

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DECLARATION OF RECOGNITION WITHOUT A BALLOT

The Parties:

Unite the Union

and

United Health Group

Introduction

1. Unite the Union (the Union) submitted an application to the CAC dated 18 December 2015 that it should be recognized for collective bargaining by United Health Group (the Employer) for a bargaining unit comprising “Medics working for United Health Group on the Shell Contract in the UKCS” based at Shell oil rigs in the United Kingdom Continental Shelf. The application was received by the CAC on 23 December 2015. The CAC gave both parties notice of receipt of the application on 23 December 2015. The Employer submitted a response to the CAC dated 11 January 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 Kenny Miller, Chairman of the Panel, and, as Members, Mrs Maureen Shaw and Mr Sandy Boyle. The Case Manager appointed to support the Panel was Linda Lehan.

3. By a decision dated 3 February 2016, the Panel accepted the Union’s application. The parties then entered a period of negotiation in an attempt to reach agreement on the appropriate bargaining unit. In correspondence received from the Employer dated 3 March 2016 it confirmed that it accepted the bargaining unit as proposed by the Union.

Issues

4. Paragraph 22 of Schedule A1 to the Act (the Schedule) provides that if the CAC is satisfied that a majority of the workers constituting the bargaining unit are members of the union, it must issue a declaration of recognition under paragraph 22(2) unless any of the three qualifying conditions specified in paragraph 22(4) applies. Paragraph 22(3) requires the CAC to hold a ballot even where it has found that a majority of workers constituting the bargaining unit are members of the union if any of these qualifying conditions is fulfilled. The three qualifying conditions are:

- (i) the CAC is satisfied that a ballot should be held in the interests of good industrial relations;
- (ii) the CAC has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union (or unions) to conduct collective bargaining on their behalf;
- (iii) membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the union (or unions) to conduct collective bargaining on their behalf.

The Union's claim to majority membership

5. In a letter dated 7 March 2016 the Union was asked by the CAC whether it claimed majority membership within the bargaining unit and, if so, whether it submitted that it should be granted recognition without a ballot. The Union, in an email to the CAC dated 9 March 2016, stated that as they had a large majority there should be no requirement for a ballot. The Union stated that their membership at the time of their application was 75.86% and had since increased to 79.31% as a new member, who was part of the bargaining unit, had joined. The Union stated that their members had consistently been pushing for recognition and hoped that the CAC Panel would grant recognition without a ballot.

6. On 9 March 2016 the CAC copied the Union's email to the Employer and invited it to make submissions on the Union's claim that it had majority membership within the

bargaining unit and on the three qualifying conditions specified in paragraph 22(4) of the Schedule.

Summary of the Employer's submissions on the qualifying conditions

7. The Employer in an email to the CAC dated 14 March submitted that although the membership check had shown that a majority of the bargaining unit were Unite members it nonetheless believed that a ballot should be held before recognition was awarded and that not holding a ballot would damage the industrial relations between the Company and the Union.

8. The Employer stated that the company was a small entity within the United Health Group, which was a larger global business, and took considerable care to operate policies and practices which were consistent across its global workforce: a concept that underlined its values of fairness and equality for its employees. As an example the Employer stated that annual pay reviews were run on a consistent basis globally, alongside the annual pay review and bonus assessment process.

9. The Employer stated that although in many cases it could be assumed that when employees join a union the employee would also support recognition, anecdotal evidence indicated that that may not be true in respect of this bargaining unit.

10. The Employer explained that members of the bargaining unit were medics who operated on offshore oil rigs in the North Sea. The Employer stated that as a result of the decline in oil prices the oil industry was in extremely poor health and consequently employees in the industry generally were concerned about their future. The Employer said that membership of the union, of course, offered employees some legal and other assistance in the event of jobs being at risk (irrespective of whether the union was recognised). The Employer said their understanding was that less than 2 years ago (and possibly more recently), and before the decline in the oil industry, the level of union membership in the bargaining unit was significantly lower than 50% but as no membership checks were carried out at that stage they had no concrete evidence of the exact numbers.

11. The Employer stated that based on that evidence, they considered that the employees who had recently become union members (as well as those who had been members for longer) could not be assumed to favour recognition of Unite.

12. The Employer stated that it also believed that many union members were not aware of the consequences of recognition. The main consequence being that they would fall outside of the relevant global policies and practices, which had been introduced to create consistency and fairness. The Employer stated that if in fact only a minority of the bargaining unit supported recognition (having understood the consequences) it would inevitably give rise to tensions and potentially conflict amongst that group. Moreover, if the Company was aware that the majority of employees did not support union recognition, it had the potential to create tensions between the Company and the Union if the Union was only truly bargaining on behalf of a minority of the bargaining unit. The Employer stated that it therefore believed that the future good industrial relations between the employees, the Union and the Company all justified holding a ballot to enable the members of the bargaining unit to express their view about recognition having understood the new bargaining structures that would be put in place.

13. The Employer stated that there was further anecdotal evidence of that during recent consultation discussions with the bargaining unit. The Employer explained that the Company had been discussing with the employees some proposed changes to their working patterns, consulting with the employees on a group and individual basis, and only a very small number suggested that they wanted to be represented by Unite as a part of that exercise. The Employer stated that the forum worked very well without the presence of Unite during those discussions.

14. The Employer stated that for the reasons above it believed that it would be in the interests of good industrial relations for there to be a ballot and that the membership evidence suggested that it could not be assumed that all members of the bargaining unit who were union members supported recognition.

Summary of the Union's submissions on the qualifying conditions

15. In response to the Employer's comments the Union submitted that the Employer had stated that annual pay reviews were run on a consistent basis globally and the Union stated that that was one of the reasons members were seeking recognition as they had not seen it as fair and in fact they had not had a review at all.

16. In response to the Employer's point in paragraph 9 above the Union asked where the evidence was that they were referring to.

17. The Union stated that the Company referred to their membership from 2 years ago and were not sure of the relevance of that as a current membership check had been conducted by the CAC which were the figures used in their claim for recognition.

18. The Union confirmed that they had only had one new member join this year and the others were recruited over several years.

19. In response to the Employer's points raised in paragraphs 12 and 13 above the Union stated that industrial relations had not been good as their members believed they had not been listened to as individuals and had consistently requested union involvement at recent discussions on working patterns only to be denied. The Union stated that the forum did not go well as the company stated and in fact believed relations would have been better with the involvement of the Union.

20. Finally the Union stated that they were still of the view that a ballot was unnecessary as the level of membership and support indicated the desire for recognition.

Considerations

21. The Act requires the Panel to consider whether it is satisfied that a majority of the workers constituting the bargaining unit are members of the Union. If the Panel is satisfied that a majority of the workers constituting the bargaining unit are members of the Union, it must declare the Union recognised as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit unless it decides that any of the three qualifying conditions set out in paragraph 22(4) is fulfilled. If the Panel considers that any of them is fulfilled it must give notice to the parties that it intends to arrange for the holding of a secret ballot.

22. A membership check carried out by the Case Manager for the purposes of the Panel's decision on acceptance, the result of which was reported to the Panel and the parties on 25 January 2016, showed that 25 of the 29 workers in the bargaining unit were members of the Union, a membership level of 75.86%. In the absence of any evidence to the contrary, the Panel is satisfied that the majority of the workers in the bargaining unit are members of the Union.

23. The Panel has considered carefully the submissions of both parties and all the evidence in reaching its decision as to whether any of the qualifying conditions laid down in paragraph 22(4) of the Schedule is fulfilled.

24. The first condition is that the Panel is satisfied that a ballot should be held in the interests of good industrial relations. The Panel has considered the arguments put forward by both parties and has come to the view that it is not satisfied that a ballot should be held in the interests of good industrial relations. The Employer informed us that many union members were not aware of the consequences of recognition and only a minority of the bargaining unit supported recognition (having understood the consequences) and it would inevitably give rise to tensions and potentially conflict amongst that group of workers. The Panel considers that these comments were at best speculative without any evidence being provided to support this statement. The Panel is therefore satisfied that this condition does not apply.

25. The second condition is that the CAC has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union to conduct collective bargaining on their behalf. The Panel does not consider that consulting with groups of employees, some on an individual basis, about

proposed changes which only a very small number suggested that they wanted to be represented by Unite constitutes evidence to this effect. The Union believed their members had not been listened to and had consistently requested their involvement at recent discussions only to be denied. The Panel is therefore satisfied that this condition does not apply.

26. The third condition is that membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the union to conduct collective bargaining on their behalf. The Employer contended that in many cases it could be assumed that when employees join a union the employee would also support recognition but that anecdotal evidence indicated that that may not be true in respect of this bargaining unit but did produce any evidence to support its contention. The Panel is therefore satisfied that this condition does not apply.

Declaration of recognition

27. The Panel is satisfied in accordance with paragraph 22(1)(b) of the Schedule that a majority of the workers constituting the bargaining unit are members of the Union. The Panel is satisfied that none of the conditions in paragraph 22(4) of the Schedule is met. Pursuant to paragraph 22(2) of the Schedule, the CAC must issue a declaration that the Union is recognised as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit. The CAC accordingly declares that the Union is recognised by the Employer as entitled to conduct collective bargaining on behalf of the bargaining unit comprising “Medics working for United Health Group on the Shell Contract in the UKCS” based at Shell oil rigs in the United Kingdom Continental Shelf.

Panel

Professor Kenny Miller, Panel Chair

Mrs Maureen Shaw

Mr Sandy Boyle

29 March 2016