

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:

Bakers Food and Allied Workers Union
(BFAWU)

and

Fyffes Group Limited

Introduction

1. The Bakers Food and Allied Workers Union (the Union) submitted an application to the CAC on 6 May 2015 that it should be recognised for collective bargaining by Fyffes Group Limited (the Employer) for a bargaining unit comprising “all hourly paid workers employed at Cross Point Business Park” adding “We do not seek recognition in relation to managers”. Cross Point Business Park is the Employer’s site in Coventry and to avoid confusion it is referred to as Cross Point Business Park in this decision. The CAC gave the parties notice of receipt of the application on 12 May 2015. The Employer submitted a response dated 15 May 2015 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 Her Honour Judge Stacey, Chairman of the Panel, and, as Members, Mr Len Aspell and Mr Malcolm Wing. The Case Manager appointed to support the Panel was Nigel Cookson.

3. By a decision dated 12 June 2015 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. The hearing was held in Birmingham on 17 July 2015 and, after due consideration of the parties' submissions, the Panel decided, in a decision promulgated 31 July 2015, that the appropriate bargaining unit in this matter should consist of workers in the following categories:- QA Assistant; Production Operative; Packer; FLT/Intake; Maintenance; Label Printer; LGV Driver; Despatch Operative and Cleaner. This bargaining unit included all QA Assistants and Label Printers irrespective of whether they were weekly or monthly paid. This bargaining unit differed to that proposed by the Union by the inclusion of the monthly paid QA Assistants and Label Printers.

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 11 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 31 July 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 4 August 2015 the Union confirmed that there was no existing recognition agreement covering any of the workers within the new bargaining unit. There was 10% membership within the new bargaining unit. As set out in the CAC decision dated 12 June 2015, the original membership check identified that there were 82 members of the Union within the original propose bargaining unit, which comprised 170 workers at that time. This was equivalent to a membership level of 48.24% of the original bargaining unit. The addition of five more posts to the bargaining unit would not significantly reduce this percentage figure and may increase it. Even if none of the five post holders added to the bargaining unit were members, there would still be a membership level of 46.86%.

8. The majority of the workers in the bargaining unit were likely to favour recognition. As set out in the CAC decision dated 12 June 2015, 109 workers out of the 170 workers in the original bargaining unit signed a petition to indicate their support for collective bargaining by the Union with the Employer. This was equivalent to 64.12% of the original bargaining unit. The addition of five new posts to the bargaining unit would not significantly reduce this percentage figure and may increase it. Even if none of the five post holders added to the bargaining unit favoured recognition, 62.29% of those in the bargaining unit would still be in favour of recognition.

9. There had been no previous application in respect of the new bargaining unit.

10. The Union submitted that this was a case where, in applying the validity tests, it would be appropriate for the CAC to rely on the original evidence, in accordance with the approach adopted in *GMB & Gleason Works Ltd (TUR1/390/04)*. However, in relation to the question of whether or not there should be a ballot, the Union would request that the CAC carry out a fresh confidential membership check. The original membership check showed that the membership of the original bargaining unit was 48.24%. The Employer's written submission dated 9 July 2015 stated that there were 168 members in the original bargaining unit at that time. If all of the five post holders added to the bargaining unit were union members then there would be 87 members out of 173, which was equivalent to 50.29%. Further, the Union submitted that some new members had recently joined the Union.

Views of the Employer

11. In an email dated 3 August 2015 the Employer stated that its position remained as previously stated. The bargaining unit would include only five extra staff which did not affect the Employer's earlier responses.

12. The following points are confirmed:-

- There was no existing recognition agreement covering any of the workers within the new bargaining unit.
- It was accepted that the number of the members of the Union constituted at least 10% of the workers constituting the relevant bargaining unit.
- There was no competing application, from another union, where their proposed bargaining unit covered any workers in the new bargaining unit.
- There had not been a previous application in respect of the new bargaining unit.

13. However in relation to the question as to whether the majority of the workers in the new bargaining unit were likely to favour recognition the Employer's position remained that it was not accepted that the majority of the workers constituting the relevant bargaining unit were in favour of the Employer recognising the Union to conduct collective bargaining on behalf of the

determined bargaining unit.

14. As set out in greater detail in previous correspondence and at the earlier hearing in this matter, the Employer's understanding of the situation was as follows:-

15. There was no history of support for the Union within the business. As far as the Employer was aware, union membership was very recent and was the result of an aggressive recruitment campaign. This campaign and the manner of recruitment of members had caused the Employer concern and had already proved divisive within the business.

16. The Employer did not believe that the workers had been advised that if the Union was recognised their union fees would increase and believed that if members had been fully informed of this, it would affect both membership numbers and support for recognition.

17. It was the Employer's understanding from comments made by workers that a number of those individuals who had signed the petition in support of the Union did not fully understand the effect of their signature. A number of individuals who had signed had done so as an act of support of co-workers and friends rather than due to an active support of the Union.

18. It was the belief of the Employer that the petition did not portray a genuine reflection of the level of support for Union recognition.

19. For the reasons stated above, the Employer did not believe that the Union had the necessary majority of workers likely to favour recognition.

Considerations

20. 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. As stated in paragraph 3 above, the determined bargaining unit differed only marginally to that originally proposed by the Union by the inclusion of the monthly paid QA Assistants and Label Printers of which there were five workers in these roles at the time the Employer provided its submissions ahead of the hearing to determine the appropriate bargaining unit and we have not been informed of any changes since.

Paragraph 45(a)

21. 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 conducted on 29 May 2015 as part of the acceptance stage of the statutory process, established that there was a membership level of 48.24% based on a 170 strong bargaining unit. As pointed out by the Union, in its submissions dated 9 July 2015 ahead of the hearing to determine the appropriate bargaining unit, the Employer produced a table showing that there were 168 members in the original bargaining unit at that time¹. Even if we were to assume that all of the five post holders added to the bargaining unit were not in membership then there would be 82 members out of a bargaining unit totalling 173 workers, which would be equivalent to 47.4%. The Employer, when given the opportunity to comment on this test accepted that the number of members constituted at least 10% of the workers constituting the relevant bargaining unit. 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)

22. The second issue for the Panel to consider is whether a majority of the workers constituting the new bargaining unit would be likely to favour recognition of the Union as

¹ This table is reproduced in para 17 of our decision on the appropriate bargaining unit promulgated 31 July 2015.

entitled to conduct collective bargaining on behalf of the bargaining unit.

23. The test under consideration here requires 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. It is by its very nature, a somewhat speculative exercise, based on the evidence put forward by the parties and the Panel's collective experience in industrial relations matters.

24. As explained above, the change between the determined and proposed bargaining units is relatively minor – the addition of five monthly paid workers – which increases the number of workers from 168 to 173. At the time of the Case Manager's check of union membership and support for recognition at the acceptance stage, some 64.12% of the workers in the proposed bargaining unit had signed the Union's petition in favour of the Union's claim for recognition. This figure would be only marginally different if based on a 173 strong bargaining unit rather than a 168 strong unit but not such that it would significantly change the result.

25. In its submissions the Employer repeated a number of concerns previously raised at the acceptance stage and which were addressed in detail in the acceptance decision. However the Employer did not point to any significant changes that had occurred beyond the minimal change to the bargaining unit decided by the Panel, and on the basis of those numbers and previous statistics, that appear to remain valid, the considerations remain as before.

26. Taking all the above in account, the Panel is satisfied that the Union's petition and the density of membership within the determined bargaining unit, 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 in the minimally changed bargaining unit as determined by the Panel and that the test set out in paragraph 45(b) of the Schedule is met.

Decision

27. 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

Her Honour Judge Stacey, Chairman of the Panel

Mr Len Aspell

Mr Malcolm Wing

10 August 2015