

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:

Community

and

Ironspray Limited

Introduction

1. Community (the Union) submitted an application to the CAC on 28 October 2015 that it should be recognised for collective bargaining by Ironspray Limited (the Employer) for a bargaining unit comprising "(a)ll hourly paid workers at the Pas Ty Coch site" which refers to the Employer's premises located in Cwmbran, Gwent. The CAC gave both parties notice of receipt of the application on 2 November 2015. The Employer submitted a response to the CAC which was received on 10 November 2015 and 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, Ms Gail Cartmail and Mr Paul Wyatt. The Case Manager appointed to support the Panel was Nigel Cookson.

Issues

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; and therefore should be accepted.

The Union's application

4. In its application the Union explained that it had initially written to the Employer on 26 June 2015 formally requesting recognition and that it then wrote again on 10 August 2015 after being verbally informed by the Employer that it had spoken with Acas on the subject of recognition and the Employer having promised that it would forward documentation on the subject. However, as no such documents were received by the Union it wrote again on 14 September 2015 informing the Employer that it was prepared to proceed with the CAC process. The three letters referred to by the Union were enclosed with the application.

5. According to the Union, there were 24 workers in total employed by the Employer, 19 of whom fell within the terms of the proposed bargaining unit. The Union said that 12 of the workers in the 19 strong proposed bargaining unit were in membership. Asked to provide evidence that a majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining, the Union said that over 50% plus one of permanent employees in the bargaining unit had joined the Union.

6. The Union explained that it had selected the bargaining unit on the basis that the hourly paid workers were a distinct and identifiable group and were managed in the same way and subject to the same terms and conditions.

7. Asked whether, following receipt of the Union's request for recognition, the Employer proposed that Acas be requested to assist the Union said that it was not known. The Employer had informed the Union verbally that it had contacted Acas and the Union agreed to Acas assistance. The Employer promised to send the Union copies of information that it had provided to Acas but to date had not done so nor had it responded to the Union's request

for the information. The Union did not receive a formal proposal to seek Acas assistance but it did agree when asked verbally by the Employer.

8. Finally, the Union said there had not been a previous application in respect of this or a similar bargaining unit and there was no existing recognition agreement that covered any of the workers in the proposed bargaining unit.

The Employer's response to the Union's application

9. In its response to the application the Employer said that it had received an initial request for recognition on 26 June 2015 and that its response to the request was to contact Acas. The Employer said that it received a copy of the application form directly from the Union the Employer on 30 October 2015.

10. When asked the number of workers in its employ the Employer referred to a list it had enclosed with its response. This list contained the names of 20 individuals with one annotated as "New starter 3 month probation period". The Employer confirmed that it did not agree the proposed bargaining unit and when asked for the reasons as to why it objected said "not enough people". Asked whether it agreed with the Union's figure as to the number of workers in the proposed bargaining unit, the Employer replied "Not known" and it gave the same answer when asked to state the number of workers in the proposed bargaining unit and, if known, any reason for the difference. Asked whether it disagreed with the Union's estimate of membership in the proposed bargaining unit and for its views as to whether a majority of the workers in the bargaining unit were likely to support recognition, the Employer again answered "not known".

11. When asked whether, following receipt of the Union's request, the Employer proposed that Acas be requested to assist the Employer answered in the affirmative but did not provide details of any contact.

12. The Employer confirmed that there was currently no recognition agreement in place covering any of the workers in the proposed bargaining unit nor was it aware of any previous application under the Schedule by the Union in respect of this or a similar bargaining unit.

13. The Employer did not contend that the Union's application failed to meet any of the other admissibility or validity criteria.

Considerations

14. In deciding whether to accept the application the Panel must determine 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.

15. The Panel is satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 35 and paragraphs 37 to 42 and that it was made in accordance with paragraph 12(2)(b) of the Schedule. The remaining issue for the Panel to address is whether the admissibility criteria set out in paragraph 36(1) of the Schedule are met.

Paragraph 36(1)(a)

16. Paragraph 36(1)(a) of the Schedule calls for the Panel to determine whether members of the Union constitute at least 10% of the workers in the Union's proposed bargaining unit. In its application the Union said that it had 12 out of a 19 strong bargaining unit in membership. When invited to comment on this claim the Employer said "not known" when asked firstly, whether it agreed with the Union as to the number of workers in the bargaining unit, secondly, when it was asked to give the actual number as to the workers in the Union's proposed bargaining unit, thirdly, whether it disagreed with the Union's estimate of membership and fourthly, the reasons as to why it disagreed with the claim that the majority of workers in the proposed bargaining unit would support recognition of the Union.

17. In light of the Union's assertion of its level of membership that is not contradicted or disputed by the Employer in its response, and on balance of probabilities on the information available, the 10% threshold has been satisfied.

Paragraph 36(1)(b)

18. The test in paragraph 36(1)(b) is whether 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. In its application the Union stated that it had a majority of the workers in membership. As noted above, the Employer responded "not known" when asked to give reasons if it did not consider that the majority of the workers in the proposed bargaining unit would support recognition of the Union.

19. As with the test in paragraph 36(1)(a), the Employer has not disputed the Union's assertion that it has a majority of workers in the proposed bargaining unit in membership. The Panel therefore conclude that in light of the Union's declaration of its level of members within the bargaining unit it is likely that a majority favour recognition.

20. For the reasons given above the Panel is satisfied that, on the balance of probabilities, a majority of the workers in the proposed bargaining unit would be likely to support recognition of the Union and the test set out in paragraph 36(1)(b) is therefore met.

Decision

21. For the reasons given above, the Panel's decision is that the application is accepted by the CAC.

Panel

Her Honour Judge Stacey, Deputy Chairman of the CAC

Ms Gail Cartmail

Mr Paul Wyatt.

13 November 2015