

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DECISION ON WHETHER TO ACCEPT THE APPLICATION

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.

Issues which the Panel has to determine

3. The Panel is required by paragraph 15 of Schedule A1 to the Act (the Schedule) to decide whether the Union's application to the CAC is valid within the terms of paragraphs 5 to 9; is made in accordance with paragraphs 11 or 12; is admissible within the terms of paragraphs 33 to 42 of the Schedule; and therefore should be accepted.

The Union's application

4. In its application the Union said that it had made its formal request for recognition to the Employer on 13 March 2015 and the Employer had responded on 30 March 2015 rejecting the request. Copies of both letters were attached to the application.

5. The Union stated that there were 150 workers employed by the Employer and that 140 of these were within the proposed bargaining unit and that the Employer did not agree either the proposed bargaining unit or the number of workers in the proposed bargaining unit. According to the Union, 72 of the workers in the proposed bargaining unit were in membership and, when asked to provide evidence that a majority of the workers were likely to support recognition for collective bargaining, the Union said that it would prefer to provide this information on a confidential basis.

6. The Union explained that the proposed bargaining unit had been selected on the basis that the majority of the workforce at Cross Point Business Park had joined the Union and that the bargaining unit selected was compatible with effective management.

7. Finally, the Union confirmed there was no existing agreement that covered any of the workers in the proposed bargaining unit nor had the Union made a previous application in respect of the proposed bargaining unit or a similar bargaining unit.

The Employer's response to the Union's application

8. In its response to the Union's application the Employer stated that it had the Union's formal request for recognition on 16 March 2015 and that it had declined the request.

9. The Employer stated that it had received a copy of the application form direct from the Union on 6 May 2015. It then confirmed that the parties had not agreed a bargaining unit either before it had received a copy of the application from the Union, or since. The Employer disagreed with the proposed bargaining unit since it lacked clarity explaining in its covering letter to the response that it had a number of workers who were neither managers nor hourly paid and it was not certain whether the Union intended these workers to be included in its proposed bargaining unit or not.

10. The Employer confirmed that it employed a total of 220 workers at Cross Point Business Park and that six of these were managers. There were 170 hourly paid workers and 44 monthly paid workers, including the six managers. The Employer enclosed with its response a list of the workers' payroll numbers as evidence and said that it would supply the CAC with names should they be requested at a later date.

11. As for the Union's estimate of membership in the proposed bargaining unit the Employer again submitted that it may well be that the Union had included agency workers in its estimated membership. As these agency workers were not employed by the Employer they should not be counted towards the numbers in respect of this application. The Employer also understood that the Union was offering initial membership for a fee of £4.90 per month rising, after three months, to £12.35 per month. Workers may have already decided not to continue membership when the fee increase was applied. As such, current membership may not be representative of membership numbers in the long term.

12. As for whether a majority of the workers in the bargaining unit were likely to support recognition the Employer explained that the Union had only been involved with the workers at the Cross Point Business Park in the last three to six months and during that time, its officials had undertaken regular and persistent campaigning of the workers outside the depot. The result being that the majority of members of the Union were very recent members and did not have a long or well established relationship with the Union and so were unlikely to want the Union to collectively bargaining on their behalf.

13. Further anecdotal evidence suggested that membership was considerably lower than the Union had suggested in its application the Employer submitted supported by the reported low turn out at recent meetings held by the Union and which was certainly not representative

of the membership numbers suggested by the Union in its application. For example, the Employer had been informed that there were a maximum 40 attendees at the meeting held on 22 April 2015.

14. Finally, the Employer when asked if it was aware of any previous application by this or another union for the same or similar bargaining unit the Employer answered “N/A”. The Employer also confirmed that there was no existing agreement in force covering the workers in the proposed bargaining unit.

15. The Employer's response was copied to the Union on 20 May 2015 and the Panel invited its comments.

Union’s comments on the Employer’s Response

16. In an email dated 20 May 2015 the Union, explained that it was seeking a bargaining unit comprising all hourly paid shop floor workers. The figures it had given were guidelines based upon the minimum information it had obtained from its members as the Employer had declined voluntary recognition.

17. The Union believed the duration its members had been in membership was irrelevant as it still had a duty to represent its members regardless of when they first joined. Members in the proposed bargaining unit had requested the Union to represent them on their terms and conditions. Membership fees were as follows: £4.94 monthly fee or £1.12 weekly fee. There was no three months increment clause. The fee details were mentioned on the membership forms. The Employer’s views were based on personal assumptions and not facts and the Union was not obliged to disclose the membership names due to confidentiality.

18. The Union had held a number of meetings with workers with approximately 80 workers having attended the initial meeting. On 22 April 2015 approximately 40 workers attended which was a significant and high proportion of the 170 hourly paid workers which spoke for itself in terms of the workers interest in the Union. Finally, the Union confirmed that it had also recruited agency staff as the Union was a non-discriminating organisation.

The membership check

19. To assist the determination of two of the admissibility criteria specified in the Schedule, namely, whether 10% of the workers in the proposed bargaining unit are members of the Union (paragraph 36(1)(a)) and whether a majority of the workers in the proposed bargaining unit are likely to support recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit (paragraph 36(1)(b)), the Panel proposed independent checks of the level of union membership in the proposed bargaining unit and the number of workers in the unit who had signed the Union's petition in support of recognition. It was agreed with the parties that the Employer would supply to the Case Manager a list of the names and job titles of workers within the proposed bargaining unit, and that the Union would supply to the Case Manager a list of its members within that unit and its petition to enable comparisons to be undertaken. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and the petition 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 May 2015. The information from both the Union and the Employer was received by the CAC on 26 May 2015. The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

20. The Union provided a spreadsheet with the details of 106 members and a petition with 158 names/signatures spread over 8 pages. The petition, with signatures dated between 1 March 2015 and 10 May 2015, carried the following proposition:

We would like the Bakers Food Allied Workers Union to represent us on all terms conditions at Fyffes Group Limited, Richardson Way, Cross Point Business Park, Coventry, CV2 2TA. (sic)

21. The Employer provided a list with the details of 170 workers with the following job titles:

QA Assistant, Production Operative, Packer, FLT/Intake, Maintenance, Label Printer, LGV Driver, Despatch Operative and Cleaner

In its covering email the Employer confirmed that its list represented its weekly/hourly paid employees and went on to add:

Could I also please take this opportunity to refer to our letter to you, dated 15 May 2015, and the email in response from BFAWU, dated 20 May 2015, that you copied to us and the matter of BFAWU's membership fees. Whilst BFAWU have said that membership fees are £4.94 per month with no 3 month increment clause, the BFAWU website (www.bfawu.org/join<<http://www.bfawu.org/join>>) state that full membership fees are £12.35 per month. Hence, our understanding that membership fees do rise after an initial period of time.

22. The membership check established that there were 82 members of the Union within the proposed bargaining unit; a membership level of 48.24%. The result of the comparison of the Union's petition with the Employer's list of workers revealed that a total of 109 workers had indicated that they supported the Union's application for recognition, which corresponds to 64.12% of the proposed bargaining unit. Sixty-six of the 109 were union members (38.82%) and 43 were non-members (25.39%).

23. The report of the result of the check of the level of Union membership and support for recognition was circulated to the Panel and the parties on 29 May 2015 and the parties were duly invited to comment on the results thereof.

Union's comments on the result of the membership check

24. In an email dated 4 June 2015 the Union sought a breakdown of the 170 weekly/hourly paid workers by the job titles given by the Employer. The Employer had also raised a question regarding membership contributions. The Panel did not consider it necessary to delay its acceptance decision making process for this line of enquiry to be pursued. As per its email of 20 May 2015, the Union stated that the fees were fixed at £4.85¹ per month or £1.12 per week for unrecognised sites and as the Employer was an unrecognised site the membership contribution was £4.85 per month.

Employer's comments on the result of the membership check

25. In a letter dated 4 June 2015 the Employer said that it accepted that the number of Union members constituted at least 10% of the workers in the relevant bargaining unit. In relation to paragraph 36(1)(b), the Employer remained of the view that the majority of the

¹ The Panel noted the slight discrepancy on the figures provided by the Union. The minor discrepancy however does not affect the Panel's decision, whichever of the two figures is accurate. It is not a material difference.

workers constituting the proposed bargaining unit were not likely to be in favour of recognising the Union to conduct collective bargaining on their behalf. Although the Union had provided a petition it was the Employer's belief that a number of the individuals that signed the petition had done so as an act of support of co-workers rather than active support of the Union. This, so the Employer argued, was demonstrated by the fact that 43 of those signing who were employees of the business but were not Union members and of those who were both employees and Union only 66 of the 82 appeared to be in favour of the Union.

26. The Employer had not had any indication from the workers that there was this level of support for recognition and the Employer was struggling to understand the level of support purportedly demonstrated by the petition. It was the Employer's belief that the petition did not necessarily portray a genuine reflection of the level of support necessary for the Union to be recognised. The Employer reiterated the point in a further email of 5 June 2015.

Considerations

27. In deciding whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 3 of this decision are satisfied. The Panel has considered all the evidence submitted by the parties in reaching its decision. The Panel is satisfied that the Union made a valid request to the Employer within the terms specified in paragraphs 5 to 9 of the Schedule to recognise it for collective bargaining in respect of the bargaining unit as described in paragraph 1 of this decision in its letter of 13 March 2015. The request was made in writing, identified the Union, the proposed bargaining unit, and stated that it (the request) was made under the Schedule.

28. The Panel is also satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 35 and 37 to 42 and that it was made in accordance with paragraph 11 of the Schedule in that, before the expiry of the first period of 10 working days, the Employer informed the Union that it did not accept the Union's request without indicating a willingness to negotiate. The remaining issues for the Panel to address are whether the admissibility criteria set out in paragraph 36(1) of the Schedule are met.

Paragraph 36(1)(a)

29. In accordance with paragraph 36(1)(a) of the Schedule the Panel must determine whether or not members of the Union constitute at least 10% of the workers in the Union's proposed bargaining unit. The check of membership and support for recognition conducted on 29 May 2015 established that membership of the Union stood at 48.24%. The Employer, commenting on the results set out in the Case Manager's report, accepted that the number of Union members did constitute at least 10% of the workers in the relevant bargaining unit. The Panel is therefore satisfied that the 10% threshold test is met.

Paragraph 36(1)(b)

30. Paragraph 36(1)(b) of the Schedule provides that, for an application to be admissible, the CAC must be satisfied that a majority of the workers constituting the proposed bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit. The Panel believes that it is important to stress at this juncture that it has to decide **likely**, not actual, majority support for recognition, and to do so within a reasonably short time frame. As such it is a question of looking at hypothetical support and is necessarily and by definition a somewhat speculative exercise, based on the information available, and in light of the Panel's expertise and experience in industrial relations in accordance with their appointment as members of the CAC

31. The Union relied on its membership level within the proposed bargaining unit, which has been established as being 48.24%, and a petition signed by 109 workers out of proposed bargaining unit totalling 170 workers, which equates to 64.12% of the proposed bargaining unit, as evidence that this test was satisfied. The Panel has had no evidence to go behind the stated desire of the signatories to the petition that they seek collective bargaining by the Union with their Employer. There is no evidence to support the Employer's concern that the petition may have been signed out of loyalty to colleagues.

32. The Employer, when asked whether it considered that a majority of workers were likely to support recognition of the Union, commented that it believed a number of the signatories had signed the petition to show support for their co-workers rather than signing it to show active support of the Union. The Employer claimed that this was evidenced by the

fact that only 43 non-members and 66 members out of a total of 170 had signed the Union's petition. Earlier, the Employer had also questioned whether members had been recruited on reduced membership fees and whether or not membership levels would change once the fees were increased after 3 months.

33. The Union had responded to the Employer's question as to membership fee increases and had said that the fee currently being paid was the rate applicable to an unrecognised site and that whilst paying the reduced rate the members were still classed as full members and so entitled to all the benefits provided by the Union. Clearly, from what the Union has said, the rate will not therefore increase after three months, but will increase if recognition is gained. It is undisputed however that a considerable percentage of the workers in the proposed bargaining unit are paying the Union contributions absent recognition, and this is not a case where, for example, free membership is given prior to recognition, as occurs in some cases.

34. Having considered the documents submitted by the parties, the Panel is of the view that the density of Union membership within the proposed bargaining unit when taken together with the evidence of support for recognition, as demonstrated by the petition, is, on balance, persuasive evidence that a majority of the workers would be likely to support recognition of the Union. Although the Employer commented that workers had signed the petition as an act of support for their co-workers, rather than active support of the Union, this amounted to assertion and opinion rather than empirical evidence.

35. On the basis of the information put before the Panel which shows a membership level of just less than half of the total number of workers in the proposed bargaining unit when taken together with a petition signed by 64% of the workers in the proposed bargaining unit, the Panel is satisfied that the majority of workers in the proposed bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit and so the test set out in paragraph 36(1)(b) of the Schedule is satisfied.

Decision

36. The Panel is satisfied that the application is valid within the terms of paragraphs 5 to 9, is made in accordance to with paragraph 11 and is admissible within the terms of

paragraphs 33 to 42 of the Schedule. The application is therefore accepted by the CAC.

Panel

Her Honour Judge Stacey, Chairman of the Panel

Mr Len Aspell

Mr Malcolm Wing

12 June 2015