

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
TS Tech UK Ltd

Introduction

1. Unite the Union (the Union) submitted an application to the CAC dated 8 July 2015 that it should be recognised for collective bargaining by TS Tech UK Ltd (the Employer) for a bargaining unit comprising “all General Associates, Technical Leader and Leader for the following areas – Health & Safety, Engineering, IT, Procurement, Maintenance & Facilities, MS-F1, MS-W1, Production Management, QC Day, Transport & Shipping, all Assembly and Weld areas for both Production and QC across both F1 and W1 facilities”. The CAC gave both parties notice of receipt of the application on 13 July 2015. The Employer submitted a response to the application on 17 July 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 Kenny Miller, as chair of the Panel, and, as Members, Ms Bronwyn McKenna and Mr Michael Shepherd. 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 24 July 2015 and was extended to 4 August 2015 in order to allow time for a membership and support check to take place and for the parties to comment on the subsequent report.

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 of the Schedule; and therefore should be accepted.

The Union's application

5. The Union stated that its request for recognition was sent to the Employer on 14 November 2014 and a reply was received dated 26 November 2014, a copy of which was attached. The Union stated that the company's response was that they disagreed with the identity of the chosen bargaining unit and proposed arranging a meeting with ACAS to discuss the matter further.

6. With regard to the description of the bargaining unit the Union explained that initially it designated "all General Associates, Technical Leaders, Technical Support and Team Leaders in the Production, QC and Material Services across both sites". The Union stated that after a meeting with the company they both agreed that the bargaining unit would be "all General Associates, Technical Leader and Leader for the following areas – Health & Safety, Engineering, IT, Procurement, Maintenance & Facilities, MS-F1, MS-W1, Production Management, QC Day, Transport & Shipping, all Assembly and Weld areas for both Production and QC across both F1 and W1 facilities".

7. The Union stated that there were a total of 381 workers in the agreed bargaining unit of which 148 were union members. Regarding evidence demonstrating that the majority of workers in the bargaining unit were likely to support recognition for collective bargaining, the Union stated that it had a high level of current membership, approximately 38%. The Union stated that the majority of its members were long standing members of the Union and their recruitment campaign was ongoing with employees continuing to join. The Union stated that it had distributed individual petition sheets indicating support for recognition for signature

by both members and non-members and the responses so far received indicated continued support for recognition. The petition sheets were not attached but the Union stated that were available on a confidential basis if required by the CAC.

8. The Union stated that the locations of the bargaining unit were Blackworth Industrial Estate, Highworth, Swindon, SN6 7NA and the West Swindon site operating out of the Spectrum Building, Meadway, Swindon SN5 7UT.

9. The Union stated that the reason for selecting the bargaining unit was that it covered employees employed on broadly common terms and conditions. The Union stated that is also reflected the structure adopted by other car manufacturing/component/logistic businesses elsewhere in the UK as well as in other Honda Group companies. The Union stated that TS Tech being one of the Honda Group of companies a similar bargaining unit was accepted by the CAC in relation to Honda of the UK Manufacturing Ltd, another Group company in 2001, and South Marston Distribution Centre Ltd in 2003.

10. The Union confirmed that there was no existing recognition agreement in force covering any of the workers in the agreed bargaining unit and that it held a current certificate of independence.

11. The Union attached to its application a copy of a Membership Certificate and the result of a membership check conducted by ACAS.

The Employer's response to the Union's application

12. In its response dated 17 July 2015 the Employer confirmed that it received the Union's written request letter on 14 November 2014 and that it responded in writing on 26 November 2014 suggesting the use of ACAS, copies of both letters were attached.

13. The Employer confirmed that it received a copy of the application form from the Union on 8 July 2015 and that it agreed the bargaining unit. The Employer gave

an explanation as to how the bargaining unit was agreed which followed various discussions with Jan Elliot of ACAS.

14. The Employer stated that the number of workers employed by them as of 15 July 2015 was 442.

15. As to whether it agreed the number of workers in the bargaining unit the Employer stated that a membership check was carried out by ACAS on 12 June 2015 and that the bargaining unit as defined and agreed included 381 associates, 148 of which were confirmed as members of the Union.

16. As to whether the Employer considered that a majority of the workers in the bargaining unit are likely to support recognition the Employer stated that TS Tech management had day to day interaction with all associates and had an employee forum (Associate committee) and the feedback from the majority of associates was that they did not want to have recognition by Unite or any other Union.

The Membership and support Check

17. To assist the determination of two of the admissibility criteria specified in the Schedule, namely, whether 10% of the workers in the agreed bargaining unit are members of the Union (paragraph 36(1)(a)) and whether a majority of the workers in the bargaining unit are likely to support 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 agreed bargaining unit and of the petition.

18. 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 agreed bargaining unit, and that the Union would supply to the Case Manager a list of their members within that unit and petition to enable comparisons to be undertaken. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and petition would not be copied to the other party. These arrangements were confirmed in a letter dated 20 July 2015 from the Case Manager to both parties.

19. The Case Manager carried out the membership and support check using the information that was received by the Union and Employer on 22 July 2015. A report of the check was issued to the Panel and to the parties on 23 July 2015. The Panel is satisfied that the checks were undertaken appropriately.

20. The Union provided a list of 165 members and the Employer provided a list of 379 workers.

21. The Union's petition consisting of 66 names/signatories was set out as follows:

UNITE THE UNION

100% Private & Confidential

I the undersigned wish to see Unite the Union fully recognised for conducting collective bargaining, including pay, hours and holidays at:

TS Tech UK Blackworth Industrial Estate Highworth, Swindon, Wiltshire, SN6 7NA
and
TS Tech UK, Spectrum House Rivermead Industrial Estate, Swindon, SN5 7UT

I was not placed under duress to sign this and have taken part of my own free will

Please note that you do not need to be a union member in order to sign this.

Name (Please print).....

Clock/works/payroll No:.....

Department/Line:

Signed:.....

Date:.....

100% Private & Confidential

- The information you have supplied will not under any circumstances be seen by the company.
- Its sole purpose is to establish how much support Unite has at TS Tech for the recognition of Unite for collective bargaining purposes.
- This is a necessary step towards gaining recognition for Unite at your workplace in order for the CAC to confirm support for Unite.
- It is important that you fill in all the appropriate sections.

22. The membership check established that there were 156 members of the Union within the bargaining unit; a membership level of 41.16%. The result of the comparison of the Union's petition with the Employer's list of workers revealed that a total of 63 workers had indicated that they wanted the Union to represent them, which corresponded to 16.62% of the bargaining unit. 46 of the 63 were union members (12.14%) and 17 were non-members (4.48%).

23. A report of the result of the membership and support check was circulated to the Panel and the parties on 23 July 2015 and the parties were invited to comment on the results and to bear in mind the two admissibility tests set out in para 36 (1)(a) and para 36 (1)(b) in so doing.

Union's comments on the result of the membership & support check

24. The Union in an e-mail dated 27 July 2015 confirmed that they were happy with the content of the report and the only additional point was to confirm that they were continuing to receive petitions.

Employer's comments on the result of the membership & support check

25. The Employer in a letter dated 27 July 2015 stated that that the Union had conducted a significant campaign since April 2014 and the numbers expressing support after the intensive campaigning only numbered 41% significantly less than a majority. The Employer stated that it was notable how many Union members had not signed the petition which was after a recognition campaign of approximately 15 months with one previous petition launched in June 2014. The Employer stated that by contrast, without any prompting or encouragement from the company, a number of employees, by means of individual conversations, had indicated that they would not support recognition of the trade union expressing dissatisfaction with the campaign. The Employer stated that some trade union members had also stated that they would not favour trade union recognition for the purposes of collective bargaining.

26. The Employer explained that the company had discussed with the Union a ballot of the bargaining unit to be run under the auspices of ACAS but the meetings ended without agreement and proposed that those discussions continued.

27. Finally the Employer summarised that under the tests set out in Paragraph 36 of the Schedule (1) (a) it did not dispute that the union had demonstrated that at least 10% of the workers in the bargaining unit proposed by the trade union were union members. In respect of 36(1)(b) the Employer stated that there was no majority in favour of recognition in the proposed bargaining unit and therefore the Panel should find that the application did not pass that test and the application should be dismissed.

Considerations

28. 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.

29. The Panel is satisfied that the Union made a valid request to the Employer within the terms specified in 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.

30. 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)

31. 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 agreed bargaining unit. The check of Union membership in the agreed bargaining unit as conducted by the Case Manager on 23 July 2015 established that Union membership stood at over 10% and the Employer in their letter of 27 July 2015

confirmed that it did not dispute this. The Panel is therefore satisfied that this test is met.

Paragraph 36(1)(b)

32. The test in paragraph 36(1)(b) is whether a majority of the workers constituting the agreed bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit. This is not a test of actual support, rather a threshold requirement whereby the Panel must be satisfied that a majority of the workers in the bargaining unit would be *likely* to favour recognition. Therefore, for the purposes of paragraph 36(1)(b) it is not necessary that a majority of workers actually do show support. The Schedule provides that, if appropriate, a test of actual support in the bargaining unit follows acceptance of an application and it is the level of that actual support which will determine whether or not recognition is awarded.

33. Based on those numbers provided by the Case Manager's check of the Union's petition against the list of 379 workers provided by the Employer indicated that 63 of the 66 petition signatories were identifiable as workers within the bargaining unit, a support level of 16.62%. Of those there were 46 union members (12.14%) and 17 non-members in the bargaining unit (4.48%). If the non union members who signed the petition are added to the number of Union members within the bargaining unit this would equate to 173 workers (45.64%) of the bargaining unit.

34. The Panel has noted the Employer's argument in their letter of 27 July 2015 that it was notable how many union members had not signed the petition. The Panel also noted from the membership and support check carried out that the petitions submitted were quite recent being dated between 9 July 2015 and 19 July 2015 and that the Union in their e-mail of 27 July 2015 confirmed they were continuing to receive petitions.

35. The Employer submitted in their letter that, without any prompting or encouragement from the company, a number of employees, by means of individual conversations, had indicated to them that they would not support recognition of the

trade union but no actual evidence to support the views of these employees was provided.

36. Therefore, given the level of Union membership and support demonstrated by the petition, and in full consideration of the evidence made available, the Panel is satisfied that, in accordance with paragraph 36(1)(b) of the Schedule, a majority of the workers in the agreed bargaining unit would be likely to favour recognition of the Union.

Decision

37. The Panel is satisfied that the application is valid within the terms of paragraphs 5 to 9, is made in accordance to with paragraph 12 and is admissible within the terms of paragraphs 33 to 42 of the Schedule. The application is therefore accepted by the CAC.

Panel

Professor Kenny Miller, Chair of the Panel

Ms Bronwyn McKenna

Mr Michael Shepherd

3 August 2015