

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

The Parties:

National Union of Journalists

NUJ

and

Newsquest Media (Southern) Limited

Introduction

1. The NUJ (the Union) submitted an application to the CAC dated 12 November 2015 that they should be recognised for collective bargaining purposes by Newsquest Media (Southern) Limited (the Employer) for a bargaining unit consisting of "All journalists employed at the South Wales Argus, with the exception of the Editor and Deputy Editor." The stated location address was "South Wales Argus, Cardiff Road, Maesglas, Newport, NP20 3QN". The CAC gave the parties notice of receipt of the application on 16 November 2015. The Employer submitted a response to the application on 23 November 2015.

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 Linda Dickens MBE, CAC Deputy Chairman chairing the Panel, and, as

Members, Mr Michael Shepherd and Mr Paul Talbot. The Case Manager appointed to support the Panel was Miss Sharmin Khan.

3. By a decision dated 29 December 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. The parties confirmed in correspondence to the CAC dated 9 and 10 March 2016 that they had reached agreement on the appropriate bargaining unit and that it was as proposed by the Union in its application, namely "All journalists employed at the South Wales Argus, with the exception of the Editor and Deputy Editor." The stated location address was "South Wales Argus, Cardiff Road, Maesglas, Newport, NP20 3QN".

Issues for the Panel

4. Paragraph 22(2) of Schedule A1 to the Act (the Schedule) requires the CAC to issue a declaration that a union is recognised as entitled to conduct collective bargaining on behalf of a group of workers constituting the bargaining unit if it is satisfied that a majority of the workers constituting the bargaining unit are members of the applicant union, unless any of the three qualifying conditions set out in Paragraph 22(4) are fulfilled. If any of these conditions are met, or the CAC is not satisfied that a majority of workers in the bargaining unit are members of the applicant union, the CAC must give notice to the parties that it intends to arrange for a secret ballot to be held. The qualifying conditions in paragraph 22(4) are as follows:

- a) the CAC is satisfied there should be a ballot in the interests of good industrial relations;
- 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 (or unions) to conduct collective bargaining on their behalf;
- c) membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of union members within the bargaining unit want the union to conduct collective bargaining on their behalf.

The Union's claim to majority membership

5. By telephone to the Case Manager on 15 March 2016 (and later by e-mail received by the CAC on 21 March 2016) the Union stated that with 14 members in the agreed bargaining unit it had majority support for recognition and was therefore claiming majority membership and requested recognition without a ballot.

The Employer's submissions on the Union's claim to majority membership and the qualifying conditions

6. In a letter from the CAC dated 16 March 2016, the Employer was invited to make submissions on both the Union's claim to majority membership within the bargaining unit and on the three qualifying conditions specified in paragraph 22(4) of the Schedule (set out in paragraph 4 above).

7. The Employer responded to the CAC by its letter dated 23 March 2016. To avoid any ambiguity, the Employer provided the job titles covered by the agreed bargaining unit as follows: Business/Property Magazines Editor; Production Editor; Picture Editor; Digital Editor; Sports Editor; Content Editor; Multi-Media Reporter; Multi-Media Reporter – Sport; Multi-Media Reporter – Health; Multi-Media Reporter – Politics; Digital and Social Media Reporter; Trainee Multi-Media Reporter

Paragraph 22(4)(a)

8. The Employer stated that in the event that the Panel was satisfied that the majority of the workers in the bargaining unit were members of the Union, it would be in the interests of good industrial relations for a ballot to be held to determine whether the Union should be recognised, on the basis that it appeared that the Union had the narrowest majority membership possible within the bargaining unit. The Employer stated that it would co-operate with the Union if the ballot supported recognition and therefore contended that a clear mandate through an independently conducted ballot would assist the parties to develop a successful working

relationship. With the exception of a couple of members of staff who had identified themselves as union members, it had no knowledge of which of the members of the bargaining unit were members of the Union. In support of its case the Employer referred the Panel to a previous CAC decision, CAC reference TUR1/256/2003, Institute of Scientific and Technical Communicators and Mission Foods.

9. The Employer did not make any submissions in respect of the remaining qualifying conditions under paragraph 22(4)(b) and (c).

Union's response to the Employer's case for a ballot

10. On 1 April 2016 the Employer's submissions on the qualifying conditions were copied to the Union and its comments invited. The Union responded to the CAC by e-mail on 6 April 2016 with the following points.

11. The Union maintained its claim that it had a majority membership level in the bargaining unit stating that its records indicated that there was a membership level of 52%. The Union requested in the event that the Panel was not satisfied in respect of the stated membership level that a fresh and confidential membership check was carried out.

12. In its view none of the conditions specified under paragraph 22(4) of the Schedule was fulfilled.

Paragraph 22(4)(a)

13. It was the Union's submission that it was not in the interests of good industrial relations to have a ballot. It felt that a ballot would be likely to cause delay and sour industrial relations. Further campaigning in the period leading up to the ballot was likely to polarise views and stoke up feelings which could worsen industrial relations. In its view a ballot would be likely to engender an adversarial situation in the workplace with the parties embroiled in a divisive contest.

14. The Union disputed that the narrowness of the Union's majority was of itself a ground for ordering a ballot and referred the Panel to the CAC's previous decision, CAC reference TUR1/29/00, ISTC and Fullarton Computer Industries Ltd which was affirmed on an application for judicial review in *Re Fullarton Computer Industries Ltd*, [2001] IRLR 752 that the CAC was not entitled to "impose, in effect, a threshold for recognition without a ballot higher than that stipulated by the legislators."

15. With regard to the Employer's reference to CAC case reference TUR1/256/2003, *Institute of Scientific and Technical Communicators and Mission Foods*, the Union contended that the circumstances in that case were significantly different and was not relevant to this case. In that case, the CAC had concluded that there was conflicting evidence as to the wishes of the workers in the bargaining unit with regard to whether or not a ballot should take place and there was no such evidence in respect of this case.

16. The Union noted that there was no evidence that the conditions under paragraph 22(4)(b) and c) were met. In conclusion once majority was established, the Union should be awarded recognition without a ballot unless there was good reason for doing otherwise. In summary it was the Union's submission that none of the 3 statutory exceptions applied in this case.

The Membership Check

17. On 8 April 2016 the parties were asked to confirm in writing whether they were content for the Panel to rely on the membership check carried out by the CAC in December 2015 for its decision in accordance with paragraph 22(2) of the Schedule as to whether it was satisfied that the Union had majority membership in the bargaining unit, or whether the number of personnel and members in the bargaining unit had changed.

18. In e-mails to the CAC dated 12 April 2016 both parties requested that a further full membership check was carried out. The Union stated that its own investigations led it to believe that there was a current membership level of 62% of in the bargaining unit. The Union requested

that the Employer be required to supply full names, dates of birth and job titles for each individual in the bargaining unit as well as copies of contracts and payslips for each individual in the bargaining unit. The Union referenced a previous CAC case in respect of GMB and JF Stone Investments Ltd t/a The American Dry Cleaning Company, CAC reference -TUR1/492/06. The Employer stated that while the numbers in the bargaining unit in its Newport newsroom remained the same, there had been a number of personnel changes since the December membership check, and that therefore the membership check would no longer be accurate. The Employer requested that the Union should be required to provide to the CAC evidence of current union membership and evidence that membership contributions were up to date. If, following the membership check the evidence showed there was still a majority of union members in the bargaining unit, the Employer maintained its argument that a ballot should be held for the reasons it had previously submitted.

19. In light of the parties' reported changes in the bargaining unit, the Panel asked the Case Manager to carry out another independent check of the level of Union membership in the bargaining unit. The Panel gave consideration to the requests of each side regarding information to be provided. We did not deem it necessary in the particular circumstances of this case to have the contracts and play slips of the workers checked by the Case Manager, but in addition to the normal CAC practice of requiring the full names, addresses, dates of birth, job titles of the workers and detailed listing of fully paid up Union members checked by the Case Manager, the Panel also directed that the Employer should provide the start date of employment and pay roll number for each worker and that the Union provide confirmation that the Union members were paid up within the terms of the Union's rule book.

20. The information from both parties was received by the Case Manager on 19 April 2016. 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 14 April 2016. The full report of the check was issued to the parties on 21 April 2016 and their comments invited.

21. The Case Manager's report showed there were 26 workers in the bargaining unit

excluding a vacant post, Content Editor, which the Employer had informed the Case Manager was expected to be filled within a month. Of the 26 workers 14 were members of the Union, a percentage level of 54%. The 14 Union members included an individual who was “waiting election”. The Union informed the Case Manager that this term was a formality in the Union’s Rule Book when a member had completed an application form and paid the subscription but in theory the local branch had to approve the membership.

Parties’ views on the membership check

22. In its e-mail to the CAC dated 25 April 2016 the Employer stated that it noted there were 13 Union members in the bargaining unit at the time of the membership check, with one membership to be confirmed. Likewise, there were 26 employees in the bargaining unit, with one vacancy to be filled. The Employer attested that a ballot should be held in accordance with its previous submissions made to the Panel on the matter.

23. The Union confirmed by e-mail to the CAC on 26 April 2016 that it had no comments on the membership check and relied on its previous submissions to the Panel as to why none of the conditions in paragraph 22(4) of the schedule were met. Subsequently, the Panel invited the Union to confirm whether having seen the membership check, it was still claiming majority membership in the bargaining unit and if so, to provide its reasoning.

24. The Union replied by e-mail dated 6 May 2016. It confirmed its claim that there was majority Union membership in the bargaining unit on the grounds that the CAC’s membership check established there were 26 employees in the bargaining unit with one vacancy and 14 of those employees were Union members. The Union stated that an individual was awaiting election by the local NUJ Branch, but that this would be completed on the evening of 10 May 2016. As this individual was already paying the NUJ subscription he/she would be a Full Member on that date.

25. The Union suggested that as it was unknown when the Employer would fill the existing vacancy, it was not a relevant factor when determining the percentage of Union members in the

bargaining unit.

26. The Union's submission on the membership check was copied to the Employer for comment who confirmed to the CAC on 15 May 2016 that it had no further submission for the Panel at this stage.

27. By a letter dated 19 May 2016 the parties were informed by the CAC that the Panel, having considered the evidence before it, was satisfied that a majority of workers constituting the bargaining unit were members of the Union. The Panel invited the Parties to consider whether the issue of whether any of the qualifying conditions as specified in paragraph 22(4) of the Schedule was fulfilled could be determined without the need for a hearing. If either party was of the view that a hearing was required it could notify the CAC and a hearing would be held. It was made clear that if the parties were content for the matter to be decided without a hearing the parties would be given the opportunity to add further to the written submissions already made to the Panel on the matter. By 31 May 2016 both parties had confirmed that they did not require a hearing and stated that they did not wish to make any further submissions to the Panel.

Considerations

28. The Schedule requires the Panel to consider whether it is satisfied that the majority of the workers in the bargaining unit are members of the Union and if the Panel is satisfied that the majority of the workers in the bargaining unit are members of the Union, it must declare the Union recognised by the Employer, unless it decides that any of the three conditions in paragraph 22(4) are fulfilled. If the Panel considers any of the conditions are fulfilled it must give notice to the parties that it intends to arrange for the holding of a secret ballot.

29. The Union has asked the Panel to declare recognition of the Union for collective bargaining without a ballot. The Case Manager's membership check undertaken in December 2015 established that 14 workers in the bargaining unit of 27 workers, that is 52% of the total, were members of the Union. A more current membership check indicated that there were 14 members, in the bargaining unit of 26 workers a membership level of 54% of the total in the

bargaining unit. The level and proportion of membership was not contested by the Employer. The Panel is satisfied that the majority of workers in the bargaining unit are members of the Union.

30. We must now consider whether any of the three qualifying conditions stated in paragraph 22(4) (described in paragraph 4 of this decision) applies in this case. In deciding this matter we have given careful consideration to all the written submissions and taken full account of all the material provided to us during the process of this application. The parties were content for the matter to be decided on the written submissions and evidence without a hearing. Given the clarity of the parties' positions and arguments, the Panel feels its decision was in no way affected by this approach.

31. It is the Employer's contention that the first qualifying condition under paragraph 22(4) is met, namely that a ballot should be held in the interests of good industrial relations, on the grounds that the Union's majority membership is narrow. The first membership check (December 2015) revealed the Union's membership was 52% of the BU. This was the majority referred to by the Employer as narrow. The more recent check showed Union membership at 54% of the bargaining unit. The Employer has not sought to add to its earlier submission. The proportion of the bargaining unit in Union membership is higher than at the first check and 54% is difficult to characterise as narrow; but even the first check revealed a clear majority.

32. However the more significant point is that the narrowness of a majority is not of itself sufficient evidence that it would be in the interests of good industrial relations to hold a ballot. Para 22(2) of the Schedule is clear that, in the absence of other factors, where the CAC is satisfied that the majority of the workers constituting the bargaining unit are members of the union, it '*must* issue a declaration that the union is recognised...'. To call a ballot because the majority is not a big one in the absence of other considerations would effectively impose a threshold above that set by the statute. The decision of one CAC Panel does not bind other Panels but in reaching our decision we considered the cases cited by the parties. The Employer in its submission made reference to Institute of Scientific and Technical Communicators and Mission Foods, CAC reference TURI/256/2003. We note that it was a case where argument and

evidence relating to a number of factors other than the narrowness of the majority (which stood at 50.52%) informed the decision of the Panel as to whether the interests of good industrial relations required a ballot to be held. In this case no other argument or evidence has been provided by the Employer relating to the matter of 'good industrial relations', nor has it sought to contest the counter arguments on this qualifying condition made by the Union.

33. On the evidence we are not satisfied that a ballot should be held in the interests of good industrial relations. No other qualifying condition was argued and we find none is applicable.

Decision

34. The Panel is satisfied in accordance with paragraph 22(1)(b) of the Schedule that the majority of the workers constituting the bargaining unit are members of the Union. The Panel is satisfied that none of the conditions in paragraph 22(4) of the Schedule is fulfilled. 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 the "All journalists employed at the South Wales Argus, with the exception of the Editor and Deputy Editor."

Panel

Professor Linda Dickens MBE, Deputy Chairman of the CAC

Mr Mike Shepherd

Mr Paul Talbot

13 June 2016