Case Number: TUR1/852/2013
10 February 2014

CENTRAL ARBITRATION COMMITTEE

TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992

SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION

DECISION ON WHETHER THE APPLICATION IS VALID FOLLOWING DETERMINATION OF THE BARGAINING UNIT

The Parties:

Unite the Union

and

Paragon Labels Ltd

Introduction

1. Unite the Union (the Union) submitted an application to the CAC dated 10 September 2013 that it should be recognised for collective bargaining by Paragon Labels Ltd (the Employer) for a bargaining unit which was clarified as comprising "all hourly paid undertaking the following tasks: non food printers, Make Ready Inks; Plain & Simple; Engineering; Digital; Tagging Machine; Printers Edale; Pre Press; Rewinders; Paper; Warehouse & Despatch, at Paragon Labels, Tenens Way, Boston". The CAC gave both parties notice of receipt of the application on 12 September 2013. The Employer submitted a response to the CAC dated 18 September 2013 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 Mr Chris Chapman, Chairman of the Panel, and, as Members, Mr Paul Gates and Mr Peter Martin. The Case Manager appointed to support the Panel was Nigel Cookson.

3. By a decision dated 14 October 2013 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. No such agreement was reached in the relevant period and so the Panel had to determine the appropriate bargaining unit in this matter. A hearing was held in Derby on 22 November 2013 and in a decision promulgated 10 January 2014 the Panel determined that the appropriate bargaining unit was one comprising all hourly paid workers at the Employer's sites in Enterprise Way, Benner Road and Holland Place (all Spalding), Lealand Way and Tenens Way (both Boston), Norfolk, Cramlington, and Hereford. This bargaining unit differed from that originally proposed by the Union which had been restricted to hourly paid workers at the Tenens Way site in Boston, Lincs.

Issues

4. As the determined 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)*

5. In a letter dated 15 January 2014 the Case Manager invited the parties to make submissions on these points for consideration by the Panel.

Views of the Union

6. In an email dated 21 January 2014 the Union stated that there was no existing recognition agreement covering any workers in the new bargaining unit, nor was there a competing application, nor had there been a previous application in respect of the new bargaining unit.

7. The Union estimated that it had a minimum of 243 members in the new bargaining unit out of an estimated total of 557 workers. Figures had not been retrieved for all depots so this number was likely to rise. This produced a membership figure of 43% which clearly passed the 10% test. The Union asked the Panel to apply its industrial knowledge to conclude that members were highly likely to vote for recognition and that, with access to the workforce, the Union would be able to convince a substantial proportion of non-members to vote for recognition and that a majority of the workforce would therefore be likely to vote for recognition.

Views of the Employer

8. By way of a letter dated 20 January 2014 the Employer confirmed that there was no existing agreement in respect of any of the workers in the new bargaining unit nor had there been a competing application from another trade union in respect of any of the workers in the new bargaining unit. When asked if there had been a previous application in respect of the new bargaining unit the Employer explained that whilst there had been no previous application in respect of the new bargaining unit, the Union had made a separate application in respect of all the hourly paid workers at the Cramlington site. These workers are now included in the new bargaining unit and the Employer had written to the Union inviting it to withdraw its application in respect of the Cramington site on the basis that the appropriate bargaining unit had already been determined. A copy of the Employer's letter to the Union was enclosed for the Panel's information.

9. When asked for its views as to whether there was 10% union membership within the new bargaining unit the Employer said that it did not hold information in respect of its workers' union membership and called upon the Union to provide evidence on this point. As to whether the majority of workers in the new bargaining unit were likely to favour

recognition the Employer said that it operated a number of ways to communicate with its staff including regular newsletters and team briefings, a confidential employee communications survey that runs ever two years and an Employee Communications Forum. On this basis it did not believe that a majority of the workers in the new bargaining unit would be likely to favour recognition and again, called upon the Union to provide evidence to support this point.

The membership 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 new bargaining unit were members of the union (paragraph 45(a)) and whether a majority of the workers in the new 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 new bargaining unit. The Employer agreed to supply to the Case Manager a list of the names, date of birth and job titles of the workers within the new bargaining unit and the Union agreed to supply to the Case Manager a list of the full names and dates of birth of its paid up members within that unit. 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 22 January 2014. The information from both parties was received by the CAC on 27 January 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 548 workers in the bargaining unit as determined by the Panel. The list of members supplied by the Union contained 245 names. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was 237, a membership level of 43.25%.

12. A report of the result of the membership check was circulated to the Panel and the parties on 28 January 2014 and the parties were invited to comment on the result by no later than noon on 3 February 2014.

Parties' comments on the result of the membership check

13. In an email dated 3 February 2014 the Union stated that the membership check showed 43.25% of the bargaining unit to be in membership so the 10% test in paragraph 45(a) was clearly made out. The Union asked the Panel to apply its industrial experience to conclude that paragraph 45(b) was also made out as union members were very likely to vote in favour of recognition and with the benefit of access, the Union was again very likely to be able to persuade a high proportion of non-members to vote for recognition.

14. In a letter also dated 3 February 2014 the Employer acknowledged that the figures in the membership report suggested that more than 10% of the workers in the relevant bargaining unit were members of the Union. As for the remaining test and whether the majority of workers in the new bargaining unit were likely to favour recognition the Employer observed that the density of union membership as suggested by the report, 43.25%, was neither a majority nor, it submitted, sufficiently close to a majority of the relevant bargaining unit for the CAC to find that the application was valid without requiring further evidence from the Union.

15. The Employer did not admit that a majority of the workers in the new bargaining unit would be likely to favour recognition. It believed that redundancies and changes to terms and conditions proposed in the spring of 2013 caused a spike in union membership. However, discussions regarding these proposals with employee representatives resulted in agreement that terms and conditions should remain unchanged demonstrating that the existing mechanism for discussing such matters worked appropriately.

16. Having learned from this process the Employer had recently put in place further mechanisms for actively informing and consulting with its workers and morale within the sites had lifted accordingly. The Employer then set out examples of the mechanisms that now operated within the business. It believed that these measures were put in place after the majority of the union members had already joined the Union and considered that the main reason why workers had become members may not apply now and that its workers' feelings about union recognition could have changed in light of these new measures being introduced.

17. The Employer also submitted that those members who were not currently members of the Union would not vote in favour of recognition. On this basis the Employer considered that the majority of the workers in the relevant bargaining unit were unlikely to favour recognition of the Union.

Considerations

18. 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 determined bargaining unit; that there is no competing application from another union; and that there has been no previous application in respect of the determined bargaining unit, save for the application by Unite in respect of the Cramlington site, but which application has now been withdrawn. 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)

19. 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.

20. The membership check conducted by the Case Manager (described in paragraphs 10-11 above) showed that 43.25% of the workers in the determined 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 determined bargaining unit as required by paragraph 45(a) of the Schedule.

Paragraph 45(b)

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

decides that a majority of the workers constituting the new bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit. As set out above, the level of Union membership in the determined bargaining unit has been established as being 43.25%. The Union did not provide any additional evidence of support for recognition, such as a petition, but relied upon its level of membership alone. It urged the Panel to apply its industrial experience to conclude that this test was satisfied explaining that its members were very likely to vote in favour of recognition and that with the benefit of access, the Union would very likely be able to persuade a high proportion of non-members to vote for recognition.

22. Contrariwise, the Employer argued that 43.25% was neither a majority nor sufficiently close enough to a majority for the CAC to find that the application was valid without requiring further evidence. It believed that the steps it had taken since the spring of 2013 to actively engage with the workers had lifted morale to such an extent that it now believed that workers who may well have been supportive of the Union at one stage, may well now take an opposing stance.

23. In addressing the requirements of paragraph 45(b) the Panel would again remind the parties that a test such as this is not an actual test of support, such as that evidenced through the holding of a ballot, but rather a test of "likely" support. In our decision accepting the application promulgated 16 October 2013, when commenting on a similar test (in paragraph 36(1)(b)) one of the points we made was that the test of likely support, by its very nature was, speculative rather than definitive and these words also hold true for this test under paragraph 45(b). We also made the point in this decision that, in the absence of evidence to the contrary, union membership provides a legitimate indicator of the views of the workers in the bargaining unit, proposed at that stage but now determined, as to whether they would be likely to favour recognition of the Union. We believe that these considerations apply equally to the test under paragraph 45(b) as they do to the test under paragraph 36(1)(b). Having taken the pro-active step of joining the Union and committing to paying subscriptions, it seems to us that, on balance, these workers will be in favour of the Union conducting collective bargaining on their behalf. Whilst the Employer disagrees with this view, it has not put forward any evidence to the contrary in support of its assertion that the steps it has taken since 2013 have quenched the thirst for recognition within the company.

24. Turning to the figures, what is clear is that the determined bargaining unit is much larger than the one originally proposed by the Union, it having risen from 88 workers to 548 workers, and membership density has fallen from 55.68% in the proposed bargaining unit, that is a total of 49 members, to 43.25%, a total of 237 members, in the new. On the basis that we take the view that Union members would, more likely than not, support recognition of the Union, the question we must ask ourselves is whether there could be sufficient non-member support within the pool of non-members in the determined bargaining unit so that it would be likely that the Union would have the support of the majority.

25. The total number of non-members within the new bargaining unit, according to our calculations, is 311, i.e. the number of workers less the number of Union members. For the Union to have the support of the majority, it would need 275 workers, i.e. 50% plus one, to be in favour of it being recognised. 275 less 237, the number of members, gives a figure of 38. How likely is it therefore that 38 non-members out of a pool of 311 would favour recognition of the Union? It is the Panel's experience that there will be a number of workers who are not members of the Union who would be likely to favour recognition of the Union and we are of the view that, on the balance of probabilities, it is more likely than not that 38 workers out of a total pool of 311 would favour recognition of the Union.

26. Accordingly, on the basis of the evidence before it, the Panel has decided that a majority of the workers in the determined bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit and the test in paragraph 45(b) of the Schedule is satisfied.

Decision

27. For the reasons given above, the Panel's decision is that the application is not invalid and that the CAC is proceeding with the application.

Panel

Mr Chris Chapman, Chairman of the Panel

Mr Paul Gates

Mr Peter Martin

10 February 2014