

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:

USDAW

and

Pearsalls Ltd

Introduction

1. USDAW (the Union) submitted an application to the CAC dated 10 September 2015 that it should be recognised for collective bargaining by Pearsalls Ltd (the Employer) for a bargaining unit comprising “All non-managerial Pearsalls employees at the Taunton site.” The application was received by the CAC on 14 September 2015. The CAC gave both parties notice of receipt of the application on 15 September 2015. The Employer submitted a response to the CAC dated 21 September 2015 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. Bob Purkiss MBE and Mr Paul Wyatt. 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 28 September 2015. The acceptance period was extended to 13 October 2015 in

order to allow time for a membership check to take place, for the parties to comment on the subsequent report 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 the Union stated that it had sent its formal request for recognition to the Employer on 12 August 2015 and a response dated 17 August 2015 had been received from the Employer. Copies of both documents were attached to the application. In its response of 17 August 2015 the Employer stated that it did not want to recognise a trade union for collective bargaining purposes. The Employer stated that it understood that its employees had a right to join a union and that it appreciated the role that companions could play in the disciplinary and grievance processes but it strongly believed that a partnership of employer and employee was the best option when it came to pay, hours and holidays. The Employer stated that it rejected the request for voluntary recognition and was resolved to fight the process through the Central Arbitration Committee if that was necessary. The Union stated in its application that the Employer, following receipt of the request for recognition, did not propose that Acas should be requested to assist.

6. The Union stated that there were 230 staff employed by the Employer at the site, of whom approximately 170 were in the proposed bargaining unit. The Union stated that there were 42 members of the Union within the proposed bargaining unit. When asked to provide evidence that the majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining, the Union stated that it had circulated a petition at the site asking workers to sign if they supported "Usdaw's claim to trade union recognition" and that this had been signed by 60 non-members. The Union stated that the number of non-members signing the petition added to the number of union members at the site was evidence that at least 102 workers in the bargaining unit supported recognition of the

Union. The Union said it was happy to share the lists of its membership and the petition supporters with the CAC on condition that the information be treated confidentially and not disclosed to the Employer.

7. The Union stated that the reason for selecting the proposed bargaining unit was because that set of workers formed a distinct group within the business and the workplace and that the proposed bargaining unit would work well for the purposes of collective bargaining. The Union stated that the bargaining unit had not been agreed with the Employer and that it was unaware of any existing recognition agreement which covered any workers in the bargaining unit. The Union stated that it had not made a previous application for recognition under the Schedule for workers in this workplace.

8. The Union confirmed that it held a current certificate of independence. The Union stated that it had copied the application made to the CAC, and supporting documents, to the Employer on 10 September 2015.

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

9. In its response to the Union's application, the Employer stated that it had received the Union's written request for recognition on 14 August 2015 and that it had rejected the request by letter of 17 August 2015. The Employer stated that it had received a copy of the application form from the Union on 14 September 2015.

10. The Employer stated that it had not, before receiving a copy of the application from the Union, agreed the bargaining unit with the Union and that it did not agree it. The Employer stated that it did not know from the description of the proposed bargaining unit exactly who the Union was seeking to represent; it did not know, for example, whether the Union wanted to represent Team Leaders, Deputy Team Leaders or Acting Team Leaders. The Employer confirmed that, following receipt of the Union's request, it did not propose that Acas be requested to assist.

11. The Employer stated that it employed 223 workers. The Employer stated that it did not agree with the number of workers in the proposed bargaining unit as defined in the Union's application and that to be precise it needed clarification as to where the Union was drawing

the line as to which employees it considered were managerial. The Employer stated the number in the proposed bargaining unit was in the region of 212.

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

13. 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 no information as to Union membership levels.

14. In answer to the question whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer stated that, despite a very extensive Union recruiting campaign, the Union had only 42 members out of a bargaining unit of at least 212. With regard to the petition the Employer stated that there was anecdotal evidence that not all employees who apparently signed it knew what they were signing. The Employer attached a document to support this point with names retracted.

Union's clarification of the proposed bargaining unit

15. In a letter from the CAC Case Manager to the Union dated 22 September 2015 the Employer's response was enclosed and the Union was asked to clarify whether Team Leaders and Acting and Deputy Team Leaders were or were not included in the proposed bargaining unit (see paragraph 10, above). In a letter to the CAC dated 23 September 2015 the Union stated that members of this group should be included as, whilst they had supervisory responsibilities, they were not managers and when not supervising they were expected to work alongside and to carry out similar tasks to the rest of the non-management workforce. The Union also stated that it understood that in the latest pay review this group had received the same percentage pay rise as the rest of the non-management workforce. The Union further stated in this letter that it was more than willing to meet the Employer, with the support of Acas or the CAC, to try to reach agreement as to what the appropriate bargaining should be.

The First Membership and Support Check

16. 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 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 and support 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 a copy of a document signed by workers stating that they did not know what they were signing when signing the Union's petition. It was agreed that the Union would supply to the Case Manager a list of its paid up members within that unit (including their full name and date of birth) and a copy of the petition signed by workers in the proposed bargaining unit in favour of recognition. It was explicitly agreed with both parties that, to preserve confidentiality, the respective documents would not be copied to the other party. These arrangements were confirmed in a letter dated 25 September 2015 from the Case Manager to both parties. The information from the Union and Employer was received by the CAC on 25 September 2015. The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

17. The list supplied by the Employer indicated that there were 208 workers in the proposed bargaining unit. The job titles listed were Accounts Assistant, Cleaner, Cost Accountant, Deputy Advanced Sutures Supervisor, Deputy Implants Supervisor, Deputy Engineering Supervisor, Deputy Supervisor, Engineering Technician, Engineering Technician Assistant, Finance Administrator, Lab Technician, Manufacturing Technician, Network Analyst, Production Planner, Purchasing, Processing Engineer, Quality Administrator, Quality Inspector, R & D Assistant, S & C Deputy Supervisor, Sales Co-ordinator, Shipping Co-ordinator, Team Leader, Team Leader/Cleaner, Validation Engineer, Warehouse. The list of members supplied by the Union contained 40 names. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was 37, a membership level of 17.79%.

18. The Union's petition was set out as follows:

USDAW

**Union of Shop, Distribution
And Allied Workers**

We the undersigned are employees of Pearsalls and support Usdaw's claim to trade union recognition for collective bargaining purposes at Pearsalls.

Name	Signature	Contact details (e-mail) Address or phone number)

19. According to the Case Manager's report the petition contained 91 names/signatures. Of these 83 were on the Employer's list of names, representing 39.90% of the bargaining unit. The number of petition names/signatures who were Union members was 33 (15.87% of the proposed bargaining unit) and the number of petition names/signatures who were non-members was 50 (24.03% of the proposed bargaining unit).

20. The Employer submitted two documents and in a covering e-mail explained that one of the documents was written by a Polish employee in her own words and signed by seven others. The Employer stated that the document was then re-worded and signed by six employees as one employee went on holiday and the other off sick.

The document written by the Polish employee read:

"I inform that a few months ago I signed a letter about trade unions in Pearsalls.

At the time of signing I did not have any knowledge and information about trade unions and benefits associated with being a member or to have a representative of trade unions in the company.

For me it was a form of survey (question), not an official document equivalent to be a member of the unions or to have a representative in the company.

It was not an official document.

17/09/15."

This was followed by eight signatures.

The second document read:

“I inform that a few months ago I signed a letter about trade unions in Pearsalls.

At the time of signing I did not have any knowledge and information about trade unions and benefits associated with being a member or to have a representative of trade unions in the company.

For me it was a form of survey (question), not a petition equivalent to be a member of the unions or to have a representative in the company.

It was not an official document.”

This was followed by six signatures and the date next to the signatures ranged from 17.09.15 – 21.09.15. The six signatories to the second document had all signed the first document.

21. Of the eight names/signatures on the Employer’s first document, the Case Manager’s report stated that all were in the proposed bargaining unit, representing 3.85% of that unit. Six of the eight had signed the Union’s petition (2.89%) and two had not signed the Union’s petition (0.96%).

22. Of the six names/ signatures on the Employer’s second document, the Case Manager’s report stated that these represented 2.88% of the proposed bargaining unit. Five of the six had signed the Union’s petition (2.40%) and one had not signed the Union’s petition (0.48%).

23. The Case Manager’s report of the results of the membership and support check was circulated to the Panel and the parties on 28 September 2015 and the parties were invited to comment on the results by a specified date.

Employer’s comments on the result of the first membership and support check

24. In a letter to the CAC dated 30 September 2015 the Employer confirmed that the test set out in paragraph 36(1)(a) of the Schedule was clearly met. In respect of paragraph 36(1)(b)

the Employer submitted that in 2014 the Union had begun a vigorous recruitment campaign but that despite an extensive and prolonged campaign its members comprised only 17.79% of the proposed bargaining unit. The Employer stated that there were no barriers in the workplace to its staff joining the Union and that its employees had nothing to fear from the Company by reason of union membership. The Employer stated that staff were regularly represented by the Union at disciplinary and grievance meetings and said that it had a good relationship with the local full-time Union Officer but did not want to engage in collective bargaining with the Union. The Employer stated that it was against that background that the Union had circulated a petition widely in the workplace but despite another intensive campaign asking staff to sign it less than 40% of the bargaining unit had done so.

25. The Employer stated that a significant number of its employees did not have English as their first language and some had told the Employer that they did not fully understand what they were signing when signing the petition. The Employer stated that some employees had told it that they felt under pressure to sign and that signing was the easy thing to do and meant that they would be left alone.

26. The Employer submitted that if the workforce wanted collective bargaining, given the extent of the Union activities and the openness with which they had been conducted, it believed that a majority would have signed the petition and the fact that they had not done so was the only evidence that was before the CAC that was relevant to the test in paragraph 36(1)(b).

Union's comments on the result of the first membership and support check

27. In a letter to the CAC dated 2 October 2015 the Union reiterated that its proposed bargaining unit was defined as "all non-managerial Pearsalls employees at the Taunton site". The Union stated that five job roles included by the Employer in the list provided for the purposes of the check - Deputy Advanced Sutures Supervisor, Deputy Implants Supervisor, Deputy Engineering Supervisor, Deputy Supervisor and S & C Deputy Supervisor - were managerial and did not belong in the bargaining unit. The Union asked the CAC to rule that these roles were not part of the bargaining unit.

28. The Union stated that it was clear that more than 10% of the bargaining unit were

members of the Union. The Union also submitted that there was clear evidence that a majority of workers in the bargaining unit would be likely to favour recognition given that, with only very limited access to the site, approximately 40% of the bargaining unit had already signed a petition supporting recognition. The Union submitted that if a ballot were held and the Union had access to the site, it was confident that the 40% petition support would be turned into a clear majority supporting recognition. The Union stated that the document submitted by the Employer, in which a number of workers had distanced themselves from the petition, had been signed by only five or six employees and that if there were widespread opposition to recognition then that letter, or similar letters, would have been signed by many more employees.

The Second Membership and Support Check

29. In the light of the Union's comment that the specified deputy supervisor roles listed in paragraph 27 above did not belong in the bargaining unit the Case Manager conducted a second membership and support check using the same documentation provided by both parties for the original membership and support check. The second membership and support check excluded those individuals holding the job titles of Deputy Advanced Sutures Supervisor, Deputy Implant Supervisor, Deputy Engineering Supervisor, Deputy Supervisor and S & C Deputy Supervisor, of which there were six in total. The Panel is satisfied that the checks were conducted properly and impartially in accordance with the agreement reached with the parties.

30. The list supplied by the Employer indicated that there were 202 workers in the Union's proposed bargaining unit. The list of members supplied by the Union contained 40 names. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was 37, a membership level of 18.32%.

31. According to the Case Manager's report the petition contained 91 names/signatures. Of these 83 were on the Employer's list of names, representing 41.09% of the proposed bargaining unit. The number of petition names/signatures who were Union members was 33 (16.34% of the proposed bargaining unit) and the number of petition names/signatures who were non-members was 50 (24.75% of the proposed bargaining unit).

32. Of the eight names/signatures on the Employer's first document (see paragraph 20 above), the Case Manager's report stated that all were in the proposed bargaining unit, representing 3.96% of that unit. Six of the eight had signed the Union's petition (2.97%) and two had not signed the Union's petition (0.99%). Of the six names/ signatures on the Employer's second document, the Case Manager's report stated that these represented 2.97% of the proposed bargaining unit. Five of the six had signed the Union's petition (2.48%) and one had not signed the Union's petition (0.49%).

33. A report of the result of the membership and support check was circulated to the Panel and the parties on 5 October 2015 and the parties were invited to comment on the result by a specified date.

Parties' comments on the result of the second membership and support check

34. In a letter to the CAC dated 6 October 2015 the Employer stated that the work of the deputy supervisors was not managerial and that they should be part of the proposed 'non-management' bargaining unit. The Employer then commented on the results of the second membership check. The Employer agreed that the test set out in paragraph 36(1)(a) was clearly met but reiterated that, for the reasons it had given in relation to the first membership and support check, the threshold for paragraph 36(1)(b) had not been met as only 41.09% of the proposed bargaining unit had signed the petition, a figure which fell below 40% if those who indicated that they did not understand the implications of the petition were taken into account. The Employer said that the statement by the Union that it had had very little access to the site (see paragraph 28 above) was misleading; a number of its employees were active Union promoters and they had full access to the workplace. The Employer stated that the Union had also organised a number of external events inviting members of the workforce and had distributed pamphlets to the workforce on an ongoing basis. The Employer reiterated its comment in paragraph 25 above that some employees had told it that they felt under pressure to sign the Union's petition.

35. The Employer stated that the unsolicited letter signed by a small number of employees, was not circulated amongst the workforce, unlike the Union's petition, and it was not appropriate to compare that with a proactively circulated petition signed by less than 42% of

the bargaining unit.

36. No further comments were received from the Union.

Considerations

37. 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.

38. The Panel is satisfied that the Union made 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. 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) are met. The Panel notes that the Employer submitted that, contrary to the Union's view, the deputy supervisors should be part of the proposed bargaining unit on the ground that their work is not managerial. If this view were to be accepted the first of the two membership checks should inform the Panel's decision. In this case the Panel has not found it necessary to decide whether the deputy supervisors should or should not be excluded from the proposed bargaining unit as the Panel does not consider that the differences between the results of the first and second checks materially affect the outcome of this application.

Paragraph 36(1)(a)

39. 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.

40. The first membership check conducted by the Case Manager showed that 17.79% of the workers in the proposed bargaining unit were members of the Union, the second membership check that 18.32% were members. As stated in paragraphs 16 and 29 above, the Panel is

satisfied that these checks were conducted properly and impartially and in accordance with the agreement reached 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)

41. 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.

42. The first support check conducted by the Case Manager (described in paragraphs 16 and 18-22 above) showed that 39.90% of the workers in the proposed bargaining unit had signed a petition in favour of recognition; the second check that 41.09% had done so. The Panel also notes that there are a further four workers in the proposed bargaining unit who are members of the union but who did not sign the petition. The Panel regards union membership as a legitimate indicator of support for recognition in the absence of evidence to the contrary and is prepared to assume, on the balance of probabilities, that these four workers are likely to favour recognition for collective bargaining purposes. However the Panel also notes that five individuals had signed a document stating that they did not understand the implications of signing the Union's petition in favour of recognition, with an additional sixth worker signing a document framed in similar terms. The Panel has considered carefully the Union's submission that if a ballot were held and the Union had access to the site, it was confident that the level of support in the petition would be turned into a clear majority supporting recognition. However, the Panel has concluded that, even on the basis of the second membership check, it has insufficient evidence to support a decision 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 required by paragraph 36(1)(b) of the Schedule.

43. The Panel notes the Union's submission set out in paragraph 28 above that it had been afforded very limited access to the Employer's site, a view contested by the Employer (see paragraph 34 above). The Panel also notes the submissions by the Employer, outlined in

paragraphs 25 and 34 above, that employees had been put under pressure to sign the Union's petition. The Panel has made no finding on either of these submissions and they have played no part in its decision.

Decision

44. For the reasons given in paragraphs 42 and 43 above, the Panel's decision is that the application is not accepted by the CAC.

Panel

Professor Gillian Morris, Chairman of the Panel

Mr. Bob Purkiss MBE

Mr. Paul Wyatt

12 October 2015