

15 July 2015

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
SGS United Kingdom Ltd

Introduction

1. Unite the Union (the Union) submitted an application to the CAC that it should be recognised for collective bargaining by SGS United Kingdom Ltd (the Employer) in respect of a bargaining unit comprising “All employees working as part of the Jetty Operation, including Supervisors, at Stanlow Oil Refinery, Ellesmere Port”. The application was received by the CAC on 19 June 2015. The CAC gave both parties notice of receipt of the application on 19 June 2015. The Employer submitted a response to the CAC dated 25 June 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 Lynette Harris, chairing the Panel, and, as Members, Mr George Getlevog and Ms Virginia Branney. 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 3 July 2015. The acceptance period was extended to 17 July 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.

The Union's application

5. The Union stated that it had submitted its last formal request for recognition to the Employer on 1 April 2015 which had been rejected by the Employer on 20 April 2015. The Union attached copies of all correspondence between the parties.

6. The Union stated that there were 1,368 workers employed by the Employer, of whom 49 were in the proposed bargaining unit. Out of the 49 workers in the bargaining unit 34 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 was willing to provide that information to the CAC on a confidential basis.

7. The Union stated that the reason for selecting the proposed bargaining unit was that it encompassed all those employees (including supervisors) deployed at one geographical location who worked on the Jetty Operation which was a distinct service carried out by the employer at Stanlow.

8. The Union stated that the bargaining unit has not been agreed with the Employer and confirmed that it held a current certificate of independence.

9. The Union confirmed that it was not aware of any existing agreement which covered any of the workers in the proposed bargaining unit.

The Employer's response

10. The Employer stated that it had received the Union's written request letter on 1

April 2015. The Employer enclosed a copy of its response which was a letter dated 20 April 2015 stating that it did not wish to proceed in negotiating a recognition agreement.

11. The Employer confirmed that it had received a copy of the application from the Union on 19 June 2015.

12. The Employer stated that it did not agree the bargaining unit and that it was the Company's position that the proposed recognition was unnecessary given that all staff at any location could raise any issues regarding pay and conditions at any time with the Company's management. The Employer also stated that it objected to the proposed bargaining unit on the grounds that fragmented bargaining would be the result of the union's proposal and effective management would be undermined by having only the Jetty Operations workforce at Stanlow Oil Refinery represented in that way.

13. The Employer stated that it did not agree with the number of workers in the bargaining unit as defined in the Union's application. The Employer gave a breakdown of all job titles and number of employees within the proposed bargaining unit which totalled 50 employees.

14. In answer to the question whether it disagreed with the Union's estimate of membership in the proposed bargaining unit and reason for disagreeing, the Employer stated that the Union membership was not known. The Employer stated that it believed that appropriate checks should be carried out and the appropriate information should be provided by the Union for that purpose.

15. As to whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer stated that it had no information to suggest that the majority of the 50 employees working as part of the Jetty Operation were likely to support the union's recognition. The Employer also stated that the company believed that appropriate and up to date evidence should be provided by the Union for that purpose.

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

17. As to whether the Employer was aware of any previous application under Schedule A1 for statutory recognition made by the Trade Union, in respect of this bargaining unit or a similar bargaining unit, the Employer stated that an application was made by the Union on 22 May 2015 but was subsequently withdrawn.

The Membership and support Check

18. To assist the determination of two of the admissibility criteria specified in the Schedule, namely, whether 10% of the workers in the bargaining unit are members of the union (paragraph 36(1)(a)) and whether a majority of the workers in the 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 bargaining unit, and of the petition. It was agreed with the parties that the Employer would supply to the Case Manager a list of the names, date of birth and job titles of workers within the bargaining unit, and 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 their petition. 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 1 July 2015 from the Case Manager to both parties. The information from the Union was received by the CAC on 1 July 2014 and from the Employer on 2 July 2014. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

19. The Union provided a list of 23 members and the Employer provided a list of 47 workers. The job titles given for the workers by the Employer were Administration Assistant, Assistant Maintenance Tech, Jetty Operations Manager, Ferryman, Isps & Mooring Operator, Maintenance Technician, Mooring Assistant, On Call Operator, Operator, Senior Operator and Shift Supervisor.

20. The Union’s petition consisting of 31 signatories was set out as follows:

Petition in support of recognition

Unite the Union is asking your employer to recognise it for collective bargaining. We have to show the Central Arbitration Committee that a majority of workers favour our application. If you want your Employer to recognise the union for collective bargaining, please sign the petition.

“I support recognition of Unite the Union, as entitled, to conduct collective bargaining on pay hours and holidays”.

| Name | | Job Title | Signature | Name | | Job Title | Signature |
|---------|-------|-----------|-----------|---------|-------|-----------|-----------|
| Surname | First | | | Surname | First | | |
| | | | | | | | |

21. The membership check established that there were 15 members of the Union within the bargaining unit; a membership level of 31.91%. The result of the comparison of the Union’s petition with the Employer’s list of workers revealed that a total of 30 workers had indicated that they wanted the Union to represent them, which corresponds to 63.82% of the bargaining unit. 15 of the 30 were union members (31.91%) and 15 were non-members (31.91%).

22. A report of the result of the membership check was circulated to the Panel and the parties on 3 July 2015 and the parties were invited to comment on the result.

Union’s comments on membership and support check

23. In a letter dated 7 July 2015 the Union stated that it had supplied extracts from its database to show that, working from the employer’s figure, it had 31.91% membership density and had provided a petition which showed that 63.82% of employees in the proposed bargaining unit would favour the recognition of Unite. The Union stated that it was therefore clear from the analysis carried out, based on the figure provided by the employer of those who worked in the appropriate unit, that it had met the tests prescribed by paragraph 36 of the Schedule.

Employer's comments on membership and support check

24. A response was received from the Employer dated 7 July 2015 stating that it understood that the petition was undertaken earlier this year (March 2015) and since that time had additional management permanently based on site at Stanlow. In addition to that it had increased management and HR presence on site. The Employer stated that it believed that if the petition were to be undertaken again the responses given by the employees would be substantially different to that presented on the previous petition which was approximately 4 months old. The Employer stated that of the individuals that had signed the petition and who were common to both their list and the Union's list, it would only require 7 workers to have changed their view in the intervening period for it to be no longer likely that a majority would favour recognition.

Considerations

25. 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.

26. 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.

Paragraph 36(1)(a)

27. 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.

28. The membership check conducted by the Case Manager showed that 31.91% of the workers in the proposed bargaining unit are fully paid up members of the Union. As stated in paragraph 18 above the Panel is satisfied that the check was 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)

29. 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. The Panel feels that it important that we emphasise that, at this stage in the statutory process, we have to decide whether it is **likely** that a majority of the workers in the proposed bargaining unit will support recognition of the Union. This is the statutory test that must be applied. It is not a question as to whether the Union is actually supported by a majority of the workers in the proposed bargaining unit. Such a test will come in the fullness of time should it be necessary to hold a secret ballot to decide the question.

30. Based on those numbers provided by the Case Manager's check of the Union's petition against the list of 47 workers provided by the Employer, this indicated that 30 of the 31 petition signatories were identifiable as workers within the bargaining unit, a support level of 63.82%. Of those there were 15 union members (31.91%) and 15 non-members in the bargaining unit (31/91%). If the non union members who signed the petition are added to the number of Union members within the bargaining unit this would equate to 30 workers (63.82%) of the bargaining unit. The Panel noted the Employer's comments that it believed that if a petition were to be undertaken now, the responses by the employees would be substantially different to that presented on the previous petition, but no evidence to support this was produced. 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

31. The Panel is satisfied that the application is valid within the terms of paragraphs 5 to 9, is made in accordance to 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 Lynette Harris

Mr George Getlevog

Ms Virginia Branney

15 July 2015