

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

DP World – London Gateway

Introduction

1. Unite the Union (the Union) submitted an application to the CAC that it should be recognised for collective bargaining by DP WORLD – London Gateway (the Employer) in respect of a bargaining unit comprising “All Terminal Operatives (excluding stores officials, engineering technical shift employees, operational supervisors, shift superintendents, technical team leaders & agency staff)” located at London Gateway, The Manor Way, Stanford le Hope, Essex SS17 9PD. The application was received by the CAC on 1 March 2016. The CAC gave both parties notice of receipt of the application on 1 March 2016. The Employer submitted a response to the CAC dated 3 March 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, chairing the Panel,

and, as Members, Mr Peter Martin and Mr Michael Leahy OBE. The Case Manager appointed to support the Panel was Linda Lehan.

3. The CAC Panel has extended the statutory acceptance period in this case. The initial period expired on 15 March 2016. The acceptance period was extended until 24 March 2016 in order to allow time for parties to comment on the membership and support check carried out by the Case Manager and to allow time for the Panel to consider said comments and to reach and promulgate its 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. In its application the Union stated that it had sent its formal request for recognition to the Employer on 10 February 2015 and received a letter from the Employer dated 23 February 2016 rejecting the offer. Copies of both letters were attached to the application.

6. The Union stated that a previous voluntary request was made to the Employer but the parties failed to reach agreement on terms of bargaining rights. The Union stated that the assistance of ACAS had been used.

7. The Union stated that there were 205 workers in the proposed bargaining unit which the Employer had agreed with. Out of the 205 workers in the bargaining unit 138 were members of the Union. When asked to provide evidence that a majority of the workers in the bargaining unit were likely to support recognition for collective bargaining, the Union stated that the members in DP World joined Unite for the purposes of collective bargaining which was facilitated by a Unite access team inside the workplace. The Union advised that it was currently running a collective

bargaining pledge card which they would provide to the CAC upon request.

8. The Union stated that the reason for selecting the proposed bargaining unit was that Unite was approached by that group of workers requesting collective bargaining.

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

The Employer's response

10. The Employer confirmed that it had received the Union's written request letter on 10 February 2016 and enclosed a copy of their letter dated 23 February 2016 rejecting the request.

11. The Employer confirmed that it had received a copy of the application form from the Union on 24 February 2016.

12. The Employer stated that it did not agree the proposed bargaining unit and the reasons for its objections were that it excluded certain groups of Terminal Operatives and other employees that should have been included listing store officials, engineering technical shift employees, operational supervisors, technical team leaders, Gate Services operatives, terminal trainers and Border Control Post. The Employer stated that the list was non exhaustive.

13. The Employer confirmed that following the receipt of the Union's requested it did not propose that ACAS be requested to assist.

14. The Employer stated that it employed 468 workers on site and that it agreed with the number of workers in the bargaining unit as defined by the Union in its application.

15. The Employer stated that there was no existing agreement for recognition in

force covering workers in the bargaining unit.

16. In answer to the question if you do not consider that a majority of workers in the bargaining unit are likely to support recognition please indicate your reasons for taking this view, with any available evidence, the Employer stated that a number of employees had made complaints that they had been pressured into joining the Trade Union by on site Trade Union members. The Employer said a number of employees had expressed verbally that they did not wish to be represented by a Trade Union for collective bargaining purposes.

The Membership Check

17. To assist the determination of two of the admissibility criteria specified in the Schedule, namely, whether 10% of the workers in the bargaining unit are members of the union (paragraph 36(1)(a)) and whether a majority of the workers in the bargaining unit would be 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 an independent check of the level of union membership within the bargaining unit, and of the petition. 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 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 and a copy of the pledge cards received. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and pledge cards would not be copied to the other party. These arrangements were confirmed in a letter dated 9 March 2016 from the Case Manager to both parties. The information from the Union was received by the CAC on 11 March 2016 and from the Employer on 10 March 2016. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

18. The Union provided a list of 145 members and the Employer provided a list of 205 workers.

19. The Union's pledge cards consisted of 125 separate A4 sheets set out as

follows:

Unite the Union

To whom it may concern

I

Working for DP World London Gateway support Unite the Union in gaining full collective bargaining rights for all Terminal Operatives.

In addition I reject DP World's attempt to restrict bargaining rights.

Name

Signature.....

Phone Number

Team

Flexi or Fixed

20. The membership check established that there were 144 members of the Union within the bargaining unit; a membership level of 70.24%. The result of the comparison of the Union's pledge cards with the Employer's list of workers revealed that a total of 125 workers had indicated that they wanted the Union to represent them, which corresponds to 61% of the bargaining unit. 123 of the 125 were union members (60%) and 2 were non-members (1%).

21. A report of the result of the membership check was circulated to the Panel and the parties on 14 March 2016 and the parties were invited to comment on the result.

Union's comments on membership and support check

22. In a letter dated 16 March 2016 the Union stated that as they had passed the

statutory tests required in paragraph 36 they did not believe that a ballot was required to test the support for collective bargaining. The Union also stated that should the application be accepted by the Panel then they would suggest the involvement of ACAS mediation to agree the bargaining unit.

Employer's comments on membership and support check

23. No comments were received from the Employer.

Considerations

24. 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.

25. 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)

26. 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.

27. The membership check conducted by the Case Manager (described in paragraphs 18 - 20) showed that 70.24% of the workers in the proposed bargaining unit are members of the Union. As stated in paragraph 17 above, the Panel is satisfied that these checks were conducted properly and 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 and the test under paragraph 36(1)(a) of the Schedule has been met.

Paragraph 36(1)(b)

28. 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.

29. The Case Manager's check of the Union's pledge cards against the list of 205 workers provided by the Employer indicated that 125 signatories were identifiable as workers within the bargaining unit, a support level of 61%. On the basis of the evidence before us, and in the absence of any evidence to the contrary, the Panel is satisfied that a majority of the workers in 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 and that the test under paragraph 36(1)(b) of the Schedule has been met.

Decision

30. The Panel is satisfied that the application is valid within the terms of paragraphs 5 to 9, is made in accordance to with paragraph 11 and is admissible within the terms of paragraphs 33 to 42 of the Schedule. The application is therefore accepted by the CAC.

Panel

Professor Linda Dickens MBE

Mr. Peter Martin

Mr. Michael Leahy OBE

22 March 2016