

Mr Len Aspell

Mr Bob Purkiss MBE

12 November 2014