

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

Rhys Davies Logistics

Introduction

1. Unite the Union (the Union) submitted an application to the CAC dated 27 January 2014 that it should be recognised for collective bargaining by Rhys Davies Logistics (the Employer) for a bargaining unit comprising “All weekly paid staff including Drivers, Warehouse Staff and Fitters based at Taffs Well”. The CAC gave the parties notice of receipt of the application on 28 January 2014. The Employer submitted a response dated 3 February 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 Professor John Purcell, Chairman of the Panel, and, as members Ms Bronwyn Mckenna and Mr Paul Wyatt. The Case Manager appointed to support the Panel was Linda Lehan.

Issues which the Panel has to determine

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.

The Union's application

4. The Union stated that it had submitted its formal request for recognition to the Employer on 8 January 2014 (although the letter was dated 7 January 2014), a copy of which was enclosed with its application. The Employer responded by letter on 21 January 2014 refusing the request, a copy of this letter was also enclosed.

5. In its application the Union stated that there were 400 workers employed by the Employer of whom 72 were in the Union's proposed bargaining unit. According to the Union the composition of the bargaining unit had been agreed during talks regarding a possible voluntary agreement with the Employer. When asked to provide evidence that the majority of the workers in the bargaining unit were likely to support recognition for collective bargaining the Union explained that the majority of the workers in the bargaining unit were members and a petition of non-members had also been conducted. The Union stated that a majority of the non-members asked said that they supported its claim for recognition. The Union stated that the bargaining unit, in which there were 44 members, had been selected on the grounds that it was a distinct unit that was compatible with the company's management structures. The Union also stated that there appeared to be distinct and separate pay arrangements in all the different geographical locations.

6. The Union stated that it was not aware of any existing agreement which covered any of the workers in the proposed bargaining unit. Finally, the Union confirmed that it had made no previous application in respect of the proposed bargaining unit or a similar bargaining unit.

The Employer's response to the Union's application

7. In its response to the Union's application dated 3 February 2014, the Employer stated that it had initially received the Union's written request for recognition via e-mail on 8 January 2014 and a hard copy letter was received on 9 January 2014 via post. The Employer confirmed that its response was to reject the request and a copy of the relevant letter was

attached. The Employer stated in its letter that as the Union was aware, the company was exploring how it might possibly work with Unite trialling a voluntary and non-legally enforceable agreement that covered a small proportion of the total workforce. It stated that the Union should not however confuse the Employer's position on this purely voluntary arrangement as being in any way representative of its stance on statutory recognition. The Employer confirmed that its e-mail to the Union dated the 8th was to enquire whether there was any mileage left in pursuing the voluntary arrangements but the Union had made its position clear in its correspondence dated 17 January and, as such, the Employer withdrew its proposals. The Employer stated that as for the Union's statutory recognition request, it would formally convey that this was rejected and to that end the Union should not presume that the parties had entered the negotiation phase. The Employer stated that it had received a copy of the application form via fax on 27 January 2014 and a hard copy was received on 28 January 2014 via post.

8. The Employer stated that it did not agree the proposed bargaining unit due to the characteristics of the workers and their associated remuneration and did not believe that acceptance of the proposed bargaining unit was compatible with effective management.

9. The Employer stated that the total number of workers employed as at 30 January 2014 was 458 with there being 90 workers in the Union's proposed bargaining unit. The Employer stated that within that unit there were drivers, warehouse operatives (although not all warehouse operatives), workshop staff, vehicle wash staff and finance and administrative staff (although not all finance and administrative staff). The Employer gave a breakdown as follows:

Drivers	61
Warehouse	20
Fitters	4
Vehicle Wash man	1
Administrative Support	4

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

11. The Employer stated that they were not in a position to agree with the Union's estimate

of membership as the Union had been unwilling to disclose any substantive evidence of membership. The Employer stated that the only visibility afforded was through deductions made from payroll and the company presently managed deductions for nineteen staff from the proposed bargaining unit. When asked whether it considered that a majority of the workers in the bargaining unit were likely to support recognition, the Employer reported that there had been no tangible evidence of this provided directly by staff to management (verbal or written) or the Union (written). Finally the Employer stated that the Union had shared no evidence with it in respect of the petition of non-members referred to in the application.

Union's comments on the Employer's response

12. The Union submitted a response to the Employer's response by way of a letter dated 7 February 2014 which was copied to the Employer. The Union stated that the Employer's response was vague in comparison with its justification for a proposed bargaining unit. The Union enclosed a copy of the voluntary recognition agreement which showed the track changes made by the Employer and stated that although a large number of comments and suggested amendments were made no challenge was made in respect of the proposed bargaining unit. The Union went into further detail in respect of why it thought the proposed bargaining unit was appropriate, however, the views on the appropriateness of the proposed bargaining unit will be revisited and addressed at the appropriate juncture.

13. The Union stated that it believed some of the staff included in the Employer's response (see paragraph 9 above) had been counted twice due to the fact that they performed two duties and that some of the staff were in fact not weekly paid. The Union stated that it was confident that over 50% of the bargaining unit were members of the Union and a majority of the remainder had signed a declaration to say that they wished Unite to be recognised for collective bargaining.

14. The Union stated that it encouraged its members to pay by direct debit and would not disclose names of members to any employer. The Union said that this was normal practice and that it would be willing to share its membership information and signed declarations on the proviso that the CAC did not share the names of members or signatures on the declarations with the Employer.

The membership check

15. 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 are likely to support recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit (paragraph 36(1)(b)), the Panel proposed independent checks of the level of union membership in the proposed bargaining unit and the support for recognition. It was agreed with the parties that the Employer would supply to the Case Manager a list of the names, date of birth and job titles of workers within the proposed bargaining unit and that the Union would supply to the Case Manager an up-to-date list of paid up members within that unit and a copy of its declarations referred to in its application to enable comparisons to be undertaken. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and the declarations would not be copied to the other party. These arrangements were confirmed in a letter dated 10 February 2014 from the Case Manager to both parties. The information from both parties was received by the CAC on 12 February 2014. The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

16. The Union provided a list of 48 members and the Employer provided a list of 90 workers. The Union also provided 24 signed declarations from workers set out as follows:

Paragraph 1 stated:

I, (name inserted) am employed by Rhys Davies Freight Logistics at Moy Road, Taffs Well.

Paragraph 2 stated either:

I am currently a member of the United Road Transport Union

or

I am currently a member of the GMB

or

I am currently not a member of any trade union

or

I am not currently a member of any union.

Paragraph 3 stated:

I hereby give my consent that all negotiations regarding annual pay awards and matters concerning Terms and Conditions of my contract with the company be conducted on my behalf by representatives of Unite Union, this being the dominant negotiating organisation at my place of work.

17. The membership check established that there were 48 members of the Union within the proposed bargaining unit; a membership level of 53.33%. The check of the Union's declarations established that 22 of the declarations were from workers in the proposed bargaining unit (24.44% of the workers in the proposed bargaining unit). One of the declarations was from a member of the Union (representing 1.11% of the bargaining unit) and 21 of the declarations were from non-members (representing 23.33% of the bargaining unit).

18. A report of the result of the membership and support check was circulated to the Panel and the parties on 13 February 2014 and the parties were duly invited to comment on the results thereof.

Union's comments on the result of the membership and support check

19. In e-mails dated 17 February 2014 and 20 February 2014 the Union submitted that whilst it was clear that a majority of the bargaining unit were in favour of recognition it was sceptical about the figure of a bargaining unit of 90 employees as put forward by the Employer. The Union stated that it was concerned that the company may have produced a list including workers who were not part of the proposed bargaining unit and requested the CAC to check this with the Employer. The Union stated that if the Employer maintained its position and the Panel deemed that to be an issue, the Union was happy to provide a list of a further five members, on a confidential basis, that may have been included in the bargaining unit as suggested by the Employer. The Union stated that it believed that the bargaining unit was smaller and therefore the proportion of members was higher.

20. The Union stated that, notwithstanding the above, the membership check showed

53.33% of the proposed bargaining unit to be members so the 10% test was made out. In addition, declarations had been signed by non-members amounting to 23.33%. The Union said that it would ask the Panel to add together the members and non-members that had signed declarations to conclude there was a very strong indication a majority would favour recognition.

21. The Union stated that in addition to the above, it had since received three further declarations of support for trade union recognition from non-members and if the Panel would like to see those declarations it would be happy to submit them again on the basis that the names of the three signatories were not shared with the Employer.

Employer's comments on the result of the membership and support check

22. In a letter dated 19 February 2014 the Employer stated that, having not had sight of the Union's spreadsheet on purported membership, it was unable to comment on its accuracy and as stated in its original response, the extent of union membership could not be agreed because the only discernable membership was through payroll deductions, which revealed only nineteen members. The Employer stated that it was not clear from the membership report of 13 February 2014 as to what further checks were undertaken to corroborate the Union's purported membership within its spreadsheet, or if there were none, why the Union's figures were preferred over the Company's. The Employer stated that it would wish to reserve its position to challenge the membership figures pending further details as to the checks that were utilised on that occasion.

23. The Employer stated that the declarations by the non-members could not be relied upon as an accurate representation of support for the Union as the declaration, which was presumably drafted by the Union itself, did not make clear that the Union would only be recognised for collective bargaining solely in relation to pay, hours, and holidays. The declaration of consent to negotiations was wider, being in respect of "awards and matters concerning Terms and Conditions of [their] contract with the Company conducted on [their] behalf by representatives of Unite ..." The Employer submitted therefore that the scope, and thus the expectation, upon which such consents were given was far wider than the basis upon which recognition had actually been applied for and begged the question, would the same number of consents have been given, had the more limited scope of statutory

recognition been conveyed. The Employer stated that it was concerned that the Union, which would have been well aware of the scope of statutory recognition, had - in error or otherwise - made representations which overstated the scope of recognition, and in doing so had compromised the process designed to ascertain the extent of support for the same.

24. The Employer stated that it was also incorrect for the declaration to state that "[the Union] was the dominant negotiating organisation at [the] place of work" as no negotiations concerning staff Terms and Conditions had ever previously occurred between the Company and the Union. Whilst internal bodies had met no other external negotiating organisation had previously undertaken collective bargaining with Company.

25. The Employer contended that, as the declarations placed before the workers by the Union were incorrect and misleading; the signatories did not make informed declarations and, as such, were unreliable.

26. The Employer stated that it would respectfully contend that the Union had failed to evidence that its asserted members within the proposed bargaining unit would likely favour recognition of the Union as entitled to conduct collective bargaining on behalf of the relevant bargaining unit. The Employer submitted that the two tests under paragraph 36 (1) were wholly distinct and, simply because an employee was a member of the Union, it did not follow that they were likely to favour recognition for collective bargaining and respectfully contended that it would involve undue conjecture on the part of the CAC to make such a leap.

27. The Employer stated that on the Union's own evidence, only 23.33% of the proposed bargaining unit appeared likely to favour recognition and of that proportion, only one was a Union member, yet it was open to the Union to obtain declarations from all asserted members, but it did not appear to do so. The Employer stated that alternatively, it could be inferred from the one positive response received from a union member, that all members of the proposed bargaining unit [such as it was understood by the Union) were in fact approached but the positive responses were limited to the one union member and 21 who were not union members. The Employer stated that the Union had only disclosed positive declarations and had not disclosed negative declarations or the number of enquiries that went unanswered and, in the absence of the Union's confirmation of the extent of negative and nil

responses, the Employer would very strongly contend that the Union had failed to demonstrate that an overall majority favouring recognition existed.

28. The Employer stated that, as set out in its initial response to the application, there had been no tangible evidence of such support provided by, or discerned from, the staff. Furthermore, the Union had shared no evidence with the Company in that regard. The Employer stated that in the interests of fairness, and so the parties were placed onto an equal footing, it would request that it be granted leave to make its own enquiries as to the level of support within the proposed bargaining unit and amongst all known Union members before admissibility was decided and pending that, it would wish to reserve the Company's right to contest that issue. On the basis that declarations which post-date the Union's statutory request and application had been considered and accepted by the CAC, it would respectfully suggest that it would only be fair for the Employer to be afforded the same opportunity.

Considerations

29. 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. In arriving at its decision the Panel has taken into consideration all of the evidence submitted by the parties. 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 in its letter of 7 January 2014. The request was made in writing, identified the Union, the proposed bargaining unit, and stated that it (the request) was made under the Schedule.

30. 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 in that, before the end of the first period the Employer informed the Union that the Employer did not accept the request for recognition without indicating a willingness to negotiate. 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)

31. 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 Union's proposed bargaining unit. The check of membership conducted by the Case Manager on 13 February 2014 established that 48 workers out of a total of 90 workers in the proposed bargaining unit were members of the Union, a membership density of 53.33%. The Panel is therefore satisfied that the 10% threshold test is met.

Paragraph 36(1)(b)

32. 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 proposed bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit. It is not a definitive test but one in which the Panel must decide, after weighing up the available evidence, whether it is likely that a majority of the workers in the proposed bargaining unit would support recognition of the Union.

33. The Employer provided names of 90 people in the bargaining unit. The Union queried this stating that they thought the number to be lower and some people who covered two roles may have been counted twice but the Panel had no reason to doubt the accuracy of the list provided by the Employer. The Employer likewise argued that the extent of the Union membership could not be agreed as the only discernable membership was through payroll deductions which revealed only 19 members. As stated in the Union's letter of 7 February 2014 they encourage their members to pay by direct debit and therefore the Panel also had no reason to doubt the accuracy of the list provided by the Union. The Employer places stress on the numbers of members and non-members not signing the declarations, and states the wording of the declaration was misleading. It is not unusual for those collecting petition signatures to target non-members (which the Union stated in its application it did in this instance).

34. The result of the membership and support check showed that there were 90 workers in the bargaining unit of whom 48 were members of the Union, giving a membership level of

53.33%. The check of the declarations showed that they had been signed by 21 non-members 23.33% and if it is assumed all the Union members are likely to support collective bargaining then this would give a support level of 76.66%.

35. The Panel is of the view that membership of a trade union can be taken as a justifiable indicator of an individual's view on support for recognition for collective bargaining purposes. Accordingly, on the strength of the Union's level of membership alone (53.33%) within the proposed bargaining unit, the Panel finds that the majority of 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 and so the test set out in paragraph 36(1)(b) of the Schedule is satisfied.

Decision

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

Panel

Professor John Purcell, Chairman of the Panel

Ms Bronwyn Mckenna

Mr Paul Wyatt

6 March 2014