Case Number: TUR1/935(2015)
14 October 2015

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

Serco Defence UK & Europe

Introduction

1. Unite the Union (the Union) submitted an application to the CAC on 29 September 2015 that it should be recognised for collective bargaining by Serco Defence UK & Europe (the Employer) for a bargaining unit comprising the "Shift Supervisors, Shift Senior Technicians, Shift Technicians, Shift Operators, Senior Systems Engineer, Mission IT Support, Mission Antenna Trainer/Co-ordinator, Communications Supervisor, Mechanical Technician, Handyman, Post Design System Librarian, Chief of Maintenance, TCS Administrator, Operations Administrator and Maintenance Support Administrator" based at the Employer's site at MOD, Serco Skynet 5, TCS Oakhanger, Bordon, Hants. The CAC gave both parties notice of receipt of the application on 1 October 2015. The Employer submitted a response to the CAC dated 7 October 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, Chairman of the Panel, and, as

Members, Ms Bronwyn McKenna and Mr Bryan Taker. The Case Manager appointed to support the Panel was Nigel Cookson.

Issues

3. 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

4. In its application the Union said that it had written to the Employer formally requesting recognition on 21 August 2015 seeking a voluntary recognition agreement. It explained that it had earlier given three months notice to the Employer withdrawing from the previous recognition agreement as that agreement contained a no-strike clause. The Union added that it had met with the Employer and that it was prepared to recognise the Union and agreed the bargaining unit but it was not prepared to enter into a new recognition agreement with the Union without a no-strike clause. Included amongst the supporting documentation with the application, and which had been copied to the Employer, was a copy of the request letter and a list of its members in the agreed bargaining unit.

5. According to the Union, there were 83 workers employed by the Employer with 53 of these falling within the agreed bargaining unit. The Union stated that it had 36 members within the agreed bargaining unit and that the Employer was fully aware of its membership. Asked to provide evidence that a majority of the workers in the agreed bargaining unit were likely to support recognition for collective bargaining, the Union said that a ballot of its members had been conducted - the result of which was set out in an email that accompanied the application – and that a majority of its members wanted a new recognition agreement without a no-strike clause.

6. The Union explained that it had selected the bargaining unit on the basis that it was the same as the previous bargaining group listed in the recognition agreement that had terminated on 31 July 2015 following a notice period.

7. Finally, the Union said there had not been a previous application in respect of this or a similar bargaining unit and there was no existing recognition agreement that covered any of the workers in the agreed bargaining unit.

The Employer's response to the Union's application

8. The Employer said that it had received an initial request for recognition on 12 June 2015 whilst the Union was still serving notice under the then existing recognition agreement. A second request was made on 21 August 2015 to which the Employer replied offering a new agreement following consultation. Copies of the correspondence referred to was enclosed with the response.

9. When asked to give the date it received a copy of the application form directly from the Union the Employer gave two dates - 12 June 2015 and 21 August 2015 - although this would appear to refer to the dates it received the formal request rather than a copy of the application. The Employer confirmed that it agreed the bargaining unit adding that it had not at any time disagreed the bargaining unit.

10. The Employer stated that as of 7 October 2015 there were 55 workers employed under the TCS Manager it employed a total of 95 workers. The Employer did not agree with the Union's figure as to the number of workers in the agreed bargaining unit explaining that there were currently 50 workers within the bargaining unit employed at TCS. It believed that the difference was due to five posts being currently vacant. The Employer said that it did not disagree with the Union's estimate of membership in the agreed bargaining unit. When asked for its views as to whether a majority of the workers in the bargaining unit were likely to support recognition, the Employer said that it understood members were not consulted nor balloted prior to 28 April 2015 when the Union decided to terminate the existing collective agreement then it went on to say that it believed members would support recognition.

11. The Employer confirmed that there was currently no recognition agreement in place covering any of the workers in the agreed bargaining unit adding that the previous agreement that was in place from 4 October 2005 was terminated by the Union on 28 July 2015. The Employer had subsequently offered a new recognition agreement on 15 July 2015 and again on 1 September 2015, both of which did not contain a "No Strike Clause". The Employer had consulted on a dispute resolution annex which the Union had declined to sign. The Employer stated that its offer of a recognition agreement remained open for the Union to consider and sign.

12. When asked whether, following receipt of the Union's request, the Employer proposed that Acas be requested to assist the Employer said that it had not had the opportunity to propose Acas be requested to assist but it had no objection to Acas involvement and would welcome its input.

13. When asked if it was aware of any previous application under the Schedule by the Union in respect of this or a similar bargaining unit the Employer referred to the Union's letter of 21 August 2015.

14. The Employer did not contend that the Union's application failed to meet any of the other admissibility or validity criteria.

Considerations

15. In determining whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 3 of this decision are satisfied. The Panel has considered all the evidence submitted by the parties in reaching its decision.

16. 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 and that it was made in accordance with paragraph 12(2)(b) of the Schedule. The remaining issue for the Panel to address is whether the admissibility criteria set out in paragraph 36(1) of the Schedule are met.

Paragraph 36(1)(a)

17. In accordance with paragraph 36(1)(a) of the Schedule the Panel must determine whether members of the Union constitute at least 10% of the workers in the Union's proposed bargaining unit. In this case, a copy of the Union's list of members formed part of the supporting documentation that was lodged along with its application form. This list ran to 41 names although on its application to the CAC the Union said that it had 36 members in the agreed bargaining unit. According to its response, the Employer agreed the number of members and confirmed that there were currently 50 workers in the agreed bargaining unit with a further five posts vacant. If we take the lower of the two figures, 36, and work on the bargaining unit as currently configured, this would give a membership density of 72% in the agreed bargaining unit. This figure may be approximate but it is clear that members of the Union constitute at least 10% of the workers in the agreed bargaining unit.

Paragraph 36(1)(b)

18 The test in paragraph 36(1)(b) is whether 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. In its application the Union stated that it had balloted its members and that the majority had supported a new agreement with a no strike clause. The Employer stated that it was of the view that the members within the agreed bargaining unit would support recognition of the Union. As noted, the number of union members is not disputed and union members constitute a majority of workers in the agreed bargaining unit.

19. In view of the above and in the absence of evidence to the contrary the Panel accepts the level of Union membership provides a legitimate indicator as to the degree of likely support for recognition of the Union for collective bargaining.

20. For the reasons given above the Panel is satisfied that, on the balance of probabilities, a majority of the workers in the agreed bargaining unit would be likely to support recognition of the Union and the test set out in paragraph 36(1)(b) is therefore met.

Decision

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

Panel

Professor Linda Dickens MBE, Deputy Chairman of the CAC
Ms Bronwyn McKenna
Mr Bryan Taker

14 October 2015