

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:

GMB

and

Engie Services Ltd trading as Workplace Solutions

Introduction

1. GMB (the Union) submitted an application dated 1 April 2016 to the CAC that it should be recognised for collective bargaining purposes by Workplace Solutions (Engie) (the Employer) for a bargaining unit comprising of "Industrial Supervisors, Industrial Charge Hands, Industrial Cleaners, Waste Management Operatives, Waste Management Administrators, Joiners, Bricklayers, Painters, Plumbers Multi skilled Craftsperson's, DOC Cleaners, DOC Supervisors, Security Officers permanently employed by Workplace Solutions, West Burton Power Station, Retford Nottinghamshire DN22 9BL and Workplace Solutions, Cottam Power Station, Cottam, Retford, Nottinghamshire, DN22 0NP". The CAC gave both parties notice of receipt of the application on 12 April 2016. The Employer submitted a response to the CAC on 18 April which was duly 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 Her Honour Judge Stacey, Chair of the Panel, and, as Members, Mr David Crowe and Ms Lesley Mercer. The Case Manager appointed to support the Panel was Nigel Cookson.

Issues

3. 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 to be accepted.

The Union's application

4. In its application, the Union stated that it had written to the Employer with a formal request for recognition on 29 January 2016 to which it received no reply. The Union attached a copy of this letter to its application.

5. The Union stated that the Employer employed 120 workers with 80 of these falling within the Union's proposed bargaining unit. The Union had 40 members in the proposed bargaining unit and when asked for evidence that the majority of the workers in the proposed bargaining unit would support recognition the Union answered "see enclosed petition". In addition to a petition the Union also attached to its application a list of its membership within the proposed bargaining unit. These documents formed part of the application and supporting documents and were copied to the Employer by the Union on 1 April 2016.

6. The petition came in two parts both of which were on Union headed notepaper. The first part was headed:

Petition in support of recognition

Workplace Solutions, West Burton Power Station

GMB trade union is asking your employer to recognise it for collective bargaining. We have to show the Central Arbitration Committee that a majority of workers in the "bargaining unit" support our application. If you do support us, please sign this petition.

I support recognition of the GMB trade union as entitled to conduct collective bargaining on pay, hours and holidays on behalf of all employees at West Burton Power Station.

This part of the petition consisted of three pages with columns headed Name, Signature and Job Title. In the second part of the petition the proposition was identical save that the location of the bargaining unit was changed to "Cottam Power Station". This part of the petition consisted of two pages with identical column headings as the first part.

7. Also attached to the application was a letter dated 14 March 2016 from the Employer confirming that as from 29 February 2016 the employing entity had changed its name from Cofely Workplace Limited to ENGIE Services Limited but that all other terms and conditions remained unchanged. The Union stated that it had selected its bargaining unit on the basis that its membership wished for a recognition agreement between the Union and the Employer. When asked whether the bargaining unit had been agreed with the Employer the Union answered "No".

8. The Union confirmed that it was in possession of a current certificate of independence and that the Union had not made a previous application to the CAC in respect of the same or a similar bargaining unit. Finally, the Union said that there was no existing recognition agreement in place covering any of the workers in the proposed bargaining unit.

The Employer's response to the application

9. In its response to the application the Employer, when asked on what date did it receive the Union's written request under Schedule A1 for recognition explained that the Site General Manager, Roger Taylor, met with the Union in September 2015 and was presented with a draft agreement. However, to its knowledge, the Employer had not received a formal written request. At the September meeting Mr Taylor verbally indicated that he did not believe there was a requirement to enter into a formal recognition agreement with the Union.

10. The Employer stated that it had received a copy of the application form and supporting documents from the Union on 11 April 2016.

11. In its response to the application the Employer stated that the parties had not agreed the bargaining unit before it had received a copy of the application form from the Union but when asked if it agreed the proposed bargaining unit the Employer answered "YES".

12. The Employer confirmed that it employed 127 at the sites concerned and not the 120 as stated by the Union and the figure of 127 was supported by the Employer's payroll records.

13. When asked to give reasons if it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer stated that the Union had claimed 40 members but that three members had taken redundancy, leaving a total of 37.

14. The Employer did not consider that a majority of the workers in the bargaining unit were likely to support recognition of the Union explaining that 61 workers had signed the Union's petition which were reasonable grounds, so the Employer believed, to doubt that support for recognition was at the required level. Furthermore, the Employer already had a representative Employee Forum in place at a local and national level.

15. Finally, the Employer answered "N/A" when asked whether there had been a previous application by the Union or another trade union in respect of this bargaining unit or a similar bargaining unit.

Clarifying the number of workers in the proposed bargaining unit

16. Before the Employer's response was copied to the Union and its comments invited the Panel sought clarification from the Employer as to the total number of workers it employed and the number of workers in the Union's proposed bargaining unit.

17. In an email to the Case manager dated 25 April 2016 the Employer stated that globally it employed approximately 180,000 workers. The UK Business Unit employed approximately 14000 workers, the EDF subsector (of which West Burton and Cottam Power Stations were a part) employed 1445 and the total employed at the West Burton and Cottam sites was 127. In an

email later that same day the Employer confirmed that within the total of 127 workers employed at the West Burton and Cottam Power Stations were roles that were outside of the Union's proposed bargaining unit. The number of workers in the roles as set out by the Union in its request for recognition (and as listed in paragraph 1 above) was 102.

Union's comments on the Employer's response

18. The Employer's response, as well as its email exchange with the Case Manager as to the number of workers in the proposed bargaining unit, was cross copied to the Union and its comments invited. In an email to the Case Manager dated 26 April 2016 the Union refuted the assertion that no formal written request had been made. The Union included in the email all of its correspondence with the Employer and its HR representatives for the last 2 years chasing a signature on a voluntary agreement. At the meeting between the parties in September 2015 Mr Taylor positively welcomed a formal agreement in principle and said that he would forward the draft to the HR department for ratification. The Union then had to chase Mr Taylor for an update to be finally informed that the Employer would not be signing the draft agreement. A copy of the draft agreement was attached to the Union's email. The Union agreed that three workers have left via voluntary redundancy since the application was submitted. Commenting on the Employer's email exchange with the Case Manager the Union stated that the proposed bargaining unit consisted of 102 workers of whom over 50% had signed a petition indicting support for recognition.

Considerations

19. In deciding whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 3 of this decision are satisfied. The Panel has considered the evidence submitted by the Union and the Employer in reaching its decision.

20. The first task of the Panel is to decide whether it is satisfied that the Union made a valid request to the Employer within the terms specified in paragraphs 5 to 9 of the Schedule, namely

that the request was received by the employer, it was made in writing and identified the Union and the proposed bargaining unit and stated that the request was made under the Schedule.

21. In this case, the Union stated that it sent its formal request for recognition to the Employer on 29 January 2016 and that it received no reply from the Employer. The Employer, on the other hand, stated in its response to the application that it had not received the request. We note that the person completing the response form on the Employer's behalf was not the person to whom the Union had addressed its request for recognition¹. When commenting on the Employer's claim that no formal request had been received the Union provided the CAC with all of its correspondence with the Employer and its HR representatives for the previous two years which, if printed, would run to some 84 pages. These emails covered the period 23 May 2014 to 15 September 2015 with no emails from January 2016, the time when the Employer was sent the formal request.

22. It is clear that the parties have been in communication for some time concerning the Union's expressed desire for recognition by the Employer. The Panel see no reason to doubt the Union's assertion that a letter of request was sent as stated and that the copy letter enclosed with the application is correctly dated and was duly despatched. On balance of probabilities the panel concludes that it was sent on 29 January 2016 and infers that it was received by the Employer. The Panel notes however that the Employer is a large organisation and the letter sent to the Site general manager may not have made its way to the HR department to be acted upon and responded to. The Panel concludes however that it was received by the Employer, as required by the Schedule. The Panel is also satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 34 and 37 to 42 and that it was made in accordance with paragraph 11 of the Schedule in that, before the expiry of the first period of 10 working days, the Employer failed to respond to the request. The remaining issues for the Panel to address are whether the admissibility criteria set out in paragraph 35 and 36(1) of the Schedule are met.

¹ The Union had addressed its request to the Site General Manager, Roger Taylor.

Paragraph 36(1)(a)

23. 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. In this case the Union has provided the Employer with its membership list and it is agreed between the parties that there are now 37 members in a proposed bargaining unit of 102 workers and so Union membership therefore stands at 36.27%. On this basis the Panel is satisfied that the 10% threshold test is met.

Paragraph 36(1)(b)

24. Paragraph 36(1)(b) of the Schedule provides that, for an application to be admissible, the CAC must be satisfied 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 would emphasise that at this stage in the statutory process, it has to decide whether it is likely that a majority would support recognition, an inherently somewhat speculative process, and it must do so within a reasonably short period of time.

25. In this case the Union relied on a petition signed by workers in the proposed bargaining unit. This petition was a supporting document in that it was attached by the Union to its application and was copied by the Union to the Employer. The Employer, in its response to the application, observed that as the petition was only signed by 61² workers, it did not consider that a majority of the workers in the bargaining unit were likely to support recognition of the Union and the number of petition signatories were reasonable grounds, so the Employer believed, to doubt that support for recognition was at the required level.

² There are 65 signatures on the petition and no explanation was given for the difference in figures though we assume allowance was made for the three workers that took voluntary redundancy terms.

26. Assuming that the Employer is correct and that a minimum of 61 of the petition signatories are workers within the proposed bargaining unit, this would equate to 59.8% of the proposed bargaining unit having signed the petition in favour of the Union being recognised.

27. Having considered the papers submitted by the parties the Panel is of the view that the petition in support of recognition, which represents a minimum of 59% of the workers in the proposed bargaining unit, is persuasive evidence that, on balance, a majority of the workers would be likely to support recognition of the Union. The Panel has not seen any evidence from the Employer which would lead us to doubt the credibility of the Union's petition as evidence towards the satisfaction of this test.

28. Accordingly, the Panel is satisfied that the 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 and so the test set out in paragraph 36(1)(b) of the Schedule is satisfied.

Decision

29. For the reasons given above the application is accepted by the CAC.

Panel

Her Honour Judge Stacey, Chairman of the Panel

Mr David Crowe

Ms Lesley Mercer.

5 May 2016