

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:

GMB

and

Solo Service Group

Introduction

1. GMB (the Union) submitted an application to the CAC dated 19 July 2016 that it should be recognised for collective bargaining by Solo Service Group (the Employer) for a bargaining unit comprising “Cleaning Operatives, Mobile Cleaning Operatives with driving responsibilities, Cleaning Supervisors”. The locations of the proposed bargaining unit were given as Queens Road depot – Queens Road, M8 0RY; Old Trafford depot – Warwick Road, M16 0PX; Rochdale – Smith Street, Rochdale, OL16 1TU; Ashton Under Lyne – Oldham Road, OL16 6DU; East Didsbury – Kingsway, Parrs Wood, M19 1TB; and Manchester Airport – Outwood Lane, M90 4WP. The application was received by the CAC on 21 July 2016 and the CAC gave both parties notice of receipt of the application on 22 July 2016. The Employer submitted a response to the CAC dated 29 July 2016 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 Professor Gillian Morris, Chairman of the Panel, and, as

Members, Mr Peter Martin and Mr Keith Sonnet. The Case Manager appointed to support the Panel was Linda Lehan.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 4 August 2016. The acceptance period was extended to 19 August 2016 in order to allow time for the parties to comment on the results of a membership check and for the Panel to consider these comments before arriving at a decision.

Issues

4. 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.

Summary of the Union's application

5. In its application to the CAC the Union stated that it had sent its request for recognition to the Employer on 4 July 2016. A copy of that letter, which was dated 1 July 2016, was attached to the application together with a Post Office receipt confirming that an item had been sent to the Employer on 4 July 2016 together with a Royal Mail proof of delivery statement dated 6 July 2016. The Union stated that, following receipt of the request for recognition, the Employer had not proposed that Acas should be requested to assist the parties.

6. The Union stated that there were 59 workers employed by the Employer, of whom 58 were in the proposed bargaining unit. The Union stated that 32 of the workers in the proposed bargaining unit were members of the Union. When called upon to provide evidence that the majority of workers in the proposed bargaining unit were likely to support recognition for collective bargaining the Union left this section blank.

7. The Union stated that the reason for selecting the proposed bargaining unit was because the bargaining unit was traditionally covered by recognition agreements and was where the Union had membership within the company. The Union did not indicate whether the

bargaining unit had been agreed with the Employer. The Union stated that, as far as it was aware, there was no existing recognition agreement in force covering any of the workers in the proposed bargaining unit.

8. The Union confirmed that it held a current certificate of independence. The Union did not answer the question whether it had made a previous application under the Schedule for statutory recognition for workers in the proposed bargaining unit or a similar unit.¹

9. The Union stated that it had copied its application and supporting documents to the Employer on 19 July 2016.

Summary of the Employer's response to the Union's application.

10. In its response to the Union's application the Employer stated that it had received the Union's written request for recognition on 6 July 2016. When asked to describe its response to the request the Employer left this section blank.

11. The Employer stated that it had received a copy of the application form from the Union on 6 July 2016. As the Union's application was dated 19 July 2016 the Case Manager contacted the Employer to query this statement. The Employer subsequently confirmed to the Case Manager that it had received the application form on 21 July 2016.

12. The Employer stated that it had not, before receiving a copy of the application form from the Union, agreed the bargaining unit with the Union and that it did not agree it. The Employer gave as its objection to the proposed unit that it disagreed with the number of workers in the proposed bargaining unit.

13. The Union stated that, following receipt of the Union's request, it had not proposed that Acas should be requested to assist.

14. The Employer stated that the number of workers employed by it was 3000+. Asked

¹ The Union made a previous application for this bargaining unit on 17 June 2016: TURI/966 (2016). The Union withdrew the application after the Employer stated in its response to the Union's application that it had not received the Union's request for recognition.

whether it agreed with the number of workers in the proposed bargaining unit as defined in the Union's application the Employer answered "No". The Employer stated that there were 67 workers in the Union's proposed bargaining unit.

15. The Employer confirmed that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit.

16. In answer to the question whether it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer said that it had only received confirmation from one employee of their union membership. In answer to the question whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer said "Not known".

17. The Employer stated that it was not aware of any previous application under the Schedule for statutory recognition by the Union in respect of this or a similar bargaining unit.² The Employer also said that it had not received any other applications under the Schedule for statutory recognition in respect of any workers in the proposed bargaining unit.

The Membership Check

18. To assist in 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 would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit (paragraph 36(1)(b)), the Panel proposed an independent check of the level of union membership within the proposed bargaining unit. It was agreed with the parties that the Employer would supply to the Case Manager a list of the names, dates of birth and job titles of workers within the proposed bargaining unit, and that the Union would supply to the Case Manager a list of its paid up members within that unit, including their name and date of birth. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists would not be copied to the other party. These arrangements were confirmed in a letter dated 2 August 2016 from the

² See note 1 above.

Case Manager to both parties. The information from the Union and Employer was received by the CAC on 2 August 2016. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

19. The list supplied by the Employer indicated that there were 65 workers in the proposed bargaining unit. The list of members supplied by the Union contained 32 names. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was 30, a membership level of 46.15%.

20. A report of the result of the membership check was circulated to the Panel and the parties on 2 August 2016 and the parties were invited to comment on the result.

The parties' comments on the result of the membership check

21. No comments were received from either party by the deadline specified.

Considerations

22. In determining whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 4 above are satisfied. The Panel has considered carefully the submissions of both parties and all the evidence in reaching its decision.

23. The Panel is satisfied that the Union's letter dated 1 July 2016 constituted a valid request to the Employer within the terms of paragraphs 5 to 9 of the Schedule and that its application was made in accordance with paragraph 11 in that before the end of the "first period" the Employer failed to respond to the request.³ Furthermore, 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 of the Schedule. The remaining issues for the Panel to decide are whether the admissibility criteria contained in paragraph 36(1)(a) and paragraph 36(1)(b)

³ The "first period" is defined in paragraph 10(6) of the Schedule as "the period of 10 working days starting with the day after that on which the employer receives the request for recognition". The Panel notes that the Union's application to the CAC is dated 19 July 2016 but also notes that it was not received by the CAC until 21 July 2016 by which time the "first period" had expired.

are met.

Paragraph 36(1)(a)

24. Under paragraph 36(1)(a) of the Schedule an application is not admissible unless the Panel decides that members of the union constitute at least 10% of the workers in the proposed bargaining unit.

25. The membership check conducted by the Case Manager (described in paragraphs 18 and 19 above) showed that 46.15% of the workers in the proposed bargaining unit were members of the Union. As stated in paragraph 18 above, the Panel is satisfied that this check was conducted properly and impartially and in accordance with the arrangements agreed with the parties. The Panel has therefore decided that members of the Union constitute at least 10% of the workers in the proposed bargaining unit as required by paragraph 36(1)(a) of the Schedule.

Paragraph 36(1)(b)

26. Under paragraph 36(1)(b) of the Schedule, an application is not admissible unless the Panel decides 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. As stated in the paragraph above, the level of union membership established by the membership check is 46.15%. The Panel considers that, in the absence of evidence to the contrary, union membership provides a legitimate indicator of the views of the workers in the proposed bargaining unit as to whether they would be likely to favour recognition of the Union. No evidence to the contrary was provided in this case. It is also the Panel's experience that there will be workers who are not members of the Union who would be likely to favour recognition of the Union. On the basis of the evidence before it, the Panel has decided that, on the balance of probabilities, a majority of the 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, as required by paragraph 36(1)(b) of the Schedule.

Decision

27. For the reasons given in paragraphs 23 to 26 above, the Panel's decision is that the application is accepted by the CAC.

Panel

Professor Gillian Morris, Chairman of the Panel

Mr Peter Martin

Mr Keith Sonnet

16 August 2016