

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DECISION ON FORM OF BALLOT

The Parties:

Unite the Union

and

Teknomek Limited

Introduction

1. Unite the Union (the Union) submitted an application to the CAC dated 20 July 2016 that it should be recognised for collective bargaining by Teknomek Limited (the Employer) for a bargaining unit comprising “Employees in Workshop Prep, Workshop Welding Departments and Stores Department” based at the Employer’s premises in Brunel Way, Sweetbriar Industrial Estate, Norwich, Norfolk. The CAC gave both parties notice of receipt of the application on 21 July 2016. The Employer submitted a response to the CAC dated 29 July 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 Linda Dickens MBE, Chair of the Panel, and, as Members, Ms Bronwyn McKenna and Mr Roger Roberts. Ms McKenna was subsequently replaced by Mr Malcolm Wing. The Case Manager appointed to support the Panel was Nigel Cookson.

3. By a decision dated 15 August 2016 the Panel accepted the Union's application. The parties then entered a period of negotiation in an attempt to reach agreement on the appropriate bargaining unit. In an email dated 1 September 2016 the Union stated that the parties were in the process of negotiating a voluntary arrangement and on this basis the Panel, by way of a letter dated 7 September 2016, notified the parties that it had decided that it would be prudent to extend the current period for the agreement of the bargaining unit until 22 September 2016. The negotiation period was further extended by the Panel to 23 October 2016 to allow discussions to take place on a draft agreement.

4. However, in an email dated 18 October 2016, the Union asked that the CAC resume the statutory process expressing concern that the Employer was using the time to undermine support for the Union and so, on 19 October 2016, the Case Manager wrote to the parties seeking confirmation as to whether or not the appropriate bargaining unit had been agreed and if so, whether this bargaining unit was the same as that originally proposed by the Union. If the agreed bargaining unit did differ to that originally proposed the parties were asked to explain how it differed.

5. Correspondence between the CAC and the parties confirmed that the bargaining unit was as originally proposed by the Union although both parties indicated there had been changes in personnel in the bargaining unit.

6. Commenting on the Union's email of 18 October 2016, the Employer stated that it had very seriously been considering the recognition issue and the voluntary recognition agreement proposed by the Union. However, whilst this was ongoing it was approached by a number of workers within the proposed bargaining unit expressing their concern over union recognition and a petition against recognition of the Union had been conducted. Given the changed circumstances, the Employer suggested that the CAC conduct a secret ballot to confirm the level of support for Union recognition.

7. On 28 October 2016 the parties were notified that the Panel would proceed on the basis that the bargaining unit was agreed to be those workers employed in Workshop Prep, Workshop

Welding Department and Stores Department. The Union was asked whether it was claiming that it had majority membership within the bargaining unit and was therefore submitting that it should be granted recognition without a ballot.

8. On 3 November 2016 the Union emailed stating that the reality of the situation was that the Employer currently employed 22 people within the identified bargaining unit and that the Union had 12 of these workers in membership. However, two had cancelled their payments and therefore would cease being considered members 26 weeks from when they cancelled their direct debits. Further, three further workers from the bargaining unit were recently made redundant, all three had appealed but one of the workers had stated that even if his appeal was successful he would not return to the company. Therefore the Union believed that whilst it could claim to have the majority in membership the position for the foreseeable future was not clear for the reasons identified and therefore the Union was of the view that an acceptable compromise would be for the matter to be the subject of a ballot following the Union being permitted access to address the entire bargaining unit.

Issues

9. On 9 November 2016, the Panel, having considered the submissions of the parties, concluded that the qualifying condition in paragraph 22(4)(a) of the Schedule was satisfied and that a ballot should be held in the interests of good industrial relations. The parties were duly given notice in accordance with paragraph 23(2) that a secret ballot would be held. The Panel also advised the parties that it would wait until the end of the notification period of ten working days, as specified in paragraph 24(5), before arranging a secret ballot. The parties were also asked for their views on the form the ballot should take.

10. The notification period under paragraph 24(5) of the Schedule ended on 22 November 2016. The CAC was not notified by the Union or by both parties jointly that they did not want the ballot to be held, as per paragraph 24(2).

Union's submissions on the form of ballot

11. In an email dated 14 November 2016 the Union stated that it would very much prefer a postal ballot as it believed this provided for full transparency and retains greater confidence in the legitimacy of the process. From a cost aspect it suggested that the Case Manager could provide a comparison in the cost differences between a postal and a workplace ballot.

Employer's submissions on the form of ballot

12. In an email dated 14 November 2016 the Employer expressed a preference for the ballot to be held at the workplace from a practicality and cost point of view. Given the size of the bargaining unit and the number of workers involved in the process the Employer believed a ballot held on its premises would be the most cost effective and practical solution. It would also lead to a quicker resolution and so minimise the uncertainty and disruption whilst the parties waited for the process to complete, whatever the outcome. Having said that, the Employer agreed that any workers not present when the ballot was held should be given the opportunity to vote by post.

Considerations

13. When determining the form of the ballot (workplace, postal or a combination of the two methods), the CAC must take into account the following considerations specified in paragraphs 25(5) and (6) of the Schedule:

- (a) the likelihood of the ballot being affected by unfairness or malpractice if it were conducted at a workplace;
- (b) costs and practicality;
- (c) such other matters as the CAC considers appropriate

14. The panel has reviewed fully all evidence relevant to the above considerations and taken account of the views of the parties. To assist in this estimate of costs of different forms of ballot

were obtained which indicated a workplace ballot would be approximately twice the cost of a fully postal ballot.

Decision

15. The decision of the Panel is that the ballot be a postal ballot.

16. The name of the Qualified Independent Person appointed to conduct the ballot will be notified to the parties shortly as will the period within which the ballot is to be held.

Panel

Professor Linda Dickens MBE, Panel Chair

Mr Roger Roberts

Mr Malcom Wing

24 November 2016