

6 August 2014

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:

University and College Union

and

Sheffield International College

Introduction

1. The University and College Union (the Union) submitted an application to the CAC dated 1 July 2014 that they should be recognised for collective bargaining purposes by Sheffield International College (the Employer). The Union stated its proposed bargaining unit as "All academic staff below the level of College Director. This would include sessional tutors. The stated location address was "Sheffield International College, North Campus, The University of Sheffield, Broad Lane, Sheffield, S3 7HQ." The CAC gave the parties notice of receipt of the application on 2 July 2014. The Employer submitted a response to the application on 7 July 2014.

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, CAC Deputy Chairman (Chairman of the Panel) and as Members, Mrs Jean Johnson and Mr Gerry Veart. The Case Manager appointed to support the Panel was Miss Sharmin Khan.

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 of the Schedule; and therefore should be accepted.

Summary of the Union's application

4. The Union stated it had a certificate of independence. Attached to its application was a copy of its formal written request for recognition dated 12 May 2014; the Employer's response - e-mail to the Union dated 27 May 2014 and the Union's letters to the Employer dated 1 July 2014 informing that an application had been lodged with the CAC and providing a copy of the application. The Union explained in its application that a meeting was held with the Employer on 26 June 2014 at which the Employer had agreed the bargaining unit and offered a voluntary agreement. However the condition was that recognition would not start earlier than 1 January 2015 and would be subject to a poll of staff and would ultimately be subject to the agreement of the company's board in the USA.

5. The Union stated that there were 119 workers employed by the Employer and that there were 88 workers in the proposed bargaining unit of which 24 were Union members. The reasons for selecting the workers in the proposed bargaining unit were because the UCU was the largest Trade Union and Professional Association for academics, lecturers, trainers, researchers and academic – related staff who worked in Further and Higher Education throughout the UK. There was a clear and distinct academic staffing structure in place at Sheffield International College, separate from a support staffing structure. The bargaining unit therefore mapped onto the existing structure in place at the SIC.

6. The Union was not aware of any existing recognition agreement that covered any of the workers in its proposed bargaining unit and it had not made a previous application for workers in the proposed bargaining unit or a similar unit.

7. As evidence that the majority of workers in the proposed bargaining unit were likely to support recognition for collective bargaining, the Union stated that it had signed pledges of support for UCU recognition which had been received from 74 of the workers in the bargaining unit between 25th May 2014 and 4 June 2014. The names would be kept confidential from the Employer but copies of the pledges could be shared with the CAC.

Summary of the Employer's response to the Union's application

8. The Employer submitted its response to the CAC on 7 July 2014. The Employer confirmed that it had received the Union's formal written request for recognition on 12 May 2014, that it had responded by e-mail on 27 May 2014 and that it had received a copy of the Union's application form and supporting documents on 1 July 2014. It quoted its response to the Union:

“... ”

Thank you for your letter dated 12th May requesting voluntary trade union recognition at Sheffield International College. Having liaised with my colleagues at HQ I would like to propose a meeting to discuss your request further. As you are aware we are in constant communication with both our academic and support staff regarding the proposed TUPE transfer in September 2015 and with this in mind I would appreciate the opportunity to discuss your request with our Staff Liaison Committee on Friday 6th June and pencil a meeting in the diary for the following week, provisionally Wednesday 11th June, to further discuss your request.

Please let me know if this can be arranged

...”

9. The Employer stated that in theory it did agree with the proposed bargaining unit but that it had some questions over some of the positions. It should be noted here that although the Employer is required to state whether it agrees with the bargaining unit in the CAC's Employer's response questionnaire, the matter of what constitutes an appropriate bargaining unit is not addressed here in this decision as this is a matter addressed at the next stage of the statutory process should the Union's application be accepted.

10. The Employer stated it employed 117 workers of which 87 were potentially workers in the Union's proposed bargaining unit but queries over three positions meant a more accurate figure would be 84. It did not dispute the Union's estimate of membership but it did note that the proposed figure of 24 members made up only 27% of the proposed bargaining unit which was less than the figures indicated at the meeting with the Union. It had no reason to believe that the majority of the workers in the proposed bargaining unit would not support recognition. At the meeting with the Union on 26th June, the parties agreed to conduct a confidential ballot through academic members of the Employer's staff liaison committee to ask whether academic staff were interested in being represented by a union and, if so, which union they would like that to be. This ballot was agreed in recognition of the Employer's desire to support staff with whichever level of support they decided was appropriate.

11. Finally, the Employer confirmed that it had not received any other application for statutory recognition under the Schedule in respect of any of the workers in the proposed bargaining unit and that there was no existing agreement for recognition in force covering any of the workers in the proposed bargaining unit.

Membership and support check

12. To assist the determination of two of the admissibility criteria specified in the Schedule, namely, whether 10% of the workers in the relevant bargaining unit are members of the Union (paragraph 36(1)(a)) and whether a majority of the workers in the relevant bargaining unit are likely to support recognition of the Union as entitled to conduct collective bargaining on behalf of the relevant bargaining unit (paragraph 36(1)(b)), the Panel proposed independent checks of the level of union membership in the proposed bargaining unit and the number of workers who had signed the Union's petition in support of recognition of the Union.

13. The arrangements for the membership and support check were confirmed in a letter from the CAC to the parties dated 16 July 2014. It was agreed that the Employer would supply to the Case Manager a list of names and job titles of workers in the proposed bargaining unit and that the Union would supply a list of the paid up members in the proposed bargaining unit and a copy

of its petition. It was also explicitly agreed with both parties that the Case Manager would compare the Employer's information with the Union's information and to preserve confidentiality, the respective lists would not be copied to the other party.

14. The Case Manager's check established that there were 85 workers within the proposed bargaining unit of which 22 were members of the Union; a Union membership level of 26%. The check of the Union's petition established that 66 workers within the proposed bargaining unit had signed the Union's petition (78% of the workers in the proposed bargaining unit). 22 of the signatories were members of the Union (26% of the workers in the proposed bargaining unit) and 44 were non-union members (52% of the workers in the proposed bargaining unit). A full report and results of the membership and support check was issued to the parties for comment on 25 July 2014.

Summary of the Union's views

15. The Union made some observations on the numbers. Namely that in response to the Unions' application, the Employer stated that the number of workers in the proposed bargaining unit was 84 to 87. The Employer had since conducted a ballot of its academic staff concerning support for voluntary union recognition. The number of workers that were balloted by the Employer was reported at 88 which was communicated to staff in an e-mail dated 11 July 2014 from the Employer and which was forwarded to the Union by its members (a copy was attached). The number of workers that appeared on the list provided by the Employer to the CAC was 85. The discrepancies may have accounted for the union members that had not appeared on the Employer's list.

16. The Union also noted that even if the percentage of those who supported recognition who were union members (22%) were discounted, a majority of those who were currently not Union members (52%) supported recognition of the UCU.

Summary of the Employer's views

The Employer confirmed by e-mail to the CAC on 31 July 2014 that it had no comments in respect of the membership and support check report but that it did note the slight difference between the lists that were provided by both parties but could not see there being a major impact.

Considerations

17. In deciding 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 and is satisfied that the membership and support check undertaken by the Case Manager was conducted appropriately.

18. 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 them for collective bargaining in respect of the proposed bargaining unit as described in paragraph 1 of this decision. The Panel is also satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 35 and 37 to 42 and that it was made in accordance with paragraph 11 of the Schedule.

19. The remaining issues for the Panel to address are whether the admissibility criteria set out in paragraph 36(1) of the Schedule are met.

Paragraph 36(1)(a)

20. 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 relevant bargaining

unit. The result of the check carried out by the Case Manager established that 26% of the workers in the proposed bargaining unit were members of the Union. The Panel is satisfied that this test is met.

Paragraph 36(1)(b)

21. Paragraph 36(1)(b) of the Schedule provides that, for an application to be admissible, the CAC must be satisfied that a majority of the workers constituting the relevant bargaining unit would be *likely* to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit. At this stage, the Panel is tasked with determining likely, not actual, majority support for recognition of the Union.

22. The Case Manager's check of the information provided by the parties demonstrated that there was a membership level of 26% within the proposed bargaining unit. No evidence was provided to indicate that membership of the Union could not be taken as an indicator of support for the recognition of the Union. The check also showed that 78% of the bargaining unit had expressed support for recognition of the Union for the purposes of collective bargaining by signing up to a clearly stated pledge of support, 52% of which was from non-union members.

23. The Panel notes that there was no contest from the Employer in respect of the petition evidence provided by the Union and therefore there is no evidence to the contrary that the Union has an overall level of support, achieved from its level of membership and non-member signatories within the proposed bargaining unit of 78%. It is not necessary for the Panel to establish that an actual majority is in favour of recognition of the Union at this stage of the statutory process. At this stage the CAC has only to be satisfied that it is likely that a majority would support it and on the evidence before it, the Panel is so satisfied. Here, the Union's petition evidence alone is high enough to demonstrate that there is clear evidence of support by a majority of the proposed bargaining unit and who are non-union employees.

24. For the reasons provided above the Panel concludes that a majority of the relevant bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit and so the requirements of paragraph 36(1)(b) of the Schedule are met.

Decision

25. The Panel is satisfied that the application is valid within the terms of paragraphs 5 to 9, is made in accordance with paragraph 11(2) and is admissible within the terms of paragraphs 33 to 42 of the Schedule. The application is therefore accepted by the CAC.

Panel

Mr Chris Chapman - CAC Deputy Chairman

Mrs Jean Johnson

Mr Gerry Veart

6 August 2014