

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:

Unite the Union

and

Ambitions Personnel

Introduction

1. Unite the Union (the Union) submitted an application to the CAC dated 27 July 2015 that it should be recognised for collective bargaining by Ambitions Personnel (the Employer) for a bargaining unit comprising “Ambitions Personnel employees based at TBS in Frating & Manningtree warehouses”. The application was received by the CAC on 29 July 2015 and the CAC gave both parties notice of receipt of the application that day. The Employer submitted a response to the CAC dated 5 August 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, the Panel Chair, and, as Members, Mr David Coats and Mrs Jackie Patel. The Case Manager appointed to support the Panel was Nigel Cookson.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 12 August 2015. The acceptance period was extended to 28 August 2015 in order to allow time for a membership and support check to be carried out, 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.

The Union's application

5. In its application to the CAC the Union stated that it had initially written to the Employer on 20 May 2015. In that letter, which the Union attached to its application, the Union had requested a meeting with the Employer to explore a voluntary recognition agreement. The letter stated that the Union's request had not yet been made under the Schedule but said that unless the Union heard formally from the Employer by end of play on 5 June 2015 then it would commence "the statutory proceedings". The Union stated that it had received an acknowledgment of its letter from the Employer at TBS Ltd who advised that he had forwarded it to his HQ but that no further response to that letter had been received. The Union stated that it had sent a formal letter requesting recognition to the Employer on 19 June 2015 and had received no response.¹ The Union also attached a copy of its letter of 19 June 2015 and of other e-mail correspondence between the parties to its application.

6. The Union stated that there were about 600 workers employed by the Employer, of whom about 100 were in the proposed bargaining unit. The Union stated that there were 33 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

¹ The Panel notes that the Union attached an e-mail dated 19 June 2015 to its application in which the Employer at TBS Ltd said that he would let HQ know the Union's letter of 19 June 2015 was on its way and would forward the soft-copy. This e-mail was sent in response to an e-mail from the Union earlier that day informing the Employer at TBS Ltd that the letter was being sent by recorded delivery as the Union had heard nothing from the Employer's HQ. See paragraph 22 below for the Panel's comments on the relevance of the Employer's e-mail.

recognition for collective bargaining, the Union stated that it had a petition of 99 signatures.

7. The Union stated that the reason for selecting the proposed bargaining unit was that these agency workers had been employed to work on the TBS site for many years and did so each day. They had a minimum hours contract for this account. The Union stated that the bargaining unit had not been agreed with the Employer and 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. The Union confirmed that it held a current certificate of independence. The Union stated that it had copied its application and supporting documents to the Employer on 19 June 2015.

The Employer's response to the Union's application

8. In its response to the Union's application to the CAC the Employer stated that it had received the Union's written request under the Schedule on 19 June 2015 via e-mail and that it did not respond to the Union's request. The Employer stated that it had received a copy of the application form and supporting documents from the Union on 29 July 2015 via e-mail.

9. The Employer stated that it had not agreed the bargaining unit with the Union prior to receiving a copy of the application form from the Union but that it did now agree with the proposed bargaining unit.

10. The Employer stated that it did not, following receipt of the Union's request, propose that Acas should be requested to assist.

11. The Employer stated that, due to the nature of its industry, the number of workers it employed fluctuated greatly to meet the changing needs of the business. It could, however, agree that the number of workers employed by it was in excess of 600 across the UK.

12. The Employer stated that it agreed with the number of workers in the bargaining unit as defined by the Union in its application. The Employer confirmed that there was no existing agreement for recognition in force covering workers in the bargaining unit.

13. In answer to the question as to whether it disagreed with the Union's estimate of membership in the bargaining unit, the Employer stated that it had no evidence to support the

number of members claimed by the Union. When asked for its reasons if it did not consider that a majority of the workers in the bargaining unit would be likely to support recognition the Employer said that it had no evidence to support the Union's claim that it had a petition of 99 signatures.

14. The Employer placed a dash under the questions as to whether it was aware of any previous application under the Schedule by the Union in respect of the bargaining unit or a similar bargaining unit and whether it had received any other applications under the Schedule in respect of any workers in the bargaining unit.

Membership and Support Check

15. To assist the determination of two of the admissibility criteria specified in the Schedule, namely, whether 10% of the workers in the agreed bargaining unit are members of the union (paragraph 36(1)(a)) and whether a majority of the workers in the agreed 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 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 bargaining unit, and that the Union would supply to the Case Manager a list of the names and dates of birth of the paid up members within that unit and a copy of the petition signed by workers in the bargaining unit in favour of recognition. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and petition would not be copied to the other party. These arrangements were confirmed in a letter dated 11 August 2015 from the Case Manager to both parties. The information from the Union was received by the CAC on 13 August 2015 and the information from the Employer was received on 17 August 2015. The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

16. The list supplied by the Employer showed that there were 125 workers in the agreed 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 agreed bargaining unit was 30, a membership level of 24%.

17. The Union provided a petition that took the form of 100 individual cards signed by workers. Each card had the Union's logo on the top left-hand side and read as follows:

"Pay: have your say

PETITION FOR TRADE UNION RECOGNITION

If you would like the union to negotiate with Management on your behalf about any aspect of pay and working hours, please sign this card and either hand it back to your rep or pop it into a post box to the FREEPOST address.

You do not need to be a union member to vote.

We the undersigned workers who are employed by Ambitions Personnel ask that Unite the Union be recognised as being entitled to conduct collective bargaining on our behalf.

Please note this petition is confidential and will only be made available to the Central Arbitration Committee (CAC) or ACAS and not to your employer."

Workers were then asked to print their names and to sign and date the card. The Case Manager's report stated that the signatures that formed the petition were dated between 9 March 2015 and 1 May 2015.

18. The Case Manager's report showed that the petition was signed by 93 workers in the agreed bargaining unit, a figure which represents 74.4% of the bargaining unit. Of those 93 signatories, 29 were members of the Union (23.2% of the agreed bargaining unit) and 64 were non-members (51.2% of the agreed bargaining unit). Six of the names/signatures on the petition did not appear on the Employer's list of workers in the agreed bargaining unit and one name appeared twice. These were not included in calculating the number of workers in the agreed bargaining unit who had signed the petition.

19. A report of the result of the membership and support check was circulated to the Panel and the parties on 17 August 2015 and the parties were invited to comment on the results by close of business on 20 August 2015.

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

20. In an email to the CAC dated 18 August 2015 the Union stated that it had nothing to add to the Case Manager's report at this stage. No comments were received from the Employer by the deadline.

Considerations

21. In determining whether to accept the application the Panel must decide whether the validity and admissibility 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.

22. The Panel is satisfied that the Union's letter of 19 June 2015 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"² the Employer failed to respond to the request. The Panel notes that the Employer at TBS Ltd said that he would let HQ know that the Union's letter was "on its way" and would forward a soft-copy to HQ. However the Panel does not consider that in doing this the Employer can be said to be responding to the request for recognition for the purposes of paragraph 11 and the Employer itself said that it did not respond to the Union's request. 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.

Paragraph 36(1)(a)

23. 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 agreed bargaining unit. The membership check conducted by the Case Manager (described in paragraphs 15 and 16 above) showed that 24% of the workers in the agreed bargaining unit

² 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".

were members of the Union. As stated in paragraph 15 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 agreed bargaining unit as required by paragraph 36(1)(a) of the Schedule.

Paragraph 36(1)(b)

24. 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 agreed bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit. The check conducted by the Case Manager showed that 74.4% of the workers in the agreed bargaining unit had signed individual cards in support of recognition. The cards signed by these workers were clearly worded and dated between 9 March 2015 and 1 May 2015 and the Employer has not disputed their validity in any respect. 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

25. For the reasons given in paragraphs 22-24 above, the Panel's decision is that the application is accepted by the CAC.

Panel

Professor Gillian Morris, Panel Chair

Mr David Coats

Mrs Jackie Patel

25 August 2015