

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

Teknomek Limited

Introduction

1. Unite the Union (the Union) submitted an application to the CAC dated 20 July 2016 that it should be recognised for collective bargaining by Teknomek Limited (the Employer) for a bargaining unit comprising “Employees in Workshop Prep, Workshop Welding Departments and Stores Department” based at the Employer’s premises in Brunel Way, Sweetbriar Industrial Estate, Norwich, Norfolk. The CAC gave both parties notice of receipt of the application on 21 July 2016. The Employer submitted a response to the CAC dated 29 July 2016 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, Chair of the Panel, and, as Members, Ms Bronwyn McKenna and Mr Roger Roberts. The Case Manager appointed to support the Panel was Nigel Cookson.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 3 August 2016. The acceptance period was then extended to 16 August 2016 in order to allow time to conduct a membership check and to allow time for the parties to comment thereon before the Panel arrived 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.

Summary of the Union's application

5. In its application to the CAC the Union stated that it had made its first approach to the Employer on an informal basis on 26 May 2016 when it wrote requesting negotiations on a voluntary basis. The Employer responded on 31 May 2016 stating that it saw little value in pursuing discussions with regard to Union recognition. The Union then made a formal request for recognition to the Employer again on 7 June 2016. Copies of the Union's letters of 26 May 2016 and 7 June 2016 as well as the Employer's letter of 31 May 2016 were attached to the application. It was not made clear whether the Employer responded to the letter relied upon by the Union as its formal request for recognition.

6. When asked whether the Union had made a previous application under the Schedule for statutory recognition for workers in the proposed bargaining unit or a similar unit the Union answered "No formal application made previously. Letters seeking voluntary recognition only". The Union stated that, following receipt of the request for recognition, the Employer had not proposed that Acas should be requested to assist the parties.

7. The Union stated that the total number of workers employed by the Employer was 26. It gave the same figure when asked for the number of workers in the proposed bargaining unit, of

whom 16 were Union members. Asked whether the Employer agreed on the number of workers in the proposed bargaining unit the Union stated “employer has not contested this”. When called upon to provide evidence that the majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining, the Union stated that workers within the company had initially approached the Union in regards to recognition. The density of membership had steadily increased to a majority of the workers in the bargaining unit since the initial approach was made. The Union stated it had a petition asking if workers supported the Union being recognised for the purposes of collective bargaining with the Employer which was signed by the majority of workers in the proposed bargaining unit, non-members as well as Union members.

8. The Union said it had selected the proposed bargaining unit as it had achieved an increased majority of workers in that Unit; the type of work carried out in the bargaining unit was distinctive to that area; there was no interchangeability of roles within other areas of the business and that workers in the bargaining unit had a specific pay system that was separate to the pay structure elsewhere within the business. When asked whether the bargaining unit had been agreed with the Employer the Union answered “No”.

9. Finally, the Union stated that there was no existing recognition agreement which covered any of the workers in the bargaining unit and it confirmed that it held a current certificate of independence.

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

10. The Employer was granted a short extension of time to make its response at the request of the Chairman who wished to handle the matter himself but was overseas. In its response to the Union’s application the Employer stated that it received the Union’s written request for recognition on 9 June 2016 to which no response was submitted. The Employer stated that it had received a copy of the application form from the Union on 21 July 2016.

11. The Employer stated that it had not, before receiving a copy of the application form from the Union, agreed the bargaining unit with the Union. It said it did not agree it, noting that “Employees in workshop prep, workshop welding departments and stores departments comprises 28 employees”.

12. When asked if, following receipt of the Union’s request, it had proposed that Acas should be requested to assist, the Employer answered “No”.

13. The Employer stated that it employed a total of 47 workers. Asked whether it agreed with the number of workers in the proposed bargaining unit as defined in the Union's application the Employer answered “No” adding “The proposed bargaining unit comprises 28 employees”.

14. The Employer said there was no existing agreement for recognition in force covering workers in the proposed bargaining unit.

15. The Employer did not answer the question as to whether or not it disagreed with the Union’s estimate of membership in the proposed bargaining unit. When asked to give reasons if it did not believe that a majority of workers in the bargaining unit were likely to support recognition the Employer stated that a majority of workers did not support recognition explaining that it had conducted a confidential ballot to assess the support for the Union and a majority of workers within the bargaining unit did not vote in favour of recognition.

16. Finally, the Employer did not answer the questions as to whether it was aware of any previous application under the Schedule for statutory recognition by the Union in respect of this or a similar bargaining unit or whether it had received any other applications under the Schedule for recognition in respect of any of the workers in the proposed bargaining unit.

Further communication from the Union

17. On 28 July 2016, before receiving the Employer’s response, the Union sent an email to the CAC setting out the content of an email communication it had received from a union member

in the proposed bargaining unit that day. This stated that ‘management have been out and about speaking to people for the last two days, trying to discourage them from having Unite the Union recognised in the workplace...’. The email stated that staff were called upstairs individually to fill in a ballot form saying ‘whether we were happy or not for Unite the Union to be recognised in the workplace’. It noted that ‘whilst there was someone from the factory floor present as people completed the ballot, there was no one from the floor present when the results were counted’. Concern was expressed that ‘they might be going down the line of scaring people to change their mind and vote no in their ballot and then say that you don’t have the support of the workforce’. The email noted that ‘there were four people absent today of which three are Unite members who did not vote in the ballot’. This email was copied to the Employer.

The membership check

18. 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 are 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 independent checks of the level of union membership in the proposed bargaining unit and the number of workers in that unit who had signed the Union’s petition in support of recognition. It was agreed with the parties that the Employer would supply to the Case Manager a list of the full names, dates 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 the full names and dates of birth of the paid up union members within that unit and a copy of the petition. The information from both the Union and the Employer was received by the CAC on 3 August 2016. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and the petition would not be copied to the other party and that agreement was confirmed in a letter from the Case Manager to both parties dated 2 August 2016. The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

19. The list supplied by the Employer showed that there were 28 workers in the proposed bargaining unit. The list of members supplied by the Union contained 16 names. According to the Case Manager's report the number of Union members in the proposed bargaining unit was 16, a membership level of 57.14%.

20. The Union also provided a copy of a petition running over two sheets of A4 and bearing 26 signatures dated between 30 June 2016 and 5 July 2016. Each page of the petition carried the following proposition:

**PETITION FOR
TRADE UNION RECOGNITION**

We the undersigned workers who are employed by Teknomek Limited. Brunel Way. Sweetbriar Industrial estate. Norwich. Norfolk. NR3 2BD. Ask that Unite the Union be recognised as being entitled to conduct collective bargaining on our behalf.

Please note: This petition is confidential and will only be made available to the Central Arbitration Committee (CAC) or ACAS.

21. The Case Manager's report showed that the petition was signed by 25 workers in the proposed bargaining unit, a figure which represents 89.29% of the bargaining unit. Of those 25 signatories 16 were members of the Union (57.14% of the proposed bargaining unit) and 9 were non-members (32.14% of the proposed bargaining unit).

22. A report of the result of the membership and support check was circulated to the Panel and the parties on 3 August 2016 and the parties were invited to comment on the results by the close of business on 9 August 2016.

Parties' comments on the result of the membership check

23. In an email dated 3 August 2016 the Union wrote "Many thanks for the documents, I can confirm that all is in order according to the information I provided". In an email dated 5 August

2016 the Employer said that it had noted the results in relation to the check undertaken by the CAC and also the results of the Union's petition. The Employer then stated that it wished to put forward further information for the CAC's consideration in its decision making process; on 28 July 2016 a confidential ballot was held within the workplace of the proposed bargaining unit of 28 covering the workers working in the Workshop prep, Workshop welding departments and Stores department. The workers were asked "Do you support Unite the union being recognised at Teknomek to conduct negotiations in relation to pay, hours and holiday on your behalf? Yes or No". Workers were entitled to vote confidentially and there was shop floor representation present to ensure the ballot was conducted fairly and confidentially.

24. The Employer stated that the results of the ballot were: 14 votes for yes; 6 votes for no and 8 abstentions/unavailable to vote. Therefore there was not a majority of support for the recognition as only 50% voted in favour of Unite being recognised.

Considerations

25. 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.

26. The Panel is satisfied that the Union made a valid request to the Employer for recognition within the terms of paragraphs 5 to 9 of the Schedule and that its application was made in accordance with paragraph 11 in that before the end of the "first period" which is defined in paragraph 10(6) of the Schedule as "the period of 10 working days starting with the day after that on which the employer receives the request for recognition", the Employer failed to respond to the request. 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 set out in paragraph 36(1)(a) and paragraph 36(1)(b) are met.

Paragraph 36(1)(a)

27. 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. The membership check conducted by the Case Manager showed that 57.14% of the workers in the proposed bargaining unit were members of the Union. As previously stated, the Panel is satisfied that this check was conducted properly and impartially and in accordance with the arrangements agreed 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)

28. 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. The check conducted by the Case Manager showed that a total of 89.29% of the workers in the proposed bargaining unit had signed the Union's petition in support of recognition. The Employer, although given the opportunity to do so when invited to comment on the results of the Case Manager's report, has not challenged the validity of the petition. The Employer did provide, however, the results of a confidential ballot that it had conducted. We are told that out of the 28 workers in the proposed bargaining unit 14 votes were cast in favour of recognition with six votes against and that there were a further eight workers who either abstained or were unavailable to vote. The Employer submitted that its ballot demonstrated that there was not a majority of workers in support of recognition as only 50% of the total bargaining unit had voted in favour of the Union. The Panel notes that, on the figures provided, those voting in favour of recognition in the Employer's ballot constituted 70% of all those voting and over 40% of the whole bargaining unit. This would be sufficient to satisfy the statutory test for recognition in a CAC ordered ballot. We have noted the observations of the Union regarding the ballot, specifically that three of those who did not cast a vote were Union members who were absent at the time, although this has not been verified.

29. At this stage we do not have to decide whether a majority of workers in the bargaining unit would actually support recognition for collective bargaining but, rather, determine whether on the evidence this is likely. Given the density of Union membership within the proposed bargaining unit and the high proportion of workers who had signed the Union's petition in support of recognition and taking into account the results the Employer provided from its own ballot which showed a majority of those voting being in favour of recognition, the Panel is satisfied that it is likely that a majority of the workers would favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit.

Decision

30. For the reasons given above, the Panel's decision is that the application is accepted by the CAC.

Panel

Professor Linda Dickens MBE, Panel Chair

Ms Bronwyn McKenna

Mr Roger Roberts

15 August 2016