

06 April 2016

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

Sarginsons Industries Ltd

Introduction

1. Unite the Union (the Union) submitted an application to the CAC dated 29 February 2016 that they should be recognised for collective bargaining purposes by Sarginsons Industries Ltd (the Employer) for a bargaining unit consisting of "the shop floor or hourly rated or manual employees". The stated location address was "Torrington Avenue, Coventry, CV4 9AG". The CAC gave the parties notice of receipt of the application on 29 February 2016. The Employer submitted a response to the application on 8 March 2016.

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, the Panel Chair, and, as Members, Mr Rod Hastie and Mr Malcolm Wing. The Case Manager appointed to support the Panel was Miss Sharmin Khan but for the purposes of this decision was

replaced with Linda Lehan.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 14 March 2016. The acceptance period was extended to 30 March and subsequently to 6 April 2016 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 confirmed in its application that it had a certificate of independence and provided a copy of the certificate. The Union also attached a copy of its written request for recognition to the Employer, letter dated 12 February 2016. In its request letter the Union stated that informal discussions had taken place but it was unacceptable to them that discussions were being deferred.

6. The Union stated that there were approximately 100 workers employed by the Employer of whom 55 were in the proposed bargaining unit. Out of the 55 workers in the bargaining unit 35 were members of the Union. 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 their membership had grown by 30 in the last 11 months which took it to above 50% of the bargaining unit.

7. The Union stated that the reason for selecting the proposed bargaining unit was that it was a logical manageable group of similar employees. The Union confirmed that it had not made any previous application for workers in the proposed bargaining unit or a similar unit and it was not aware of any existing recognition agreement that

covered any of the workers in the proposed bargaining unit.

8. The Union stated that it had copied its application and supporting documents to the Employer on 29 February 2016.

Summary of the Employer's response to the Union's application

9. The Employer submitted its response to the application to the CAC on 8 March 2016.

10. The Employer confirmed it had received the Union's written request under Schedule A1 for recognition on 29 February 2016. The Employer stated that it had made no formal response as it believed that Acas were still involved.

11. The Employer stated that it did not agree the proposed bargaining and that the Union had assumed these workers were shop floor workers but there had been no discussions regarding the proposed bargaining unit.

12. The Employer stated that it did not agree with the Union's figure for the number of workers in the proposed bargaining unit and their details showed 75 people not 55 people as stated by the Union.

13. The Employer stated that it was unsure of the level of Union membership within the proposed bargaining unit and this was something it had wanted Acas to clarify for them.

14. The Employer stated that it did not consider that a majority of workers in the bargaining unit were likely to support recognition as it believed its employees were more accepting of its business and communication practices. The Employer stated that it also believed that workers may want to be a union member for their own personal benefit rather than as a collective.

15. Finally, the Employer confirmed that it had not received any other application for statutory recognition under the Schedule in respect of any of the workers in the

proposed bargaining unit and that there was no existing agreement for recognition in force covering any of the workers in the proposed bargaining unit.

Membership and support check

16. To assist the determination of the second 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 are likely to support recognition of the Union as entitled to conduct collective bargaining on behalf of the agreed bargaining unit (paragraph 36(1)(b)), the Panel proposed independent checks of the level of union membership in the proposed bargaining unit. It was agreed with the parties that the Employer would supply to the Case Manager a list of the names, addresses 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 16 March 2016 from the Case Manager to both parties. The information from the Union was received by the CAC on 17 March 2016 and from the Employer on 21 March 2016. The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

Summary of the membership and support check

17. The comparison of the Union's list of members with the Employer's list of workers established that there were 53 workers within the proposed bargaining unit of which 32 were members of the Union; a Union membership level of 61%. A report of the result of the membership check was circulated to the Panel and the parties on 22 March 2016 and the parties were invited to comment on the result.

Union's comments on membership and support check

18. In a letter dated 24 March 2016 the Union stated that it was happy that the

findings confirmed that not only had they met the 10% floor in the bargaining unit but was in excess of the number required to gain recognition if and when agreement of the bargaining unit was confirmed. The Union also expressed its feeling about the bargaining unit being compatible with effective management but this is an issue to be addressed by the CAC at the appropriate juncture.

Employer's comments on membership and support check

19. A response was received from the Employer dated 23 March 2016 stating the only clarification it would like to state was that it did not agree with the Union's bargaining unit and therefore would need the numbers recalculated accordingly in due course.

Considerations

20. 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 available evidence in reaching its decision.

21. 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)

22. 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.

23. The membership check conducted by the Case Manager showed that 61% of the workers in the proposed bargaining unit are fully paid up members of the Union. As stated in paragraph 16, the Panel is satisfied that the check was conducted properly, 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)

24. 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.

25. The Case Manager's check of the information provided by the parties demonstrated that there was a membership level of 61% within the proposed bargaining unit. Based on its knowledge and experience, the Panel is of the view that membership of a union can be indicative of an individual's support for recognition of a union to collectively bargain on their behalf. It notes that there is no evidence or argument to the contrary from the Employer.

26. For the reasons provided above and based on the evidence before it, the Panel concludes that a majority of the Union's proposed bargaining unit would be likely to favour recognition of the Union to conduct collective bargaining on its behalf and that the requirements of paragraph 36(1)(b) of the Schedule are met.

Decision

27. The Panel is satisfied that the application is valid within the terms of paragraphs 5 to 9, is made in accordance with paragraph 11(2) 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

Rod Hastie

Malcolm Wing

06 April 2016