

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:

RMT

and

J W Filshill Ltd

Introduction

1. RMT (the Union) submitted an application to the CAC that it should be recognised for collective bargaining by J W Filshill Ltd (the Employer) in respect of a bargaining unit comprising “All Drivers and Warehouse Staff, excluding Supervisory and Management Grades” located at Hillington Road, Glasgow, GS2 4HE. The application was received by the CAC on 1 December 2014. The CAC gave both parties notice of receipt of the application on 2 December 2014. The Employer submitted a response to the CAC dated 4 December 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 Mr Chris Chapman, chairing the Panel, and, as Members, Mrs Maureen Shaw and Mr Sandy Boyle. The Case Manager appointed to support the Panel was Linda Lehan.

3. By a decision dated 30 December 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 but no agreement was reached. The parties were invited to supply the Panel with, and to exchange, written submissions ahead of a hearing to determine the appropriate bargaining unit. However, at the hearing in Glasgow on 16 February 2015 after the Union had completed its submissions and the Employer had applied to admit additional evidence it became clear that there was a degree of confusion on the part of the Union and the Panel as to the composition of its proposed bargaining unit and so the hearing was adjourned to enable the Union to seek clarification in the light of the additional evidence. The hearing was relisted and held in Glasgow on 30 March 2015. After due consideration of the parties' submissions, both written and oral, the Panel decided that the appropriate bargaining unit in this matter should consist of "all staff employed in Transport, Picking, Tobacco and Warehouse at the Hillington site with the exception of senior managers, managers and assistant managers". This bargaining unit differed to that proposed by the Union by the inclusion of workers who had the exact same job titles within Transport and Warehouse at the Hillington site who the Union sought to exclude.

4. As the determined bargaining unit differed from that proposed by the Union, the Panel is required by paragraph 20 of the Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992 (the Schedule) to determine whether the Union's application is valid or invalid within the terms of paragraphs 43 to 50 of the Schedule.

Issues

5. Paragraph 20 of the Schedule states that where an application has, as in the present case, been accepted under paragraph 12 and the CAC has determined an appropriate bargaining unit that differs from the proposed bargaining unit then the CAC must, within the decision period, decide whether the application is 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*)

6. In letters dated 17 and 23 April 2015 both parties were asked for their views as to whether the application remained valid following the determination of the bargaining unit.

Views of the Union

7. In a letter dated 22 April 2015 the Union confirmed that they did not believe there was an existing recognition agreement covering the workers within the new bargaining unit. The Union stated that they were not aware of any competing application from another union that covered any worker in the determined bargaining unit and they were not aware of any previous application in respect of the new bargaining unit.

8. The Union submitted that the previously submitted membership lists demonstrated more than 10% membership in the new bargaining unit and that the previously submitted petition supporting RMT recognition at JW Filshill Ltd also demonstrated majority support within the new bargaining unit.

Views of the Employer

9. In a letter dated 22 April 2015 and an e-mail 29 April 2015 the Employer stated that there was no existing recognition agreement covering any of the workers within the bargaining unit.

10. As to whether there was 10% Union membership within the new bargaining unit the Employer stated that, although unable to verify, they were not aware numbers had increased since the Union's application of 28 November 2014. The Employer stated that they upheld the legal and personal right for their staff to join a Union and did not track union membership so therefore were unable to establish how many staff were members of the Union. The Employer stated that they had been informed by 2 staff members that they had left the Union cancelling their subscriptions and both staff members had signed letters stating they did not support recognition which the Employer believed showed that individual union membership was not necessarily indicative of support for union recognition/collective bargaining.

11. As to whether the majority of workers in the new bargaining unit were likely to favour recognition the Employer stated a number of staff had changed their views since the Union's petition was carried out some 5 months ago. The Employer stated that based on comments from their staff, they believed only 20% of the staff in the new bargaining unit supported union recognition, 34% were not in favour of union recognition, 32% undecided and 6% declined not to comment mainly due to fear of repercussion from union colleagues. The Employer confirmed that they had individual signed letters from staff members stating that they did not favour recognition and 3 letters from staff stating that they had signed a Union petition in favour of recognition and wished that retracted. The Employer stated, based on how their staff had responded during discussions, it believed that the majority of staff were unlikely to favour union recognition.

12. The Employer confirmed that there was no competing application from another Union where their proposed bargaining unit covered any workers in the new bargaining unit and that there had not been a previous application in respect of the new bargaining unit.

Case Manager's membership and support check

13. To assist the determination of the two admissibility tests under paragraph 45 (a) and 45 (b) of Schedule A1, namely whether 10% of the workers in the determined bargaining unit are members of the Union and whether a majority of the workers in this bargaining unit are likely to favour recognition of the Union, the Panel instructed that the Case Manager carry out checks on the level of union membership within the determined bargaining unit and the number of workers who had indicated support for recognition of the Union for the purposes of collective bargaining.

14. The parties agreed that the Employer would supply, to the Case Manager, a list of the names of workers within the determined bargaining unit and a copy of its evidence that the workers within that unit did not support Union recognition and that the Union would supply, to the Case Manager, a list of its union members within that unit and a copy of its evidence in support of the Union to enable a comparison to be undertaken. The Union provided a list of 42 union members in the determined bargaining unit, and a petition consisting of 68 signatures. The Employer provided a list of 112 workers, and a petition which was in the form of letters signed by 34 workers. The information from the Union was received by the CAC on 6 May 2015 and from the Employer on 8 May 2015. 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 6 May 2015.

15. The result of the membership and support check showed that there were 112 workers in the bargaining unit of whom 42 were members of the Union, giving a membership level of 37.5%. The check on the Union's petition showed that it had been signed by 68 workers in the determined bargaining unit and the check clarified that 1 name did not appear on the Employer's list. Of the 67 (59.82%) who had signed the Union's petition there were 39 (34.82%) union members and 28 (25%) non-union member workers in the bargaining unit.

16. A comparison was made of the number of union members who had signed the Employer's petition against the number of workers in the bargaining unit and the number of workers in the bargaining unit who had signed both the Employer's and the Union's petitions. 34 workers had signed the Employer's petition of which 1 name did not appear on the Employer's list. Of the remaining 33 (29.46%) workers in the determined bargaining unit 31 (27.67%) were non union members and 2 (1.79%) were union members. The number of workers who had signed both the Employer's petition and Union's petition was 5 (4.46%). Of those 2 (1.79%) were union members in the determined bargaining unit and 3 (2.67%) were non-union members.

17. The Employer had conducted its own poll and enclosed a copy of the "Voting Poll work sheets" which contained 6 sheets and were conducted by Managers and Assistant Managers. There were 106 names on the sheets and the results showed that 33 were not in favour of collective bargaining, 37 were undecided and 21 in favour of collective bargaining. There was no comment by 3 names and by the remaining 12 names it stated either no comment, on holiday or unavailable.

18. The report of the result from the membership and support checks was circulated to the Panel and the parties on 14 May 2015. Both parties were then invited to supply comments relating to the validity tests and the membership check report.

Union's comments

19. Commenting on the membership check the Union stated that it believed that the figures shown confirmed majority support of the workers in the bargaining unit for RMT recognition for Collective Bargaining.

20. The Union raised two queries regarding the number of workers in the bargaining unit as identified in the count. Point one being that the Employer identified 112 workers in the bargaining unit yet only had 106 names in its poll and point two they believed that

the count of 112 workers included Stock/Line Managers who the Union stated were not in the bargaining unit which may have had some bearing on point one.

Employer's comments

21. The Employer stated that in respect of the 2 union members and 3 non union members who had submitted letters to them and also signed the Union's petition that showed 5 individuals actively wished to express they were "not in favour" even though they had signed the RMT petition that they were "in favour".

22. The Employer stated that it had concerns that a form of interference occurred during the petition it conducted from certain RMT members. The Employer also stated that they had been informed that whilst the petition was being carried out by the Union some staff felt uncomfortable and signed "in favour" only to avoid possible conflict occurring. Finally the Employer stated that they noted that there was a low conversion from RMT "petition support signatures" to becoming members over the last 6 months – an increase of 4.

Employer's additional comments

23. The respective comments were cross copied to the parties on 20 May 2015 and the Employer was asked to clarify the number of workers in the bargaining unit as the list supplied by them for the membership check consisted of 112 workers whereas the poll conducted only showed 106 workers. In an e-mail received from the Employer dated 22 May 2015 the Employer confirmed that one of the "opinion poll" sheets containing 5 staff was mistakenly not included but could be submitted if requested and in error a newly appointed Transport LGV Driver had been excluded as he was unavailable to provide an opinion. In respect of the Stock Managers the Employer stated that they were included in the determined bargaining unit and pointed out paragraph 31 of the CAC determination of the bargaining unit decision dated 17 April 2015.

24. In a letter dated 26 May 2015 the Employer's comments were cross copied to the Union and it was confirmed to the Union that, as set out in Paragraph 37 of the bargaining unit decision, the 5 stock managers were included in the determined bargaining unit and therefore the list of workers submitted by the Employer for the purpose of the membership check was correct.

Considerations

25. The Panel is satisfied on the evidence available that the application is valid in terms of the tests laid down in paragraphs 44 and 46 to 49 of the Schedule, namely that there is no existing recognition agreement in force, that there is no competing application and that there has been no previous CAC application in respect of the new bargaining unit. The remaining tests before the Panel are whether, in accordance with paragraphs 45(a) and (b) of the Schedule, 10% of the workers constituting the new bargaining unit are members of the union and whether 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.

Paragraph 45(a)

26. With regard to the first test whether the Union members constitute at least 10% of the workers in the bargaining unit, the Case Manager's check established that there was a membership level of 37.5% and this was not challenged by the Employer at any point in its representations to the Panel. The Panel is therefore satisfied that the test set out in paragraph 45(a) of the Schedule is met and that at least 10% of the workers constituting the new bargaining unit are members of the Union.

Paragraph 45(b)

27. The second issue for the Panel to consider is whether a majority of the workers constituting the bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit.

28. The Case Manager's check revealed that the Union's petition showed some 59.82% of the workers favoured the Union's claim for recognition of which 28 (25%) were non union members. The letters submitted by the Employer showed that some 33 (29.46%) of the workers did not favour recognition by the Union of which only 2 (1.79%) were union members. 5 workers (4.46% of the bargaining unit) had signed both a letter for the Employer and the Union's petition which included the 2 union members. If one discounted from the Union's petition all the workers who had also sent signed letters to the Employer the Union would still have a 55.36% majority of workers likely to support recognition. Taking the level of Union membership together with the number of non union members who signed the Union's petition also provides a figure of a 62.5% majority likely to support recognition.

29. The test under consideration calls upon the Panel to make an assessment, based on the evidence presented, as to whether a majority of the workers would be **likely** to favour recognition of the Union (emphasis added). Taking all the above in account the Panel is satisfied that the Union's petition alone provides sufficient evidence that the majority of workers constituting the relevant bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit and that the test set out in paragraph 45(b) of the Schedule is met.

Decision

30. The decision of the Panel is that the application is valid for the purposes of paragraph 20 of the Schedule and the CAC will therefore proceed with the application.

Panel

Mr Chris Chapman, Chairman of the Panel

Mrs Maureen Shaw

Mr Sandy Boyle

01 June 2015