

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

Wolviston Management Services Limited

Introduction

1. Unite (the Union) submitted an application to the CAC dated 20 December 2016 that it should be recognised for collective bargaining by Wolviston Management Service Limited (the Employer) for a bargaining unit comprising “Hourly paid production and cleaning staff on Wolviston Contracts at Invista Gloucester”. The location of the bargaining unit was stated as Invista Textiles UK Ltd, Ermin Street, Brockworth, Gloucester, GL3 4HP”. The CAC gave both parties notice of receipt of the application on 21 December 2016. The Employer submitted a response dated 11 January 2017 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 Linda Dickens MBE, as chair of the Panel, and, as Members, Mr Len Aspell and Ms Judy McKnight CBE. The Case Manager appointed to support the Panel was Miss Sharmin Khan.

3. The CAC Panel extended the acceptance period on 4 occasions to allow time for the Employer to respond to the application, for the CAC to carry out a membership and support

check; for the parties to comment on that check and provide more time for the Panel to consider all the evidence before arriving at a decision. The initial acceptance period expired on 9 January 2017 and the last extension ends the acceptance period on 13 February 2017.

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 of the Schedule; and therefore should be accepted.

The Union's application

5. The Union enclosed with its application to the CAC a copy of its formal request letter for recognition to the Employer dated 23 November 2017 and the Employer's written response to that letter dated 1 December 2017. In its covering letter to the application submitted to the CAC, the Union stated that it believed the Employer had received its formal request letter on 24 November 2016. It confirmed that it was ready to provide to the CAC on a confidential basis evidence that a majority of the workers in the bargaining unit favoured its application. It also confirmed that it was sending a copy of its covering letter and its enclosures to the Employer. The Union explained in the application to the CAC that it received the Employer's response to its request dated 1 December 2016 via e-mail on 5 December 2016. The Employer was refusing Unite recognition but seemed to be dismissing its claim for a local bargaining unit on a specific contract in Gloucester.

6. The Union stated "Unknown" when asked in the application form how many workers were employed by the Employer. It stated that there were 43 workers in the proposed bargaining unit of which 28 were members of the Union. When asked to provide evidence that a majority of the workers in the bargaining unit were likely to support recognition for collective bargaining, the Union stated that it believed that the majority of the workers in the proposed bargaining unit would be in favour of trade union recognition as the vast majority were Unite the Union members.

7. Explaining the reasons for selecting the proposed bargaining unit, the Union stated that the bargaining unit was a contract of work at Invista in Gloucester that Wolviston had successfully bid for in 2016, therefore it believed that the contract demonstrated a stand-alone managed group of workers and that this justified its claim for the bargaining unit.

8. Finally the Union stated that the Employer had not proposed that Acas be asked to assist following receipt of its request for recognition; that the bargaining unit had not been agreed with the Employer; that it had not made a previous application under Schedule A1 for statutory recognition for the workers in the bargaining unit or similar unit, and that there was not any existing recognition agreement which it was aware of which covered any workers in the proposed bargaining unit. The Union also confirmed that the date on which its application and supporting documents were copied to the Employer was 20 December 2016.

The Employer's response to the Union's application

9. The Employer completed the CAC's Employer Response Questionnaire. The Employer confirmed it had received the Union's written request dated 23 November 2016 on 28 November 2016 and that it had rejected that request. The Employer enclosed a copy of its letter of response to the Union dated 1 December 2016. The Employer also confirmed that it had not proposed that Acas be requested to assist the parties.

10. The Employer confirmed it received a copy of the Union's application and supporting documents on 21 December 2016 and that it had not agreed the bargaining unit before receiving it. It also confirmed that it did not agree to the proposed bargaining unit. The Employer briefly indicated its reason for its objection to the proposed bargaining unit in answer to the question in the Questionnaire but these comments are not set out here as this is not relevant to the Panel's decision on whether the application is admissible or not.

11. The Employer stated that the number of workers employed by it was 642. It stated that there were 55 workers in the Union's proposed bargaining unit as defined in the Union's application and that it did not know the reason why not all of these workers were accounted for by the Union.

12. The Employer agreed with the Union's estimate of membership in the proposed bargaining unit but respectfully requested that the number was checked by the Union as a number of employees had intimated that they were no longer part of the Union.

13. As to whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer did not believe this to be the case as 27 of the 55 workers declined to join Unite when they were canvassed to do so. This led the Employer to believe that a majority of the workers in the bargaining unit likely to support recognition would not be achieved.

14. The Employer stated that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit. Finally the Employer inserted "N/A" when asked if it was aware of any previous application under Schedule A1 for statutory recognition made by the Union in respect of the proposed bargaining unit or similar unit and if it had received any other applications under Schedule A1 for statutory recognition in respect of any of the workers in the proposed 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 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 addresses and job titles of workers within the proposed bargaining unit, and that the Union would supply to the Case Manager a list of the names of its paid up members within that unit also including their dates of birth and addresses. 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 13 January 2017 from the Case Manager to both parties. The information was received from the Union and Employer on 17 and 18 January 2017 respectively.

16. The Employer explained that it had included 18 workers employed at Wilton Teeside who were employed under the same terms as those in the Union's proposed bargaining unit. In undertaking the membership check the Case Manager excluded workers on the Employer's list located at Teeside. The check established that there were 28 members of the Union on the list of 55 in the bargaining unit provided by the Employer, a membership level of 51%.

17. A report of the result of the membership check was circulated to the Panel and the parties on 23 January 2017. The parties were invited to comment on the results and asked to bear in mind the two admissibility tests set out in paragraph 36 (1)(a) and paragraph 36 (1)(b) in so doing. The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

Comments on the Case Manager's report

18. The Union made two points in its comments to the CAC by e-mail on 27 January 2017. Firstly it stated it had 4 additional members for which it could provide evidence of if the Panel allowed the application. Secondly, it stated that the Employer had cited 55 employees, but had included workers in areas which were not in the Union's proposed bargaining unit for example, Security, Management and Laboratories. The Union stated that it considered the true number of employees in the bargaining unit was 44 and not 55.

19. The Employer confirmed to the Case Manager by telephone on 31 January 2017 that it did not wish to submit any comments on the membership and support check.

20. On 31 January 2017 the Union's comments of 27 January 2017 were cross copied to the Panel and the Employer by the Case Manager. By a letter dated 2 February 2017 the Employer submitted a response to the Panel expressing its disagreement with the Union that the proposed bargaining unit numbers were 44 out of 55.

21. The Employer stated that it was unclear, based on the parameters given by the Union, who was included in the proposed bargaining unit as it had employees who were multi-skilled and worked between Operations and Security and Cleaning and Laboratories. It also stated that as part of its contract with the client it was committed to upskill its workforce with formal training across disciplines to ensure a flexible and diverse workforce and that this

would be more difficult if the proposed bargaining unit did not cover all employees on the site. It noted that all the employees on the contract had the same terms and conditions which were dictated by the client and it would be unfair not to include all the employees as any potential changes would affect them. The Employer stated that the Union's representatives had unsuccessfully tried to recruit hourly paid Security, Laboratory and Management employees and believed it was for this reason that these workers had been omitted from the proposed bargaining unit. Finally the Employer noted that there were now 56 workers on site with a new worker in the Cleaning group.

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 made a valid request to the Employer within the terms specified in 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.

24. 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)

25. In accordance with paragraph 36(1)(a) of the Schedule the Panel must determine whether or not members of the Union constitute at least 10% of the workers in the Union's proposed bargaining unit. The check of Union membership in the proposed bargaining unit as conducted by the Case Manager established that Union membership stood at 51%. The Panel is therefore satisfied that this test is met.

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.

27. The membership check conducted by the Case Manager indicated a paid up membership of 51% in a bargaining unit of 55 workers. There is a likelihood that the Union membership density in its proposed bargaining unit may be higher than 51% since the Union notes that some categories (Security Officers, Laboratory Technicians, Managers) have been included by the Employer but fall outside its proposed bargaining unit of 'hourly paid production and cleaning staff on Wolviston contracts at Invista Gloucester'. That the Employer had included on its list some workers whom the Union had excluded from its proposed bargaining unit was implicitly confirmed by the Employer's comments (noted earlier) as to why it thought the Union wished to exclude these job categories. The Union also refers to having recruited new members.

28. The Panel did not consider it necessary to request a second check, which might have risked identifying Union members. At this stage we do not need an exact figure of actual Union membership and support in the proposed bargaining unit in order to form a view as to whether a majority is likely to support recognition of the Union for collective bargaining.

29. The Panel is mindful that at this stage of the statutory process the Panel has to apply the admissibility tests to the Union's proposed bargaining unit. The Employer's comments relate mostly to its view that any bargaining unit should be larger than that proposed by the Union. However, whether the bargaining unit proposed by the Union is appropriate is a matter to be addressed at the next stage of the statutory process if an application is accepted by the CAC. The Panel needs to be satisfied that a majority of the workers in the Union's proposed bargaining unit are *likely* to support recognition of the Union for the purposes for collective bargaining. Even on the longer list provided by the Employer the Union has a majority of members. It is the Panel's experience that being a member of a Union can be taken as indicative of support for collective bargaining and in this case there is no evidence to the contrary.

30. On the basis of the evidence before it the Panel has decided that, on the balance of probabilities and for the reasons provided above, 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

31. The Panel is satisfied that the application is valid within the terms of paragraphs 5 to 9, is made in accordance with paragraph 11 and is admissible within the terms of paragraphs 33 to 42 of the Schedule. The application is therefore accepted by the CAC.

Panel

Professor Linda Dickens MBE

Mr Len Aspell

Ms Judy McKnight CBE

13 February 2017