

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DECISION ON WHETHER THE APPLICATION IS VALID FOLLOWING
AGREEMENT ON THE BARGAINING UNIT

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. The Union in a letter to the CAC dated 27 May 2014 confirmed that the Finishing Administrator and the Factory Cleaner would be added to the bargaining group. In a letter to both parties dated 29 May 2014 the Case Manager confirmed that it understood that the parties had reached agreement as to the appropriate bargaining being:

“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. The Case Manager also sought clarification from the Union and the Employer as to whether the agreed bargaining unit differed to that originally proposed by the Union in its formal request for recognition and subsequently in its application to the CAC. In correspondence received from the Union it was confirmed that the agreed bargaining unit differed to that originally proposed in that the Finishing Administrator and Factory Cleaner had been added

Issues

6. Having decided that the agreed bargaining unit differed from that proposed by the Union in its application, the Panel is required by paragraph 20 of Schedule A1 to the Act (the Schedule) to decide whether the Union’s application is valid or invalid within the terms of paragraphs 43 to 50 of the Schedule. The tests that the Panel must consider under these paragraphs are:-

- is there an existing recognition agreement covering any of the workers within the new bargaining unit? (*paragraph 44*)
- is there 10% union membership within the new bargaining unit? (*paragraph 45(a)*)
- are the majority of the workers in the new bargaining unit likely to favour recognition? (*paragraph 45(b)*)
- is there a competing application, from another union, where their proposed bargaining unit covers any workers in the new bargaining unit? (*paragraph 46*)
- has there been a previous application in respect of the new bargaining unit? (*paragraphs 47 to 49*)

In a letter dated 4 June 2014 the Case Manager invited each party to make submissions on these points for consideration by the Panel.

Views of the Union

7. In a letter dated 5 June 2014 the Union stated that there was no existing recognition agreement covering any of the workers within the new bargaining unit. The Union stated that there was no competing application from another union that covered any worker in the new bargaining unit and that there had been no previous application in respect of the new bargaining unit.

8. In response to whether there was 10% union membership within the new bargaining unit the Union submitted that as it had only been increased by 2 employees since the last membership check it more than adequately fulfilled the criteria. In respect of are the majority of workers in the new bargaining unit likely to favour recognition the Union stated that the workers mandate would still be a reflection of the views of 70.83% of the relevant workforce and that membership had also considerably grown since then.

Views of the Employer

9. In a letter dated 17 June 2014 the Employer confirmed that there was no existing recognition agreement covering any of the workers within the bargaining unit and that there was no competing application from any other trade union.

10. As for whether there was 10% union membership within the new bargaining unit the Employer referred to previous correspondence stating that several employees had declared that they had cancelled their membership of the Union as they were satisfied that the Employee Forum was dealing effectively with the broad range of issues they wished to raise. The Employer asked that it be noted that employees had expressed concern that it was not easy to cancel union membership and had therefore cancelled subscriptions directly with their bank.

11. When asked whether the majority of workers in the new bargaining unit were likely to favour recognition the Employer again referred to previous correspondence explaining that employees in the proposed bargaining unit were canvassed to assess their opinion on 'if there should be union recognition at Primopost' and 73% had not voted in support of union recognition. The Employer stated that the views of a significant percentage of their workforce would not be canvassed during any Union negotiations and it was their view that union membership was almost entirely concentrated within the print activity and was therefore not representative of all of the Operations employee team. Finally the Employer stated that at the Managing Director's business briefing, when asked, there was significant and strongly expressed concerns made by employees at the negative effect the Union would have on the currently effective communications within Primopost.

The membership and support check

12. To assist in the determination of two of the validity tests specified in the Schedule, namely, whether 10% of the workers in the agreed bargaining unit are members of the union (paragraph 45(a)) and whether a majority of the workers in the agreed bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit (paragraph 45(b)), the Panel proposed an independent check of the level of union membership within the agreed bargaining unit. The Employer agreed to supply to the Case Manager a list of the names, date of birth and job titles of workers within the agreed bargaining unit and the Union agreed to supply to the Case Manager a copy of its petition and a list of its paid up members within that unit, including their full name and date of birth. 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 from the Case Manager to both parties dated 17 June 2014. The

information from both parties was received by the CAC on 18 June 2014. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

13. The list supplied by the Employer indicated that there were 69 workers in the agreed bargaining unit. The list of members supplied by the Union contained 35 names. According to the Case Manager's report, the number of Union members in the agreed bargaining unit was 35, a membership level of 50.72%. The Union provided a petition signed by 62 workers and the check established that 51 (74%) of the signatures were from workers in the agreed bargaining unit. Of the 51 signatures 19 were non members (representing 27.53% of the bargaining unit).

14. A report of the result of the membership check was circulated to the Panel and the parties on 18 June 2014 and the parties were invited to comment on the result.

Parties' comments on the result of the membership check

15. In a letter dated 23 June 2014 the Union stated that it believed that having now demonstrated on three separate occasions (once with ACAS) that it had exceeded the CAC requirement for recognition and given the lack of cogent argument against, from the company, the CAC should proceed to agree in recognition forthwith.

16. A lengthy response was received from the Employer dated 23 June 2014. The Employer stated that no increase in membership had occurred since 16 April 2014 and that the company was currently recruiting to fill 3 vacancies which would likely reduce the proportion of union membership by 2% thereby bringing the membership levels below the majority threshold. With regard to the current union membership the Employer questioned whether those employees who had indicated to them that they had cancelled their subscriptions directly with their own bank had been accurately captured by the Union i.e. had they refreshed their membership data or had the previous list simply been resubmitted. The Employer went on to reiterate what it had previously stated concerning the views of the employees at the Managing Director's business briefing as in paragraph 11 above.

17. In respect of the petition the Employer stated that whilst it seemed apparent from the information provided that it demonstrated the constituency of the bargaining unit, it must be borne in mind that the data was drawn from the workforce population in existence over 12 months ago and as such they proposed it could not accurately reflect the current position without further validation.

18. The Employer then went into detail about how it believed the recognition application was generated and why it thought in the interests of continued good industrial relations the CAC commission a ballot of the bargaining unit which is something that will be looked at and considered at the next stage in the process.

Considerations

19. The Panel is required to determine whether the Union's application is valid or invalid within the terms of paragraphs 43 to 50 of the Schedule. In reaching its decision the Panel has taken into account the submissions of both parties and all the other evidence before it. On the evidence available, the Panel is satisfied that there is no existing recognition agreement covering any of the workers within the agreed bargaining unit; that there is no competing application from another union; and that there has been no previous application in respect of the agreed bargaining unit. The remaining issues for the Panel to decide are whether the validity criteria contained in paragraph 45(a) and paragraph 45(b) are met.

Paragraph 45(a)

20. Under paragraph 45(a) of the Schedule an application is invalid unless the Panel decides that members of the union constitute at least 10% of the workers in the agreed bargaining unit.

21. The membership check conducted by the Case Manager outlined above showed that 50.72% of the workers in the agreed bargaining unit were members of the Union. The Panel notes the Employer's comment that it is currently recruiting to fill 3 vacancies which would likely reduce the proportion of union membership by 2% however the Panel has to look at the figures at the time the membership check is conducted. The Panel also notes the Employer's comment concerning several employees declaring that they had cancelled their membership

but no evidence of this was provided. As previously stated the Panel is satisfied that the 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 agreed bargaining unit as required by paragraph 45(a) of the Schedule.

Paragraph 45(b)

22. Under paragraph 45(b) of the Schedule, an application is invalid unless the Panel decides that a majority of the workers constituting the agreed bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit.

23. The result of the membership check showed a membership level of 50.72% and the check of the petition showed that 51 workers had signed the petition of which 19 were non-members which equates to 27.53% of the agreed bargaining unit.

24. The Panel notes the Employer's comment concerning employees in the proposed bargaining unit being canvassed to assess their opinion on 'if there should be union recognition at Primopost' and that 73% had not voted in support of union recognition but again no evidence to support this was provided. The Panel can only make its decision on the evidence available and therefore on the strength of the Union's level of membership alone (50.72%) the Panel has decided that, on the balance of probabilities, a majority of the workers in the agreed 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 45(b) of the Schedule.

Decision

25. The decision of the Panel is that the application is valid for the purposes of paragraph 20 of the Schedule and the CAC must proceed with the application.

Panel

Professor Lynette Harris, Chairman of the Panel

Mr David Bower

Mr. Paul Gates OBE

25 June 2014