

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DECISION ON WHETHER THE APPLICATION IS VALID FOLLOWING
AGREEMENT ON THE BARGAINING UNIT

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 both parties notice of receipt of the application on 28 January 2014. The Employer submitted a response to the CAC dated 3 February 2014 which was duly 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, Ms Bronwyn Mckenna and Mr. Paul Wyatt. The Case Manager appointed to support the Panel was Linda Lehan.

3. By a decision dated 6 March 2014, the Panel accepted the Union’s application. The parties then entered a period of negotiation in an attempt to reach agreement on the appropriate bargaining unit.

4. An exchange of e-mails from the Union and Employer dated 10 and 11 April 2014 was received by the CAC which confirmed that a bargaining unit had been agreed. The agreed bargaining unit was described as “Distribution Fleet and Trunkers; Away Fleet; Shunters - Days; Carpet Fleet; Warehouse A - Days; Warehouse A - Nights; Warehouse B - Catnic and any other RDL staff not protected under Hempel Paints TUPE; Garage - Days; Garage - Nights and Garage - Vehicle Wash based at Taff Wells”.

5. In a letter dated 14 April 2014 the Case Manager sought clarification from the Union and the Employer as to whether the agreed bargaining unit differed to that originally proposed by the Union in its formal request for recognition and subsequently in its application to the CAC. In correspondence received from both parties it was confirmed that the agreed bargaining unit differed to that originally proposed by the Union in that the Administration, Flexi Drivers and those within one category (Hempel Paints) who had terms and conditions protected under TUPE legislation were excluded.

Issues

6. Having decided that the agreed bargaining unit differed from that proposed by the Union in its application, the Panel is required by paragraph 20 of Schedule A1 to the Act (the Schedule) to decide whether the Union’s application is valid or invalid within the terms of paragraphs 43 to 50 of the Schedule. The tests that the Panel must consider under these paragraphs are:-

- is there an existing recognition agreement covering any of the workers within the new bargaining unit? (*paragraph 44*)
- is there 10% union membership within the new bargaining unit? (*paragraph 45(a)*)
- are the majority of the workers in the new bargaining unit likely to favour recognition? (*paragraph 45(b)*)

- is there a competing application, from another union, where their proposed bargaining unit covers any workers in the new bargaining unit? (*paragraph 46*)
- has there been a previous application in respect of the new bargaining unit? (*paragraphs 47 to 49*)

In a letter dated 16 April 2014 the Case Manager invited each party to make submissions on these points for consideration by the Panel.

Views of the Union

7. In a letter dated 23 April 2014 the Union stated that it did not believe that there was an existing recognition agreement covering any of the workers within the new bargaining unit. The Union stated that it was not aware of any competing application from another union that covered any worker in the new bargaining unit and there had not been a previous application in respect of the new bargaining unit. The Union submitted that there was around 60% union membership within the new bargaining unit and that a further 21 non-members had signed a declaration stating they were in favour of Unite being recognised for collective bargaining. The Union submitted that the support for recognition for collective bargaining equated to 85% of those in the bargaining unit.

Views of the Employer

8. A lengthy letter dated 25 April 2014 was received from the Employer confirming that it was not aware of any existing recognition agreement covering any of the workers within the bargaining unit and that there was no competing application from any other trade union.

9. The Employer went on to repeat comments previously made in respect of the membership and support check carried out at acceptance stage as described in the CAC decision dated 6 March 2014 (paragraphs 22 – 28). The Employer stated that it was not arguing the 10% membership although did challenge the overall membership

figure. With regard to whether the majority of workers in the new bargaining unit are likely to favour recognition the Employer submitted that the declarations signed by the non-members could not be relied upon as accurate representation of their support as the wording of the declaration was misleading.

The membership and support check

10. To assist in the determination of two of the validity tests specified in the Schedule, namely, whether 10% of the workers in the agreed bargaining unit are members of the union (paragraph 45(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 45(b)), the Panel proposed an independent check of the level of union membership within the agreed bargaining unit. The Employer agreed to supply to the Case Manager a list of the names, date of birth and job titles of workers within the agreed bargaining unit and the Union agreed to supply to the Case Manager a copy of its petition and a list of its paid up members within that unit, including their full name and date of birth. 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 25 April 2014. The information from the Union was received by the CAC on 28 April 2014 and from the Employer on 29 April 2014. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

11. The list supplied by the Employer indicated that there were 73 workers in the agreed bargaining unit. The list of members supplied by the Union contained 47 names. According to the Case Manager's report, the number of Union members in the agreed bargaining unit was 47, a membership level of 64.38%. The Union provided 27 declarations from workers and the check established that 22 (30.14%) of the declarations were from workers in the agreed bargaining unit. One of the declarations was from a member of the Union (representing 1.37% of the bargaining unit) and 21 declarations were from non-members (representing 28.77% of the bargaining unit).

12. A report of the result of the membership check was circulated to the Panel and

the parties on 29 April 2014 and the parties were invited to comment on the result.

Parties' comments on the result of the membership check

13. In an e-mail dated 2 May 2014 the Union stated that due to the high level of membership and the demonstrated support for recognition amongst non-members there appeared to be no need for a ballot.

14. In a letter dated 2 May 2014 the Employer stated that it reiterated previous comments and went on to outline them again.

Considerations

15. The Panel is required to determine whether the Union's application is valid or invalid within the terms of paragraphs 43 to 50 of the Schedule. In reaching its decision the Panel has taken into account the submissions of both parties and all the other evidence before it. On the evidence available, the Panel is satisfied that there is no existing recognition agreement covering any of the workers within the agreed bargaining unit; that there is no competing application from another union; and that there has been no previous application in respect of the agreed bargaining unit. The remaining issues for the Panel to decide are whether the validity criteria contained in paragraph 45(a) and paragraph 45(b) are met.

Paragraph 45(a)

16. Under paragraph 45(a) of the Schedule an application is invalid unless the Panel decides that members of the union constitute at least 10% of the workers in the agreed bargaining unit.

17. The membership check conducted by the Case Manager outlined above showed that 64.38% of the workers in the agreed bargaining unit were members of the Union. As previously stated the Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties. The Panel has therefore decided that members of the union constitute at least 10% of the workers

in the agreed bargaining unit as required by paragraph 45(a) of the Schedule.

Paragraph 45(b)

18. Under paragraph 45(b) of the Schedule, an application is invalid unless the Panel decides that 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.

19. The result of the membership check showed a membership level of 64.38% and the check of the declarations showed that they had been signed by 21 non-members 28.77% and if it is assumed all the Union members are likely to support collective bargaining then this would give a support level of 93.15%

20. The Panel notes the Employer's concern about the wording of the declaration being misleading and that it felt that the declarations signed by the non-members could not be relied upon as accurate representation of their support. The Panel can only make its decision on the evidence available and therefore on the strength of the Union's level of membership alone (64.38%) the Panel has decided that, on the balance of probabilities, 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, as required by paragraph 45(b) of the Schedule.

Decision

21. The decision of the Panel is that the application is valid for the purposes of paragraph 20 of the Schedule and the CAC must proceed with the application.

Panel

Professor John Purcell, Chairman of the Panel

Ms Bronwyn Mckenna

Mr. Paul Wyatt

12 May 2014