

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:

Unite the Union

and

Paragon Vehicle Services Ltd (Port of Tyne)

Introduction

1. Unite (the Union) submitted an application to the CAC dated 3 July 2014 that it should be recognised for collective bargaining by Paragon Vehicle Services Ltd (Port of Tyne) (the Employer) for a bargaining unit comprising "All Manual shop floor staff including Supervisors employed at Paragon Vehicle Services Port of Tyne Site". The CAC gave both parties notice of receipt of the application on 7 July 2014. The Employer submitted a response to the CAC dated 14 July 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 John Purcell, Chairman of the Panel, and, as Members, Mr Bill Lockie and Ms Virginia Branney. The Case Manager appointed to support the Panel was Kate Norgate.

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 stated that it had sent its formal request for recognition to the Employer on 20 June 2014 but the Employer did not respond to its request.

5. According to the Union, a total of 36 workers were employed by the company, of whom 26 were in the proposed bargaining unit, a unit which had not been agreed with the Employer. The Union stated that it had 21 members within the proposed bargaining unit. The Union did not state whether it had any evidence to demonstrate that a majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining.

6. The Union stated that its reason for selecting the proposed bargaining unit was that it covered all manual staff on the same terms and conditions.

7. The Union stated that there had been no previous application in respect of this or a similar bargaining unit.

The Employer's response to the Union's application

8. In its response to the Union's application the Employer stated that it had received the Union's written request for recognition on 20 June 2014. The Employer submitted its letter of response to the request dated 3 July 2014, in which it stated that it did not believe it to be necessary for the Company to accept the Union's

request for recognition as it was a good employer with good employee relations, and that there were appropriate Human Resource and Employment Law Policies in place.

9. The Employer confirmed that it had received a copy of the application form from the Union on 9 July 2014.

10. The Employer confirmed that with reference to the term manual workers only, it did agree the proposed bargaining unit, however it did not agree with the number stated to be within the unit.

11. The Employer stated that it currently employed 31 workers, of whom 22 were manual workers. It disagreed with the Union's estimate as to the number of workers in the bargaining unit, stating that it could not comment on the difference as it was unsure of the Union's reasoning.

12. In answer to the question as to whether it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer stated that it believed there were currently only 6 employees who paid their union membership via the Company's payroll. It therefore requested evidence in support of the additional employees who were said to be union members. When asked for its reasons if it considered that a majority of the workers in the proposed bargaining unit would not be likely to support recognition, the Employer explained that on 12 June 2014 a meeting was held by the Director of New Vehicle Operations with all the employees of Port of Tyne, regarding engagement. During and after the meeting employees were given the opportunity to raise any issues or concerns regarding their employment. The employer explained that at no point did any of the employees express an interest in union involvement.

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

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 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 within the proposed bargaining unit. It was agreed with the parties that the Employer would supply to the Case Manager a list of the names, dates of birth and job titles 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 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 22 July 2014 from the Case Manager to both parties. The information from the Union was received by the CAC on 22 July 2014 and from the Employer on 23 July 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 spreadsheet with the names, dates of birth, job titles and age for 22 individuals and the Union provided a spreadsheet with the membership details of 21 individuals.

16. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was 18, a membership level of 81.81%. A report of the result of the membership check was circulated to the Panel and the parties on 24 July 2014 and the parties were invited to comment thereon.

Summary of the parties' comments on the result of the membership check

17. In a letter dated 28 July 2014 the Employer sought clarification as to what capacity those individuals who did not appear on the Employer's list were employed.

It further sought clarification on the financial terms provided for each individual on the Union's list and questioned, what proof the Union had supplied in support of the fact that all 18 individuals were "actual" union members.

18. By e-mail dated 28 July 2014 the Union confirmed that it had no comments to make on the report.

19. By letters dated 31 July 2014, following instruction from the Panel, the Case Manager wrote to both parties, explaining to the Employer that the Panel is not concerned with those members not appearing on the Employer's list, as it is the number of names in common that are relevant to the tests, and asking the Union to clarify the membership status for those individuals on the list supplied by the Union for the purpose of the check.

20. In a letter dated 1 August 2014 the Union clarified that those individuals listed as fully paid were paying by Direct Debit, those on Check Off were having union deductions made from their wages, and the new member had recently joined with the intent of paying by Direct Debit but at the time the list was produced had not made their initial scheduled payment to Unite.

21. On 5 August 2014 the Union's response was copied to the Employer.

Considerations

22. 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, ideally within the initial two week acceptance period. The Panel has considered all the evidence submitted by the parties in reaching its decision.

23. 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 request was made in writing and identified the

Union, the proposed bargaining unit and the request was made under the Schedule. 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.

24. The remaining issues for the Panel to address are whether the admissibility criteria set out in paragraph 36(1) of the Schedule are met: density of trade union membership and likelihood of support for recognition.

Paragraph 36(1)(a)

25. 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.

26. The membership check conducted by the Case Manager (as set out in paragraphs 14 -15 above) showed that 81.81% of the workers in the proposed bargaining unit were members of the Union. The Panel notes the Employer's concern expressed in paragraph 17 in which it sought clarification on the terms used by the Union to describe the membership status of those individuals on the list submitted to the Case Manager for the purpose of the check. The Panel also notes that, as recorded in paragraph 20 above, at the request of the Panel the Union subsequently clarified the payment methods used by those individuals on its list whom it stated were fully paid members. Furthermore, that one "New Member" had not yet made their initial payment and this was due to the timing of the list. The Panel is content to rely for the purposes of this decision on the information provided by both parties in determining the level of union membership in the bargaining unit. The Panel has therefore decided that members of the Union constitute at least 10% of the workers in the proposed bargaining unit as required by paragraph 36(1)(a) of the Schedule.

Paragraph 36(1)(b)

27. 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. For the reasons given in the previous paragraph the level of union membership is 81.81%. The Panel considers that, in the absence of reliable evidence to the contrary, union membership provides a legitimate indicator of the views of the workers in the proposed bargaining unit as to whether they would be likely to favour recognition of the Union. On the basis of the evidence before it, the Panel has decided that, on the balance of probabilities, a majority of 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.

Decision

28. For the reasons given in paragraphs 22-27 above the Panel's decision is that the application is accepted by the CAC.

Panel

Professor John Purcell, Chairman of the Panel

Mr Bill Lockie

Ms Virginia Branney

6 August 2014