

Case Number: TUR1/886/2014

6 October 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:

GMB

and

Nuair Limited

Introduction

1. The GMB (the Union) submitted an application to the CAC dated 30 August 2014 that it should be recognised for collective bargaining by Nuair Limited (the Employer) for a bargaining unit comprising “All permanent shop floor direct Employees/Operatives engaged in the production process who are not of managerial status within the shop floor who work flexibly across various areas of work depending their allocated work each day: Assembly Operatives, Sheet Metal operatives, Stores and Service Department Operatives located at the Western Industrial Estate Site in Caerphilly”. The application was received by the CAC on 4 September 2014. The CAC gave both parties notice of receipt of the application on 4 September 2014. The Employer submitted a response to the CAC dated 11 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 is chaired by Professor Paul Davies QC FBA, with, as Members, Ms Bronwyn McKenna and Mr Roger Roberts. The Case Manager appointed to support the Panel was Miss Sharmin Khan.

3. The CAC Panel extended the acceptance period for the case. The initial period expired on 18 September 2014. The acceptance period was extended to 6 October 2014 in order to allow time for a membership check to be carried out, for the parties to comment on the subsequent report and for the Panel to consider all the evidence before arriving at a decision.

Issues

4. 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.

Summary of the Union's application

5. The Union stated that it had a current certificate of independence and that it had sent its formal request for recognition to the Employer on 6 August 2014 by recorded delivery (a copy of the letter was attached). A copy of the Employer's response declining the Union's request by a letter dated 21 August 2014 was enclosed with the application.

6. The Union stated that there were 130 workers in the proposed bargaining unit and 29 of these workers were members of the Union. When asked to provide evidence that a majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining, the Union stated that in addition to its 29 members, it had petition evidence which showed additional support from 104 signatories, 28 of whom were Union members.

7. The Union's reasons for selecting the proposed bargaining unit were that it was a standalone unit and all workers within its scope shared the same terms and conditions of employment and came under the same grievance and disciplinary procedures. The unit was logical and workable in practice, appropriate and compatible with effective management.

8. The Union confirmed that it was not aware that there was any existing recognition agreement which covered any workers within its proposed bargaining unit and that it had not made a previous application under the Schedule for statutory recognition for the workers in the proposed bargaining unit. Finally the Union informed the CAC that the date on which it copied its application to the CAC and supporting documents to the Employer was 30 August 2014.

Summary of the Employer's response

9. In response to the Union's application to the CAC, the Employer confirmed that it had received the Union's written request on 8 August 2014 to which it had responded by declining voluntary recognition. The Employer attached a copy of its response to the Union, the letter dated 21 August 2014. The Employer also confirmed that it had received from the Union a copy of the application on 2 September 2014.

10. The Employer stated that the parties had not agreed the proposed bargaining unit. In its view it was potentially divisive and was not compatible with effective management as it did not encompass all employees doing the same or similar work, or include workers at its satellite "over spill" stores/distribution facility at Bedwas only 3.1 miles away.

11. The Employer stated that its total number of employees as at 4 September 2014 was 424. It believed there to be 188 workers in the proposed bargaining unit not 130 as stated by the Union.

12. When asked if it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer stated that it had no reason to doubt the Union's figure. The Employer stated that it did not consider that a majority of the workers in the proposed bargaining unit were likely to support recognition as it had conducted a secret staff poll on 28 August in which 74 employees indicated a preference for recognition. It doubted that the 104 signatories obtained by the Union accurately reflected levels of support, not least because of peer pressure to put names to a form. Historically the Employer had seen little enthusiasm for union recognition and staff relations were generally excellent. In July 2014 the Employer had made a change to morning start times which undoubtedly had been the catalyst for the Union actively seeking recognition now. The Employer was on board and now addressing staff concerns so the Employer expected current levels of support for recognition to decline.

13. Finally the Employer confirmed that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit.

Membership and Support Check

14. To assist the determination of two of the admissibility criteria specified in the Schedule, namely, whether 10% of the workers in the proposed bargaining unit are members of the union (paragraph 36(1)(a)) and whether a majority of the workers in the proposed 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 and support within the proposed bargaining unit.

15. It was agreed with the parties that the Employer would supply to the Case Manager a list of the names, addresses, job titles, and dates of birth of the workers within the proposed bargaining unit, and that the Union would supply to the Case Manager a list of its paid up members within that unit, including their names, addresses and dates of birth. It was explicitly agreed with both parties that, to preserve confidentiality, the

respective lists would not be copied to the other party. These arrangements were confirmed in a letter dated 12 September 2014 from the Case Manager to both parties. The Panel was satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

16. The list supplied by the Employer showed that there were 170 workers in the proposed bargaining unit. The list of members supplied by the Union contained 30 names. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was 28, a membership level of 18%.

17. The comparison of the Union's petition with the Employer's list of workers established that 98 (58%) of workers in the proposed bargaining unit who signed the petition were in favour of recognition of the Union; 26 (16% of the proposed bargaining unit) were Union members and 72 (42% of the proposed bargaining unit) were non Union members.

18. Signatories on each page signed up to the following statement with their signature and date, as well as printing their name, job title and department. The earliest date on the petition was 18 June 2014 and the most recent date was 21 July 2014:

“We, the undersigned employees of Nuaire Limited, wish to have the GMB Trade Union recognised by Nuaire Limited for all issues related to collective bargaining for all terms and conditions of employment.”

19. A report of the result of the membership check was circulated to the Panel and the parties on 25 September 2014. The parties were invited to comment on the result by 30 September 2014. The Employer confirmed by e-mail to the Case Manager on 25 September that it did not wish to comment. The Union did not comment on the result of the checks either.

Considerations

20. In determining whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 4 above are satisfied. The Panel has considered carefully the submissions of both parties and all the evidence in reaching its decision.

21. The Employer did not contest the validity of the application within the terms of paragraphs 5 to 9 of the Schedule, nor did it contend that the application was not made in accordance with paragraph 11 or 12. Having considered the documentation provided by both parties the Panel is satisfied that the Union's request to the Employer was valid within the terms of paragraphs 5 to 9 of the Schedule and that the application was made in accordance with paragraph 11. The Panel is also satisfied that the application is not rendered inadmissible by any other provision in paragraphs 33 to 35 and paragraphs 37 to 42 of the Schedule. The remaining issues for the Panel to decide are whether the admissibility criteria contained in paragraph 36 of the Schedule are met.

Paragraph 36(1)(a)

22. Under paragraph 36(1)(a) of the Schedule an application is not admissible unless the Panel decides that members of the union constitute at least 10% of the workers in the proposed bargaining unit. The membership check conducted by the Case Manager established that 18% of the workers in the proposed bargaining unit were members of the Union. Therefore the Panel is satisfied that the test in paragraph 36(1)(a) of the Schedule has been met.

Paragraph 36(1)(b)

23. Under paragraph 36(1)(b) of the Schedule, an application is not admissible unless the Panel decides that a majority of the workers constituting the proposed bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit. As already stated the Panel accepts that the level of union membership is 18% and in its industrial relations experience the Panel

considers that membership of a union can indicate support for recognition specially, as in this case where there is no evidence to suggest that workers have joined for other specific reasons. The Case Manager's checks established that 42% of the proposed bargaining unit in support of recognition of the Union was from non-Union members. The Panel can reasonably conclude then that the overall level of likely support for recognition of the Union for the purposes of collective bargaining in this case is around 60% of the proposed bargaining unit.

Decision

24. On the basis of the evidence before it and for the reasons above the Panel concludes that a majority of the workers in the proposed 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 36(1)(b) of the Schedule. The test in paragraph 36(b) of the Schedule has been met and therefore the application is accepted by the CAC.

Panel

Professor Paul Davies QC FBA - CAC Deputy Chairman

Ms Bronwyn McKenna

Mr Roger Roberts

06 October 2014