

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DECISION ON WHETHER THE APPLICATION IS VALID FOLLOWING
DETERMINATION OF THE BARGAINING UNIT

The Parties:

GMB

and

Metallink Fluid Power Systems

Introduction

1. GMB (the Union) submitted an application which was received by the CAC on 14 December 2015 that it should be recognised for collective bargaining by Metallink Fluid Power Systems (the Employer) for a bargaining unit comprising "All permanently employed Manufacturing/Production Operatives at Metallink Crook, excluded from our application will be; Office Staff, Management, Administration, Contractors, Fixed Term Workers and Agency Workers". The CAC gave the parties notice of receipt of the application on 14 December 2015. The Employer submitted a response to the application dated 14 December 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 Mr Chris Chapman, the Panel Chair subsequently replaced by Professor Kenny Miller and, as Members, Mr David Bower subsequently replaced by Mrs Maureen Chambers

and Ms Virginia Branney. The Case Manager appointed to support the Panel was Linda Lehan.

3. By a decision dated 11 January 2016 the Panel accepted the Union's application. As the parties failed to agree a bargaining unit, a hearing was held in Newcastle on 4 March 2016. Following the hearing the Panel decided that the appropriate bargaining unit in this matter should comprise "All employees excluding management". This bargaining unit differed to that proposed by the Union by the inclusion of the Accounts Assistant and two Logistic Officers.

Issues

4. As the determined bargaining unit differed from that proposed by the Union, the Panel is required by paragraph 20 of the Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992 (the Schedule) to determine whether the Union's application is valid or invalid within the terms of paragraphs 43 to 50 of the Schedule.

Union's comments on the tests in paragraphs 43 to 50

5. In an e-mail dated 21 March 2016 the Union submitted that there was no competing application from another union covering any of the workers in the new bargaining unit nor had there been a previous application in respect of the workers in the new bargaining unit. The Union stated that they believed there were 37 employees within the new bargaining unit and currently 11 were union members. The Union stated that it believed there was a strong desire from the production staff for trade union recognition.

The membership and support check

6. To assist the determination of the two admissibility tests under paragraph 45(a) and 45(b) of the Schedule, namely whether 10% of the workers in the relevant bargaining unit were members of the Union and whether a majority of the workers in this bargaining unit were likely to favour recognition of the Union, the Panel instructed the Case Manager to carry out checks on the level of union membership and support within the bargaining unit. The

Employer agreed that it would supply to the Case Manager a list of the names, dates of birth and job titles of the workers within the determined bargaining unit. The Union agreed to supply to the Case Manager a list of names and dates of birth of the paid up union members in the determined bargaining unit together with a copy of the petition it had to enable a comparison to be undertaken. The information from both the Employer and the Union was received by the CAC on 23 March 2016. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and petition would not be copied to the other party and that agreement was confirmed in a letter from the Case Manager to both parties dated 22 March 2016. The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

7. The Union provided a list containing the details of 11 union members.

8. The Union's petition was set out as follows:

GMB @ Work in Metallink

“Yes I support the GMB claim through recognition to conduct collective bargaining on my behalf and would welcome the opportunity to register my opinion in a secret ballot”.

Signature: _____

Print Name: _____

Please note this section can be completed by both members and non-members.

Surname: _____

Forename: _____

Address: _____

_____ Postcode: _____

Job Title: _____

Are you an existing union member? YES?NO

If yes, please indicate which union you are a member of:

GMB

□ OTHER: _____

Membership number (if known): _____

This information will NOT be shown to your employer

Please return this slip in the envelope provided or to
GMB Middlesbrough, Freepost RTJZ-AEZK-HSXZ,
GMB Northern, 1 Mosley Street, Newcastle Upon Tyne.
NE1 1YE

GMB@WORK
You can join online at:
www.gmb.org.uk/join

9. The Employer provided a list containing the details of 38 workers.

10. The membership check established that there were 11 members of the Union within the determined bargaining unit; a membership level of 28.94%. The result of the comparison of the Union's petition with the Employer's list revealed that a total of 11 workers had signed the petition, which corresponded to 28.94% of the determined bargaining unit, of which 8 (21.05%) were members and 3 (7.89%) were non members.

11. The report of the results of the check of the membership level and support for recognition was circulated to the Panel and the parties on 23 March 2016 and the parties were duly invited to comment on the results thereof.

12. No comments were received from either party

Considerations

13. The Panel is satisfied on the evidence available that the application is valid in terms of the tests laid down in paragraphs 44 and 46 to 49 of the Schedule, namely that there is no existing recognition agreement in force covering any of the workers in the determined bargaining unit, that there is no competing application and that there has been no previous application to the CAC in respect of the determined bargaining unit. The remaining tests before the Panel are whether in accordance with paragraphs 45(a) and (b) of the Schedule, 10% of the workers constituting the relevant bargaining unit are members of the Union and that the majority of those workers would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit.

14. With regard to the question of whether union members constitute at least 10% of the workers in the agreed bargaining unit, the Case Manager's check established that 28.94% of the workers in this bargaining unit were members of the Union which the Employer did not dispute. The evidence available before the Panel establishes that at least 10% of the workers in the bargaining unit are members of the Union. The Panel is therefore satisfied that the 10% test set out in paragraph 45(a) is met.

15. The second test for the Panel to consider is whether a majority of the workers constituting the relevant 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 the previous paragraph the level of union membership has been established as 28.94%. The result of the comparison of the petition with the Employer's list of workers revealed that 11 workers had indicated that they wanted the Union to represent them. Of those who had signed the Union's petition there were 8 (21.05%) union members and 3 (7.89%) non-union members. If you add the non union members who signed the petition to the number of union members this equates to 14 which represents 36.84% of the new bargaining unit. Based on the evidence before it the Panel is of the view that the test in paragraph 45(b) is not met, that is, the majority of the workers in the determined (new) bargaining unit would not be likely to favour recognition.

Decision

16. The decision of the Panel is that the application is found invalid for the purposes of paragraph 20 of the Schedule and the CAC cannot proceed with this application.

Panel

Professor Kenny Miller

Mrs Maureen Chambers

Ms Virginia Branney.

05 April 2016