

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DECLARATION OF RECOGNITION WITHOUT A BALLOT

The Parties:

Unite the Union

and

Paragon Vehicle Services Ltd (Port of Tyne)

Introduction

1. Unite the Union (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.

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 but for purposes of this decision was Adam Goldstein.

3. By a decision dated 6 August 2014 the Union's application was accepted by the CAC.

4. Following indication from the Employer that the bargaining unit was agreed, the case manager wrote to both parties on 18 August 2014 stating that the Panel understood that the parties had reached agreement that the appropriate bargaining unit was that which was originally proposed by the Union. No objection was received from either party following this.

Issues

5. Paragraph 22 of Schedule A1 to the Act (the Schedule) provides that if the CAC is satisfied that a majority of the workers constituting the bargaining unit are members of the union, it must issue a declaration of recognition under paragraph 22(2) unless any of the three qualifying conditions specified in paragraph 22(4) applies. Paragraph 22(3) requires the CAC to hold a ballot even where it has found that a majority of workers constituting the bargaining unit are members of the union if any of these qualifying conditions is fulfilled. The three qualifying conditions are:

(i) the CAC is satisfied that a ballot should be held in the interests of good industrial relations;

(ii) the CAC has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union (or unions) to conduct collective bargaining on their behalf;

(iii) membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the union (or unions) to conduct collective bargaining on their behalf. Paragraph 22(5) states that “membership evidence” is (a) evidence about the circumstances in which union members became members, or (b) evidence about the length of time for which union members have been members, in a case where the CAC is satisfied that such evidence should be taken into account.

The Union's claim of majority membership

6. In a letter dated 18 August 2014 the Union was asked by the CAC if it claimed majority membership within the bargaining unit, and if so, whether it submitted that it should be recognised without a ballot. The Union claimed, in a letter dated 20 August 2014, that it had majority membership within the bargaining unit and therefore submitted that it should be granted recognition without a ballot.

Employer's submissions on the Union's claim and the qualifying conditions

7. The Union's letter of 18 August 2014 was copied to the Employer under cover of a letter dated 20 August 2014 in which the case manager asked the Employer if had any submissions to make on the Union's claim to majority membership or on the three qualifying conditions (see paragraph 5 above). The Employer responded by a letter dated 26 August 2014. In this letter the Employer noted that the Union had claimed majority membership of those forming the bargaining unit but submitted that it was in the interests of fairness and good industrial relations that a ballot took place in any event. Asked by the case manager if it would like to expand on its reasons for favouring a ballot, the Employer sent an e-mail on 29 August 2014 stating as follows. The Employer had a good relationship with employees and had had no indication that those employees wished the Union to be involved. The Employer held, on that basis, that it would be fair and equitable for a ballot to take place to identify the employees' actual thoughts on the matter. Should it be that employees wished for the Union to be involved, the Employer stated that it would be supportive of the same, knowing that they were working in the interest of all parties.

Union's comments on the Employer's submissions

8. The Employer's letter and e-mail were copied to the Union on 1 September 2014 and the Union was invited to comment upon these. The Union replied by a letter dated 3 September 2014. In this letter the Union stated that it did not agree that a ballot should be held. The Union submitted that a ballot would only lengthen the process and add cost. The Union then turned to the three qualifying conditions as follows:

Membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the union to conduct collective bargaining on their behalf

The Union submitted that it had demonstrated through a CAC membership check that it had the required membership of 81.81%. The Employer had neither commented on this nor produced evidence to support any claim that it was not correct or that the Union membership did not support recognition.

The CAC has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union to conduct collective bargaining on their behalf

The Union stated that no evidence had been produced.

The CAC is satisfied that a ballot should be held in the interests of good industrial relations

The Union submitted that it did not believe that not having a ballot would harm good industrial relations in the future. The Employer had existing union recognition agreements with Unite the Union in other workplaces and areas of the business. For example Unite the Union had recognition in vehicle movement and in vehicle services at Ellesmere Port Vauxhall. The Union further stated that the Employer had not provided any evidence as to why industrial relations would be damaged if ballot was not held.

Considerations

9. The Act requires the Panel to consider whether it is satisfied that the majority of the workers constituting the bargaining unit are members of the Union. If the Panel is satisfied that the majority of the workers constituting the bargaining unit are members of the Union it must then issue a declaration of recognition unless any of the three qualifying conditions in paragraph 22(4) is fulfilled. If the Panel considers that any of them is fulfilled it must give notice to the parties that it intends to arrange for the holding of a secret ballot.

10. In this case, the Union claimed majority membership. The membership density of

81.81%, cited by the Union in its 1 September 2014 letter (see paragraph 8 above), was established in the membership check of 24 July 2014 which was conducted at the acceptance stage. The Employer did not dispute the Union's claim to majority membership. This means that the Panel is now obliged to consider each of the qualifying conditions laid down in paragraph 22(4) of the Schedule.

Condition 22(4)(a) that the Panel is satisfied that a ballot should be held in the interests of good industrial relations

11. The Panel notes the Employer's comments about its good relationship with its employees and that, given the absence of any indication that the relevant workers desired recognition, a ballot would establish the actual position. However, the Panel has not been provided with any evidence that it would be in the interests of good industrial relations to hold a ballot. The Panel is, therefore, not persuaded by the Employer's view. The Panel concludes that this condition is not fulfilled.

Condition 22(4)(b) that the CAC has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union to conduct collective bargaining on their behalf

12. No such evidence has been received and the Panel concludes that this second condition does not apply.

Condition 22(4)(c) membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the union to conduct collective bargaining on their behalf

13. No such evidence has been produced and we conclude that this third condition has not been fulfilled.

Declaration of recognition

14. The Panel is satisfied in accordance with paragraph 22(1)(b) of the Schedule that the majority of the workers in the bargaining unit are members of the Union. The Panel is

satisfied that none of the conditions in paragraph 22(4) of the Schedule are met. Pursuant to paragraph 22(2) of the Schedule, the CAC must issue a declaration that the Union is recognised as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit. The CAC accordingly declares that the Union is recognised by the Employer as entitled to conduct collective bargaining on behalf of the bargaining unit comprising, “All Manual shop floor staff including Supervisors employed at Paragon Vehicle Services Port of Tyne Site.”

Panel

Professor John Purcell, Chairman

Mr Bill Lockie

Ms Virginia Branney

12 September 2014