Case Number: TUR1/958/2016
10 May 2016

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

Serco Ltd

Introduction

1. Unite the Union (the Union) submitted an application to the CAC dated 15 April 2016 that it should be recognised for collective bargaining by Serco Ltd (the Employer) for a bargaining unit comprising "Those workers employed at RNAS Yeovilton on Serco Ltd contracts: Gems, Gnome and Workshops – mechanical & electrical" located at "RNAS Yeovilton, Ilchester, Somerset BA22 8HT". The application was received by the CAC on 15 April 2016 and the CAC gave both parties notice of receipt of the application on 19 April 2016. The Employer submitted a response to the CAC dated 25 April 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 Michael Shepherd and Mr Keith Sonnet. The Case Manager appointed to

support the Panel was Linda Lehan but for the purpose of this decision was Miss Sharmin Khan.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 3 May 2016. The acceptance period was extended to 13 May 2016 in order to allow time for the Panel to consider the evidence 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 its request for recognition was dated 16 March 2016 and that it had been sent to the Employer by e-mail and by fax. A copy of the letter was attached to its application to the CAC. When asked to give a brief summary of the Employer's response to the letter the Union stated that the "Employer has engaged with the union (members on site) running a ballot to support recognition, and requesting the involvement of ACAS." The Union stated that following the request for recognition the Employer had proposed that ACAS be requested to assist and that the Union agreed to this. The ACAS contact was named as Mr Michael Gardner.

6. When asked whether the Union had made a previous application under the Schedule for statutory recognition for workers in its proposed bargaining unit or a similar unit the Union answered "None".

7. The Union stated that the total number of workers employed by the Employer was 80 of whom 66 were in the proposed bargaining unit. The Union stated that 41 of the workers in the proposed bargaining unit were Union members. 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 was in receipt of a recent petition (57 names and signatures) supporting its application for recognition to conduct collective bargaining on their behalf.

8. The Union stated that the reason for selecting the proposed bargaining unit was because it was "the group of workers remaining post TUPE to Babcock onsite, and we believe this bargaining unit to have a very high membership density." The Union also stated that 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.

9. The Union confirmed that held a current certificate of independence. The Union stated that it had copied its application and supporting documents to the Employer on 15 April 2016.

Summary of the Employer's response

10. In its response to the Union's application the Employer stated that it had received the Union's written request for recognition on 15 March 2016 and a further copy was received on 18 April 2016. 9.The Employer stated that it had responded to the Union's request by sending an e-mail reply on 16 March 2016 advising that the form had been addressed incorrectly and that it had agreed to undertake a ballot of employees to indicate (sic) their wishes regarding potential recognition or maintenance of the existing employee consultation arrangements ending on 29 March.

11. The Employer stated that it had received a copy of the application from the Union on 18 April 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. When asked to briefly indicate its objections to the proposed bargaining unit the Employer stated that the unit included employees from a variety of different contracts/employee groups. It also stated that on 14 May 2016 35 of these employees, working in the Mechanical and Electrical workshops, would leave its employment and transfer to Morson (under TUPE).

13. In answer to the question whether it had proposed that Acas be requested to assist following receipt of the Union's request, the Employer stated "We are happy to have discussions facilitated by ACAS."

14. The Employer stated that it employed a total of 67 workers who were engaged across its contracts at Yeovilton. This included 35 employees who would leave its employment on 14 May. Asked whether it agreed with the number of workers in the proposed bargaining unit as defined in the Union's application the Employer stated that the Union's application "incorrectly indicates that we have 80 employees, with 66 in the proposed bargaining group".

15. The Employer stated that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit but that it had an employee consultation forum that had been in place for around ten years. The Employer attached a copy of a document headed "Works Committee Constitution February 2014" to its response.

16. When asked whether it disagreed with the Union's estimate of membership in the proposed bargaining unit the Employer provided no response. The Employer also provided no response when invited to give its reasons if it did not consider that a majority of the workers in the bargaining unit would be likely to support recognition. In addition, the Employer did not respond to the questions as to whether it was aware of any previous application under the Schedule for statutory recognition by the Union in respect of this or a similar bargaining unit and whether it had received any other applications under the Schedule in respect of any workers in that unit.

Union's comments on the Employer's response to the application

17. In a letter to the Union dated 26 April 2016 the Case Manager invited the Union to comment on the Employer's response to the application. In an e-mail dated 28 April 2016 the Union stated that the bargaining unit description and numbers were based on information from its members on site, which was at the time a best guess. The Union stated that the Employer had not meaningfully engaged in previous requests for recognition, despite the Union winning workplace ballots and making verbal requests in respect of attempts to define a bargaining unit and numbers. The Union stated that it believed that the last workplace ballot run on site by the Employer (March 2016) indicated that the workers wished to be represented by a trade union, and the Employer running this ballot indicated engagement with the Union and its members.

The Employer's response to the Union's comments

18. The Union's comments on the Employer's response were sent by the Case Manager to the Employer on 29 April 2016. In her covering letter the Case Manager informed the Employer that she would contact the Employer once the Panel had had the opportunity of considering the Union's letter. On 3 May 2016 the Employer sent an e-mail to the Union, which was copied to the Case Manager, in which it responded to some of the Union's comments. No response from the Employer to the Union's comments was sought by the Panel and the Employer's e-mail arrived after the Panel had reached its decision on acceptance (although prior to the date that the written decision was finalized). As a consequence, the Employer's response to the Union's comments has played no part in the Panel's decision.

Considerations

19. 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.

20. 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. The Panel is also satisfied that the application was made in accordance with paragraph 11. Paragraph 11 applies if before the end of the "first period" the employer either fails to respond to the request or informs the union that the employer does not accept the request (without indicating a willingness to negotiate). The "first period" is defined in paragraph 10(6) as the period of 10 working days starting with the day after that on which the employer receives the request for recognition. In this case the Employer responded to the request by saying it had agreed to undertake a ballot of employees to "indicate" (sic) their wishes. The Panel does not consider that this, of itself, constitutes a willingness to negotiate with the union. The Employer stated in its response to the Union's application that it was "happy to have discussions facilitated by Acas" but there is no indication that it communicated a willingness to negotiate to the union before the end of the "first period" and, indeed, the Employer has not sought to argue that it did so.

21. 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)

22. 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. The Union stated in its application to the CAC that it had 41 members in its proposed bargaining unit. The Employer stated in its response to the application that there were 67 workers engaged across its contracts at Yeovilton. On the basis of these figures there is a membership level of 61% within the proposed bargaining unit. The Employer's response form asks the Employer to give reasons if it disagrees with the Union's estimate of membership in the proposed bargaining unit. The Employer

did not provide any comment under this heading. In the absence of any evidence to the contrary the Panel has decided that, on the balance of probabilities, the level of union membership in the bargaining unit does 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)

23. 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. For the reasons given in paragraph 22 above the Panel has concluded, for the purposes of this stage of the statutory recognition process, that the level of union membership within the proposed bargaining unit stands at 61%. 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 such evidence to the contrary was received in this case. The Panel also notes that the Union stated in its application that it had a recent petition containing 57 names and signatures supporting its application for recognition. The Employer did not disclose the result of its own ballot of employees' wishes on potential recognition but it did not make any comment when asked on the response form to give reasons if it did not consider that a majority of workers in the proposed bargaining unit were likely to support recognition. On the basis of the evidence before it the Panel has decided that, on the balance of probabilities, a majority of 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.

Concluding observation

24. The Panel notes the statement by the Employer in its response to the application that 35 workers within the proposed bargaining unit would leave its employment on 14 May 2016. However the Panel reminds the parties that the Schedule sets a tight timetable for a decision as to whether an application should be accepted and the Panel is required to make a decision based on the number of workers employed by the Employer at the time that decision is made. Whether the Union's proposed bargaining unit is appropriate falls to be considered, in the absence of agreement between the parties, at a later stage of the statutory process.

Decision

25. For the reasons given in paragraphs 20-23 above, the Panel's decision is that the application is accepted by the CAC.

Panel

Professor Gillian Morris, Panel Chair

Mr Mike Shepherd

Mr Keith Sonnet

10 May 2016