

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:

GMB

and

Doff Portland Limited

Introduction

1. The GMB (the Union) submitted an application to the CAC on 4 June 2014 that it should be recognised for collective bargaining by Doff Portland Ltd (the Employer) for a bargaining unit comprising "workers in the following departments and/or with the following job titles: Production Operatives, Mill Operative, Warehouse Operatives, Team Trainers, Cleaners, Formulators, Quality Control and Maintenance" permanently employed at the Employer's site in Aerial Way, Hucknall, Nottinghamshire. The CAC gave both parties notice of receipt of the application on 4 June 2014. The Employer submitted a response to the CAC dated 5 June 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 Mr Chris Chapman, Chairman of the Panel, and, as Members, Ms Judy McKnight CBE and Mr Mike Regan. The Case Manager appointed to support the Panel was Nigel Cookson.

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 said that it had written to the Employer formally requesting recognition on 17 February 2014 and that following receipt of the request the Employer, whilst rejecting the request, confirmed the proposal that Acas be asked for assistance. Copies of both the request letter and the letter in response from the Employer dated 3 March 2014 were attached to the application.

5. According to the Union, there were approximately 52 workers employed by the Employer with 40 of these falling within the definition of the bargaining unit proposed by the Union and subsequently agreed by the Employer during the course of the parties' discussions with Acas in attendance. The Union stated that it had 14 members within the agreed bargaining unit. Asked to provide evidence that a majority of the workers in the agreed bargaining unit were likely to support recognition for collective bargaining, the Union referred to a petition that had been enclosed with its application, a copy of which had been served on the Employer at the time the Union furnished the Employer with a copy of the application in accordance with paragraph 34 of the Schedule.

6. The Union explained that it had selected the bargaining unit on the basis that it was a traditional bargaining unit comprising shop floor production workers including team managers and the Union believed that this made industrial commonsense and was fully compatible with effective management.

7. Finally, the Union confirmed that there had been no previous application in respect of this or a similar bargaining unit and there was no existing recognition agreement that covered any of the workers in the agreed bargaining unit.

The Employer's response to the Union's application

8. According to its response to the Union's application the Employer had received the Union's formal request for recognition on 17 February 2014 and whilst it rejected the request it was willing to negotiate and Acas was contacted and was in attendance at a meeting between the parties.

9. The Employer confirmed that it had received a copy of the application form directly from the Union on 27 March 2014 and further confirmed that it had agreed the bargaining unit prior to receiving its copy of the application.

10. The Employer stated that it employed a total of 40 workers on the site and that this number would increase this year. The Employer did not agree with the Union's figure as to the number of workers in the bargaining unit although it did not give an alternative figure nor explain the reason for any difference. The Employer also disagreed with the Union's estimate of membership saying that one worker had left the business and a second worker was a seasonal worker and so was not a full time employee. When asked for its views as to whether a majority of the workers in the bargaining unit were likely to support recognition, it said that the Union was not prepared to give it any individual names or numbers and the number of members was only known once the Employer had received the information from the CAC.

11. When asked if it was aware of any previous application under the Schedule by the Union in respect of this or a similar bargaining unit the Employer said that there had been a previous application in 2012 but that when it went to a ballot, the decision was not to have union recognition.

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

Clarification of the Employer's response

13. Before the Employer's response was cross copied to the Union, the Chairman of the Panel directed that the Employer be asked whether the previous application referred to in its

response was an application for statutory recognition made to the CAC. In an email dated 10 June 2014 the Employer confirmed that the CAC had not been involved in the matter.

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 agreed bargaining unit are members of the union (paragraph 36(1)(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 36(1)(b)), the Panel proposed an independent check of the level of union membership within the agreed bargaining unit. It was agreed with the parties that the Employer would supply to the Case Manager a list of the workers within the agreed bargaining unit and that the Union would supply to the Case Manager a list of paid up members within that unit, its petition in support of recognition already having been provided. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists would not be copied to the other party and that agreement was confirmed in a letter from the Case Manager to both parties dated 11 June 2014. As the petition had been included with the copy of the application form served on the Employer by the Union it was not subject to the terms of the agreement over confidentiality. The Union's list of members was received by the CAC on 11 June 2014 and the list of workers was received from the Employer on 12 June 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 list with 36 names, dates of birth and job titles. However, one worker had been annotated by the Employer as having left the company and another as being a temporary worker and so outside the terms of the agreed bargaining unit and so these workers were excluded from the comparisons that were undertaken.

16. The Union provided a list with 14 names in a spreadsheet with columns for workplace name, membership number, date of birth, job title, last pay date and pay with all the members showing as paid up to 2 June 2014. The Union also provided a petition which it had copied to the Employer (and, as it formed part of the Union's application, it was also copied to the Panel.) There were 36 signatures on the petition which included the signatures of both of the

workers annotated by the Employer as not being in the agreed bargaining unit. The petition asked the workers to sign if they supported recognition of the GMB as entitled to conduct collective bargaining on pay, hours and holidays on behalf of all employees in the following roles: Production Operatives, Warehouse Operatives, Team Trainers, Cleaners, Formulators, Quality Control and Maintenance at the site in Aerial Way, Hucknall.

17. According to the Case Manager's report, the number of Union members in the agreed bargaining unit was 12, a membership level of 35.29%. The check of the Union's petition established that all 34 workers within the agreed bargaining unit had signed the Union's petition (100% of the workers in the agreed bargaining unit). Twelve of the signatories were members of the Union and 22 were non-union members. A report of the result of the membership check was circulated to the Panel and the parties on 12 June 2014 and the parties were invited to comment thereon.

Union's comments on the results of the membership check

18. The Union, in an email dated 12 June 2014, said that it accepted and agreed the membership and support check in respect of the agreed bargaining unit.

Employer's comments on the results of the membership check

19. In an email dated 19 June 2014 the Employer wrote that it would prefer the matter to go to a ballot as this process allowed workers to vote anonymously and not be influenced by others and that this would be the correct route for workers to make their decision on whether to recognise the Union.

Considerations

20. 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.

21. 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 12 of the Schedule in that, before the end of the second period the parties agreed a bargaining unit but not that the Union is to be recognised as entitled to conduct collective bargaining on behalf of the unit.

22. The remaining issues are whether the admissibility criteria set out in paragraph 36 of the Schedule are met. In accordance with paragraph 36(1)(a) and (b), the Panel must determine whether members of the Union constitute at least 10% of the workers in the agreed bargaining unit, and whether 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.

Paragraph 36(1)(a)

23. The membership check conducted by the Case Manager showed that 35.29% of the workers in the agreed bargaining unit were members of the Union. The Employer did not contest this finding. As mentioned 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 agreed bargaining unit as required by paragraph 36(1)(a) of the Schedule.

Paragraph 36(1)(b)

24. The test in paragraph 36(1)(b) is for the Panel to assess majority likely support, a somewhat speculative exercise, which, on the strength of the current density of Union membership, may be tested by a secret ballot of the bargaining unit in due course for a more precise analysis as to the workers' views before decisions about recognition are made. For present purposes the evidence relied upon by the Union is a petition signed by every member of the agreed bargaining unit. The Employer, in its email of 19 June 2014, did not comment on the test under paragraph 36(1)(b) but simply said that it believed the question of Union recognition was one that should be dealt with by way of an anonymous ballot.

25. Having considered the matter, the Panel is satisfied that the level of support shown by the petition, with a clear proposition in favour of collective bargaining and which was signed by every worker in the agreed bargaining unit, demonstrates that on the balance of probabilities and in the absence of any evidence to the contrary, a majority of the workers in the agreed bargaining unit would be likely to support recognition of the Union and the test set out in paragraph 36(1)(b) is therefore met.

Decision

26. For the reasons given above, the Panel's decision is that the application is accepted by the CAC.

27. Given our decision above and on the basis that the parties had reached agreement as to the appropriate bargaining unit before the application was made to the CAC, the Panel, not being satisfied that a majority of the workers constituting the agreed bargaining unit are members of the Union, gives notice pursuant to paragraph 23(2) of the Schedule that it intends to arrange for a secret ballot to be held in which the workers in the bargaining unit will be asked whether they want the Union to conduct collective bargaining on their behalf.

Panel

Mr Chris Chapman, Chairman of the Panel

Ms Judy McKnight CBE

Mr Mike Regan

20 June 2014