

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DETERMINATION OF THE BARGAINING UNIT

The Parties:

Unite the Union

and

Safehouse Habitats (Scotland) Ltd

Introduction

1. Unite the Union (the Union) submitted an application to the CAC on 10 April 2015 that it should be recognised for collective bargaining by Safehouse Habitats (Scotland) Ltd (the Employer) for a bargaining unit comprising the "Technician group" based at the Employer's site at Strathmore House, Charles Bowman Avenue, Claverhouse Industrial Park, Dundee. The CAC gave both parties notice of receipt of the application on 15 April 2015. The Employer submitted a response to the CAC dated 21 April 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 Professor Linda Dickens MBE, chairing the Panel, and, as Members, Mr Paul Gates OBE and Mrs Maureen Shaw. The Case Manager appointed to support the Panel was Nigel Cookson.

3. By a decision dated 1 June 2015 the Panel accepted the Union's application. In the accompanying letter the parties were invited to enter a period of negotiation in an attempt to reach agreement on the appropriate bargaining unit. The letter also set out the Employer's duty under paragraph 18A(2) of the Schedule to provide the Union and the CAC with a list of the categories of worker in the proposed bargaining unit, a list of the workplaces at which the workers in the proposed bargaining unit work, and the number of workers the Employer reasonably believed to be in each category at each workplace. This information must be provided within 5 working days starting with the day after that on which the CAC gave the Employer notice of acceptance of the application.

4. On 8 June 2015 the Employer supplied the CAC with the information specified in paragraph 18A(2) and as is the CAC's normal practice, this was copied to the Union. In an email to the CAC of the same date the Union said that it had not been supplied with this information by the Employer as required by the Schedule and requested that the CAC move immediately to determine whether its proposed bargaining unit was appropriate. The Union's email was copied to the Employer. An email of 9 June 2015 from the Employer made it clear that the information had been provided only to the CAC and not to the Union directly.

5. On 11 June 2015 the Panel directed that the Case Manager inform the parties that it had formed the opinion that the Employer had failed to comply with the duty imposed by paragraph 18A in that it failed to provide the specified information direct to the Union within the timeframe set by paragraph 18A(2). Having made this finding the Panel would now proceed under paragraph 19 of the Schedule to determine whether the proposed bargaining unit was appropriate. To assist in this determination the parties were requested to make written submissions by noon on 29 June 2015. Notice was given that should a hearing be required it would be held on 17 July 2015 in Edinburgh. There was further correspondence between the Employer and the CAC relating to this decision which was copied to the Union.

6. In a letter dated 16 June 2015 the parties were notified that their written submissions must address the considerations set out in Paragraph 19B of Schedule A1 and they were further informed that, upon considering the written submissions, the Panel may decide that the matter could be disposed of without the need for a hearing and that the CAC would write and confirm whether this was the case.

7. On 29 June 2015 the parties' submissions were received by the CAC. On 30 June 2015 the submissions were cross copied and the parties were informed that, having examined the submissions, the preliminary view of the chair of the Panel, Professor Linda Dickens MBE, was that a hearing to determine the bargaining unit was not required but that the parties were invited to make representations on the need for a hearing, if they so wished, by no later than the close of business on 4 July 2015. The parties were also informed that if the case did proceed without a hearing they would have the opportunity of commenting on the other party's submission before the Panel made its determination. By emails dated 2 July the parties stated that a hearing was not required to decide the issue of the bargaining unit.

8. In accordance with paragraph 19 of Schedule A1 to the Act (the Schedule) the Panel's task was to determine first whether the Union's proposed bargaining unit was appropriate and then, if it was found not to be so, to determine a bargaining unit that was appropriate.

Summary of the submission made by the Union

9. It was the Union's view that the bargaining unit should comprise all Technicians, of which there were currently 50 in number, employed by the Employer.

10. At present there were no national and local bargaining arrangements. The Employer had its sole place of business at Strathmore House, Charles Bowmont Avenue, Claverhouse Industrial Park, Dundee. It had no satellite offices. At present, the Employer negotiated terms and conditions individually.

11. In addition to management the Employer's only other employee group was administration staff. It was submitted that the administration functions carried out by administration staff were wholly different to those duties undertaken by Technicians and it would not be appropriate for them to be included in the bargaining unit. While there were three levels of Technicians, they largely carried out the same duties. The Employer already regarded the Technicians to be a unit compatible with effective management. When the Employer sought to make redundancies in or about September 2014 the Technicians were regarded as the appropriate pool from which candidates would be selected. Further, in April 2015 the Employer sought to engage with the "Technician Group" to negotiate revised terms and conditions to which it wanted all Technicians to sign up to. Copies of the Employer's

letter in respect of the redundancy consultation dated 17 September 2014 and the Employer's letter of 15 April 2015 in respect of the revision of terms and conditions of employment were attached to the Union's submission and referred to for their terms.

12. As already detailed, there were two groups of employees in the Employer's business, namely Technicians and administration staff. The characteristics of each grouping were wholly different. The characteristics of the Technicians' tasks meant that categorising them as a bargaining unit was compatible with effective management.

13. All workers were employed from the Employer's address at Claverhouse Industrial Park, Dundee. While Technicians were instructed to work at locations away from the Employer's place of business this did not detract from the management structure being centred in Dundee. Indeed, the terms and conditions issued to all employees with the Employer's letter of 15 April 2015 detailed that the Technicians place of work was Charles Bowman Avenue, Claverhouse Industrial Park, Dundee. The statement of terms and conditions of employment were attached to the Union's submissions and reference was made to the heading "Place of Work".

14. Having regard to the terms of paragraph 19(B), the Union submitted that the bargaining unit it proposed was compatible with effective management and indeed the other matters set out within said paragraph as detailed above.

Summary of the submission made by the Employer

15. The Employer explained that it was in the business of providing and utilising safe working environment technology to the oil and gas industry. This was a highly specialised industry and the Employer's aim was to become the leader in its field.

16. Each Technician was, in effect, home based. Although the Employer had one office in the UK, its Technicians were based throughout the United Kingdom and one Technician resided in the Netherlands. No Technician was required to attend at the Employer's offices as a matter of course. When a Technician was not physically carrying out their duties, they remained at home, unless specifically requested by the Employer to attend at the office or elsewhere.

17. The role of the Technicians was a central one for the Employer, and all other employees supported and managed the Technicians. The Union submitted its application for recognition at a time when the Employer was agreeing a significant change to its Technicians' terms and conditions of employment. The Employer was pleased to report that all Technicians voluntarily agreed, after a period of both collective and individual consultation, to those changes.

18. However, as a consequence, the information that the Employer supplied to the CAC in relation to the proposed bargaining unit on 2 April 2015 had become out of date. There were previously two distinct grades of Technician, and there would now be three grades moving forward.

19. The Employer had previously set out to the CAC why it believed that the proposed bargaining unit would not be compatible with effective management but asked that the following information also be taken into account.

20. There were no existing national or local bargaining arrangements to consider. There would be other employees who worked side by side with the Technicians, but would not be in the bargaining unit. The Employer believed that this would create fragmentation and disquiet in its workforce.

21. The Employer had already referred to the fact that its Technicians' homes were dotted around the UK, with one employee residing in the Netherlands. The Employer also noted that the actual work locations for its Technicians could vary significantly, as could the period of time that a Technician was directed to work at a particular site.

22. The Employer had indicated that moving forward there were to be three categories of Technician. Level A would be probationary Technicians, Level B would be the "standard" Technicians, whilst there would also be a Level C grade for those Technicians with enhanced responsibilities, with each Level attracting its own pay and other entitlements. The Employer queried how a bargaining unit made up of these three different types of employee could be compatible with effective management.

23. The Employer concluded its submission by saying it 'does not suggest an alternative

bargaining unit, as it believes that the proposed bargaining unit is the least unsuitable’.

The parties’ final comments

24. On 3 July 2015 the parties were informed that, with the consent of the parties, the matter of the appropriate bargaining unit would be decided on the papers received without the need for an oral hearing. The parties were given the opportunity of commenting on the submission lodged by the other party. The parties were also informed that the Panel would determine the bargaining unit on or before 17 July 2015 and they would be informed of its decision shortly thereafter.

25. In an email dated 7 July 2015 the Employer confirmed that it had no comments regarding the Union's submission regarding the bargaining unit.

26. In an email dated 8 July 2015 the Union said that the only comment it would make to the Panel was that as the Employer was not suggesting another bargaining unit it was tacitly agreeing that the Technicians should be the appropriate bargaining unit.

Considerations

27. The Panel is required, by paragraph 19(2) of the Schedule to the Act, to decide whether the Union’s proposed bargaining unit is appropriate and, if found not to be appropriate, to decide in accordance with paragraph 19(3) a bargaining unit which is appropriate. Paragraph 19B(1) and (2) state that, in making those decisions, the Panel must take into account the need for the unit to be compatible with effective management and the matters listed in paragraph 19B(3) of the Schedule so far as they do not conflict with that need. The matters listed in paragraph 19B(3) are: the views of the employer and the union; existing national and local bargaining arrangements; the desirability of avoiding small fragmented bargaining units within an undertaking; the characteristics of workers falling within the bargaining unit under consideration and of any other employees of the employer whom the CAC considers relevant; and the location of workers. Paragraph 19B(4) states that in taking an employer’s views into account for the purpose of deciding whether the proposed bargaining unit is appropriate, the CAC must take into account any view the employer has about any other bargaining unit that he considers would be appropriate. The Panel must also

have regard to paragraph 171 of the Schedule which provides that “[i]n exercising functions under this Schedule in any particular case the CAC must have regard to the object of encouraging and promoting fair and efficient practices and arrangements in the workplace, so far as having regard to that object is consistent with applying other provisions of this Schedule in the case concerned.”

28. With the consent of the parties this matter has been determined on the papers without the need of an oral hearing. In reaching its decision the Panel has taken full and careful account of all the material and submissions provided by the parties.

29. Although the Employer did not propose any other bargaining unit which it considers would be appropriate, the Panel, in deciding whether the proposed bargaining unit is appropriate, did bear in mind potential alternatives. We are not required, however, to find the most appropriate bargaining unit but rather, as detailed above, to determine whether the one proposed by the Union is appropriate in the terms of the Schedule. In this context we note that the Employer is of the view that the bargaining unit proposed by the Union is the ‘least inappropriate’.

30. There are no existing national or local bargaining arrangements.

31. On the evidence we find the Union’s proposed bargaining unit of Technicians is appropriate. Although there are to be three different grades within the Technician group, to separate them into three separate bargaining units would lead to small fragmented units in the undertaking which we seek to avoid as likely to be incompatible with effective management. Further, we are of the view that Technicians have sufficient and distinct common characteristics and interests (including the work they undertake, variable work locations and assignments) to form an appropriate bargaining unit compatible with effective management. This view is supported by evidence of the way in which Technicians are managed by the Employer in relation to various issues. We note the Employer’s submission that different grades of technician will attract different rates of pay and entitlements but this is commonly found within a single bargaining unit. The administrative and management employees who make up the remainder of the workforce do not share the particular characteristics of the Technicians, nor is the Employer suggesting that a bargaining unit including them would be appropriate.

Decision

32. The appropriate bargaining unit in this matter is that as proposed by the Union namely the "Technician group" based at the Employer's site at Strathmore House, Charles Bowman Avenue, Claverhouse Industrial Park, Dundee.

Panel

Professor Linda Dickens MBE, Deputy Chairman of the CAC

Mr Paul Gates OBE

Mrs Maureen Shaw

14 July 2015