

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

Precision Polymer Engineering

Introduction

1. Unite the Union (the Union) submitted an application to the CAC dated 25 October 2016 that it should be recognised for collective bargaining by Precision Polymer Engineering (the Employer) for a bargaining unit comprising “Within the four segments of the business, this will include hourly paid shop floor manual production shift workers including cell leaders in the following areas: Maintenance Dept, tool room dept, seven production cell, extrusion dept, goods in and out department. However, the bargaining unit will exclude staff, segment leaders, supervisors and above and individuals with responsibility for discipline and grievance”. The Union stated the location as being the Shop Floor. The application was received by the CAC on 25 October 2016. The CAC gave both parties notice of receipt of the application on 26 October 2016. The Employer submitted a response to the CAC dated 7 November 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 Kenny Miller, Chairman of the Panel,

and, as Members, Mr Mike Regan and Ms Virginia Branney. The Case Manager appointed to support the Panel was Linda Lehan.

3. The CAC Panel extended the acceptance period in this case. The initial period expired on 8 November 2016. The acceptance period was extended to 22 November 2016 and to 25 November 2016 in order to allow time for further information to be obtained, 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 confirmed that it had made a previous application under Schedule A1 for statutory recognition for workers in the bargaining unit but this had subsequently been withdrawn.

6. The Union stated that it had submitted its request letter to the Employer on 22 July 2016, a copy of which it attached to the application. The Union confirmed that at the request of the Employer the services of ACAS were used.

7. The Union stated that there were 210 workers employed by the Employer, of whom 160 were in the proposed bargaining unit. Out of the 160 workers in the proposed bargaining unit 91 were members of the Union. The Union stated that the Employer did not agree with the number of workers in the proposed bargaining unit. When asked to provide evidence that a majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining, the Union stated that it had on good authority, from members within the workplace, that a

substantial number of employees would join the Union once recognition had been achieved which it believed would take the membership within the bargaining unit to 70%.

8. The Union stated that the reason for selecting the proposed bargaining unit was that it mirrored the management structure within the company and was a sensible and coherent group within the manual/shop floor areas.

9. The Union stated that the 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. The Union confirmed that it held a current certificate of independence.

The Employer's response to the Union's application.

10. The Employer confirmed that it had received the Union's written request letter on 22 July 2016 and responded in writing on 3 August 2016 not accepting the request but indicating a willingness to negotiate.

11. The Employer confirmed that it had received a copy of the application form from the Union by email on 26 October 2016 and a hard copy was received by them on 27 October 2016. The Employer stated that it had not, before receiving a copy of the application from the Union, agreed the bargaining unit and still did not agree it. When asked to indicate its objections to the proposed bargaining unit the Employer gave a lengthy response explaining that the bargaining unit proposed by the Union was confused and lacking in clarity. The Employer stated that the description was insufficiently precise for the Company or its employees to identify the proposed bargaining unit with any clarity or certainty. The Employer stated that the description referred to workers in four segments of the business but went on to exclude "staff" and there was no explanation of what constituted "staff". The Employer stated that it was also not clear whether the Union intended that "staff, segment leaders, supervisors" were excluded generally or only if they had "responsibility for discipline and grievance". The Employer went into further detail surrounding the ambiguity of the proposed bargaining unit giving examples of what it found to be unclear.

12. The Employer also submitted a detailed argument on why it believed that the Union's proposed bargaining unit was unsuitable, which will, if necessary, be considered at a later stage of the process.

13. Following receipt of the Union's request the Employer stated that a meeting was arranged with ACAS for 8 November 2016 but that was pre-empted by an earlier application for recognition which the Union withdrew and by the current application. The Employer attached a chain of emails showing that a meeting was organised.

14. The Employer stated that it employed 264 workers and that it did not agree with the number of workers in the proposed bargaining unit, as it was unclear as to the precise nature of the bargaining unit, but would be willing to provide numbers once it had clarity.

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

16. In answer to the question whether it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer stated that it did not have hard evidence of the number of Union members and, if the application was to proceed, requested a membership check be undertaken to determine the accuracy of the Union's figures. The Employer stated that the soundings which the Company had taken from employees indicated that there was less support for the Union than the Union were suggesting.

17. As to whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer stated that feedback it had received from face to face meetings with employees, "town hall" sessions and focus groups suggested that there was no appetite amongst the overwhelming majority of the workforce for recognition. The Employer stated that employees had confirmed that there were happy with the way that the Company was focussing on employee engagement and the measures which it had introduced, particularly over the last two years. The Employer stated that there were numerous mechanisms in place, including

a vibrant staff forum, annual surveys and increased face to face communication, all of which were popular and working effectively.

Union's comments on the Employer's response

18. In reply to the Employer's response the Union stated that the proposed bargaining unit was very clear and detailed and suggested that the company had changed its production arrangements to make the proposed bargaining unit unclear.

19. The Union stated that the difference between shop floor manual workers and staff workers, it believed, was clear and it was mischievous to suggest otherwise. The Union stated that the bargaining unit would exclude Staff Segment Leaders, Supervisors and individuals who had responsibility for discipline and grievance which they also believed was clear. The Union went on to address the other points made by the employer in respect of the ambiguity of the bargaining unit stating why they felt the description of their bargaining to be clear.

The Membership Check

20. To assist the determination of two of the admissibility criteria specified in the Schedule, namely, whether 10% of the workers in the proposed bargaining unit are members of the union (paragraph 36(1)(a)) and whether 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 (paragraph 36(1)(b)), the Panel proposed an independent check of the level of union membership within the proposed bargaining unit. 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 proposed 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). It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists would not be copied to the other party. These arrangements were confirmed in a letter dated 9 November 2016 from the Case Manager to both parties. The information from the Union was received by the CAC on 11 November 2016 and from the employer on 15 November 2016. The Panel is

satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

21. The Employer's Solicitor in a covering letter dated 15 November 2016, which was set out by the Case Manager in the membership report, stated that as set out in their clients' replies to the CAC questionnaire, unfortunately, the description of the proposed bargaining unit contained various contradictions and inconsistencies. The Solicitor stated that his clients wished to assist the Panel as fully as possible but in the absence of a clearly defined bargaining unit, this was not easy.

The Solicitor went on to state the following:

“The description of the Bargaining Unit provides:

“Within the four segments of the business, this will include hourly paid shop floor manual production shift workers including cell leaders in the following areas: Maintenance Dept, tool room dept., seven production cell, extrusion dept, goods in and out department. However, the bargaining unit will exclude staff, segment leaders, supervisors and above and individuals with responsibility for discipline and grievance.”

The proposed Bargaining Unit is said to be "within the four segments of the business" so presumably is not intended to include all employees in those segments.

The list prepared by my clients includes all hourly paid shop floor manual production shift workers apart from:

1. Cell leaders (also described as supervisors) as they have supervisory responsibility including for disciplinary matters. In their observations on my clients' responses to the questionnaire, Unite at Bullet Point 1 state: "If cell leaders have responsibility for discipline they are excluded from the bargaining unite (sic) as this could create a conflict of interest."

Having stated specifically in their description that cell leaders are included, they have now confirmed that they are excluded. There are 21 Cell Leaders so whether they are "in or out" makes a significant difference to the Bargaining Unit.

2. Employees in the Maintenance Department. Unite have also referred specifically to the Maintenance Department as being included but it is not included in any of the four segments of the business and has only three employees none of whom is hourly paid so my clients have not included them in the spreadsheet.

Although Goods In and Out (despatch) and Toolroom are not part of any segment, as Unite have made specific reference to them in the description and they are hourly paid, my clients have included employees in these parts of the business in the

spreadsheet.

The microform and technical departments are not within the four segments and Unite have not referred to them specifically in the application. In their observations on my clients' responses to the questionnaire, Unite state "description of the four segments does not include microform or technical departments. I am unsure if these are additional segments." The employees in these departments have not been included."

22. The list supplied by the Employer indicated that there were 140 workers in the proposed bargaining unit. Alongside the name of each worker the Employer listed the 4 Segments and the Job Description/Department within those segments and these details were described in the membership check. There were also 3 Job Description/Departments listed which had no Segment against them which were Despatch Operative, Goods in Operative and Toolroom Operative. The list of fully paid up members supplied by the Union contained 59 names. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was 47, a membership level of 33.57%.

23. A report of the result of the membership check was circulated to the Panel and the parties on 18 November 2016 and the parties were invited to comment on the result.

Employer's comments on the result of the membership check

24. The Employer in a lengthy letter dated 21 November stated that although, on the basis of the membership check, the Union were able to show the necessary 10% membership they had produced no evidence that a majority of the employees in the bargaining unit were likely to vote in favour of recognition. The Employer stated that the Union had failed to produce any evidence to indicate that a majority of the employees in the bargaining unit would vote in favour of recognition and the CAC had not been provided with the results of any petitions, survey or any pledge cards. The Employer went into detail about the terminology of the Union's description of the proposed bargaining unit and referred the CAC to recent correspondence, particularly to their letter of 15 November 2016 (see paragraph 21 above). The Employer also reiterated its argument on why it believed that the Union's proposed bargaining unit was unsuitable.

Union's comments on the result of the membership check

25. No comments were received from the Union.

Considerations

26. 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.

27. 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 12. 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)

28. 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.

29. The membership check conducted by the Case Manager showed that 33.57% of the workers in the proposed bargaining unit were members of the Union which was not disputed by the Employer. As stated in paragraph 20 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)

30. 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. As discussed in the previous paragraph, the level of union membership identified by the membership check is 33.57%. The Union did not provide any further evidence of likely support for recognition which was also pointed out by the Employer in their letter dated 21 November 2016. The Panel has concluded that the evidence before it is not sufficient to support a decision 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 proposed bargaining unit as required by paragraph 36(1)(b).

Decision

31. For the reasons given in paragraph 30 above, the Panel's decision is that the application is not accepted by the CAC.

Panel

Professor Kenny Miller, Chairman of the Panel

Mr Mike Regan

Ms Virginia Branney

25 November 2016