

**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

Servest Group Limited

**Introduction**

1. Unite the Union (the Union) submitted an application to the CAC dated 3 June 2016 that it should be recognised for collective bargaining by Servest Group Limited (the Employer) for a bargaining unit comprising “All hourly paid staff within the Servest housekeeping contract at Crowne Plaza Blackfriars Hotel”. The application was received by the CAC on 6 June 2016. The CAC gave both parties notice of receipt of the application on 6 June 2016. The Employer submitted a response to the CAC on 13 June 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, Chairman of the Panel, and, as Members Mr David Bower and Mr David Coats. The Case Manager appointed to support the Panel was Linda Lehan.

3. The CAC Panel has extended the acceptance period in this case. The initial period

expired on 20 June 2016. The acceptance period was extended to 1 July 2016 and subsequently to 11 July 2016 in order to allow time for the parties to comment on the results of a membership check and for the Panel to consider these comments before arriving 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.

## **The Union's application**

5. The Union stated that it had sent its formal request for recognition to the Employer on 10 May 2016. A copy of that letter was attached to the application. The Union stated that there had been a verbal conversation at a meeting on 13 May 2016, a draft voluntary agreement sent on 16 May 2016 and a reminder of request sent on 19 May 2016. The Union stated that the Employer had not responded at any point in writing but had stated verbally that it was not the policy of the company to recognise trade unions.

6. The Union stated that there were 20,000 workers employed by the Employer, of whom 36 were in the proposed bargaining unit. Out of the 36 workers in the proposed bargaining unit the Union stated that 28 were members of the Union. When asked to provide evidence that a majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining, the Union stated that it had a membership list available which was to remain confidential. The Union explained that the housekeeping department at the Crowne Plaza Blackfriars Hotel was previously an in-house operation supplemented by additional workers supplied by KSM (UK) Ltd and that on 1 April 2016 it was outsourced to Severest. The Union stated that both the directly employed staff and the KMS staff were transferred to Servest as part of that process and were now Servest employees. The Union stated that prior to the outsourcing announcement a small number of the directly employed housekeeping staff were Unite members but none of the KMS staff were members. The Union stated that in the run up to the transfer the majority of staff from both groups took up

Unite membership and it now represented over two thirds of the hourly paid staff within the bargaining unit. The Union explained about the TUPE process and how it was representing its membership in prospective legal claims arising out of the TUPE transfer process and attached copies of two collective grievance letters signed by a number of employees. The Union stated that since 1 April Severest had brought in new starters to the Hotel and feedback from those workers had been positive in terms of support for the Union. Finally the Union stated that it was confident that a majority of new starters would support union recognition but at this stage were reluctant to engage fully due to the perceived anti-union bias of the company and its local management.

7. The Union stated that the reason for selecting the proposed bargaining unit was because the housekeeping department at Crowne Plaza Blackfriars Hotel was a specific stand-alone contract acquired by Servest from 1 April 2016. The Union also stated that the terms and conditions of the majority of the workforce were protected by the TUPE Regulations and were unique and specific to that contract location.

8. The Union stated that the bargaining unit had not been agreed with the Employer and it was not aware of any existing recognition agreement that covered any of the workers in the bargaining unit. The Union confirmed that it held a current certificate of independence. The Union stated that it had copied the application made to the CAC, and supporting documents, to the Employer on 3 June 2016.

### **The Employer's response to the Union's application.**

9. The Employer confirmed that it had received the Union's written request letter of 10 May 2016 and that no response was made.

10. The Employer stated that it had received a copy of the application form from the Union on 6 June 2016.

11. The Employer confirmed that it had not agreed to the proposed bargaining unit before it received a copy of the application form from the Union but stated that it did now agree the proposed bargaining unit.

12. The Employer stated that the Servest Group Ltd employed approximately 16,000 employees and the Hotels Division of Servest approximately 400 employees. The Employer confirmed that it agreed with the number of workers in the Union's proposed bargaining unit.

13. The Employer stated that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit.

14. In answer to the question whether it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer said that their indications were that the union membership was no more than 15 in number. The Employer stated that it also had substantiated evidence that some employees had been coerced into union membership and not understood the cost implications upon them or that they would then be subject to collective representation. The Employer stated that there had been a campaign by union activists to intimidate new employees into membership in order to gain a majority and in doing so undermined the reputation of Servest. The Employer stated that at least one employee had requested to have their application for union membership withdrawn. The Employer stated that the union had used two letters of collective grievances to support their claim that there were 28 union members but that did not prove that signatories were members and asked us to note that 7 of the names were 'pp' signatories so did not personally sign the letter of complaint. The Employer stated that furthermore at least one of the signatories had categorically stated that they were not a union member and never had been and that put some doubt on the likelihood that all other signatories were subscribed members.

15. As to whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer stated that the 8 separate issues that were presented to Servest as part of the collective grievance had been addressed and that 3 issues were still in contention and subject to an Appeal. The Employer stated that Servest was confident that those issues would also be satisfactorily resolved and believed that employees were confident that their concerns and welfare did not require a collective recognition in the future. The Employer stated that in the last two weeks since the application was put to the CAC a significant number of employees had indicated that they did not want to be part of a union that used intimidation to bolster membership. The Employer stated that it believed that if an organised referendum was carried out the general consensus would be that collective representation would not be supported.

16. The Employer confirmed that it was not aware of any previous application in respect of

the bargaining unit.

### **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 agreed bargaining unit are members of the union (paragraph 36(1)(a)) and whether a majority of the workers in 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 (paragraph 36(1)(b)), the Panel proposed an independent check of the level of union membership within the agreed bargaining unit. It was agreed with the parties that the Employer would supply to the Case Manager a list of the names, dates 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 its paid up members within that unit (including their full name and date of birth). It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists would not be copied to the other party. These arrangements were confirmed in a letter dated 15 June 2016 from the Case Manager to both parties. The information from the Union was received by the CAC on 15 June 2016 and from the Employer on 17 June 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 list supplied by the Employer indicated that there were 42 workers in the agreed bargaining unit. The list of members supplied by the Union contained 29 names. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was 20, a membership level of 47.61%.

19. A report of the result of the membership check was circulated to the Panel and the parties on 17 June 2016 and the parties were invited to comment on the result.

### **The Union's comments on the result of the membership check**

20. The Union asked the CAC Case Manager for the names of those 9 union members not on the Employer's list, which was given to them, and in an email dated 21 June 2016 stated that there were 3 on the list who they said were still with the company and then gave their reasons for believing that.

21. Attached to a further email dated 23 June 2016 the Union gave their comments on the membership check. The Union stated that the membership check based on the comparisons between the union membership list and the company employee list confirmed a membership level of 47.61%. The Union stated that they were confident that that satisfied the test under paragraph 36 – (1) (a) which specifies that union membership must constitute at least 10 per cent of the workers constituting the relevant bargaining unit.

22. The Union stated they had challenged 3 members who did not appear on the company list, along with an explanation of why they should still be listed as employees and that those members were in dialogue with the company regarding their respective situations. The Union stated that they maintained that those 3 were rightfully part of the bargaining unit and their inclusion therefore increased the overall percentage of union members within the bargaining unit.

23. The Union said that it acknowledged that staff turnover had had an impact on membership levels and high staff turnover was very much the nature of the hospitality sector and in particular that of the sub-contracted element of the sector. The Union stated that staff turnover within the sector ran at 31% per year and was considerably higher within the London area. The Union stated that it had numerous recognition agreements with sub contracted cleaning and catering service providers and were used to managing membership fluctuations within the bargaining machinery, while engaging in the necessary ongoing recruitment activity. The Union said that their experience was that once the union was recognised and established staff turnover reduced as the workforce stabilised.

24. The Union stated that it believed turnover also impacted on the company employee list and evidence from their members was that there was a rapid turnover of new starters with many only lasting a few days beyond induction training. The Union stated that they believed therefore that the list provided by the company could only be treated as a snapshot of the number of employees at a particular period and believed they were confident in saying that some of those on the list provided by the company may already have left.

25. The Union stated that they were confident that their membership represented the overwhelming majority of long serving employees and therefore a far more stable element of the workforce believing that that should be a key factor in terms of any judgement made by the Panel.

26. In terms of the majority of staff favouring union recognition the Union stated that one

of the factors the Panel should consider was the growth in union membership within the bargaining unit. The Union stated that it had looked at the entry dates for the 29 members' details provided and said that it demonstrated a clear and consistently growing level of support for the union and went on to give details of when members had joined. Looking at the details supplied it showed that since the TUPE transfer had taken place 11 new members had been recruited.

27. The Union stated that pre transfer it had raised the issue of lack of collective consultation as regards the TUPE transfer with hotel management and, as a consequence, elections were held under the TUPE provisions and 2 Unite members were elected for the purposes of collective consultation. The Union stated that those members were given paid release to attend union training and they were confident that staff understood from the outset the collective role of the union and had been fully supportive of the union being formally recognised.

28. The Union stated that it had taken steps to ensure that members were fully informed and collectively engaged and had hired a meeting venue near the Crowne Plaza to hold fortnightly membership meetings outside of working hours. The Union said that those meetings had been consistently well attended with over two thirds of the members in attendance at each meeting and Union recognition and the progress towards it had been discussed at every meeting. The Union stated that care had been taken to ensure that members with English as a second language fully understood the process and that they had had interpreters in attendance in the main workforce languages of Hungarian, Bulgarian and Romanian as well as translated materials. The Union stated that membership increase had corresponded with the dates of those meetings.

29. The Union said that they were continuing to hold those meetings and were confident that they would continue to encourage ongoing membership increases pending the resolution of the recognition issue. The Union said that existing members were responding to requests from non-members within the housekeeping department for information about the union and the benefits of membership and that again gave them confidence that there was substantial support for the union to be legitimised through formal recognition.

30. The Union said that it refuted the allegations contained in the Employer's response that staff had in some way been unduly pressurised into joining the union and that that was not the manner in which they operated and had made that clear directly to the company. The Union said that they were confident that the company had no evidence whatsoever to support that, in their words, unfounded allegation.

31. The Union stated that all their members within the bargaining unit paid their contributions by direct debit which obviously required them to provide personal bank details and all forms had been checked by union officers and staff and none of those who had joined had cancelled their membership or raised any questions about the validity or legitimacy of their membership. The Union said that members continued to actively utilise representation on both a collective and individual basis as well as seeking support of the union's legal services in respect of outstanding matters relating to the TUPE transfer process.

32. The Union said that genuine progress was being made in building relationships with the company and a voluntary agreement was discussed at a meeting. The Union stated that their statutory claim would not be withdrawn on the basis of those discussions being held but obviously if a voluntary agreement was signed they would then be in a different position.

33. The Union explained that there were conscious that the Employer did not have extensive and well developed relationships with trade unions and any union recognition the company had appeared to be in the public sector as a consequence of inherited union agreements as a consequence of TUPE transfers. Finally the Union stated that it would be more than happy for the services of ACAS to be utilised in line with their guidance and assistance in relationship building in terms of either statutory or voluntary recognition being afforded.

#### **The Employer's response to the Union's comments above**

34. In response to the Union's email of 21 June the Employer accepted that one of the three workers listed should have been on their list. In respect of the other two workers on the Union's list the Employer stated that they did not accept that they should have been included as both had been absent without leave one since 4 June 2016 and the other since 8 June 2016. The Employer stated that both of those workers had been subject to their AWOL procedures and were considered to be leavers.

35. The Employer listed the names of six employees who had submitted written confirmation to them that they had withdrawn their involvement and support of the union and were not aware whether they were among the list of 29 names that were presented by the union.

36. Finally the Employer stated that in terms of the tests as set out in paragraph 36 of the Schedule 36(1)(b) if necessary they would make provision to petition their employees to



demonstrate that the majority of employees on the site at Crowne Plaza would not support the application for Collective Bargaining.

37. In a letter to both parties dated 1 July 2016 the CAC confirmed that on looking at the list of 6 employees the Employer stated had withdrawn their involvement and support of the Union only 1 person was actually on the list submitted by the Union for the membership check as still being member.

### **Considerations**

38. 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.

39. 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)*

40. 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.

41. The membership check conducted by the Case Manager (described in paragraphs 17 and 18 above) showed that 47.61% of the workers in the agreed bargaining unit were members of the Union. As stated in paragraph 19 above, the Panel is satisfied that this check was conducted properly and impartially and in accordance with the arrangements agreed with the parties. By taking into account the comments received from both parties in relation to the number of workers in the bargaining unit and the number of Union members the figure

would in both circumstances increase by one and therefore the figure of 47.61% would marginally increase to 48.83%. The Employer in their comments did not dispute the 10% membership. The Panel is satisfied 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)*

42. 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. For the reasons given in the previous paragraph the level of union membership as conducted in the membership check is 47.61%. The Union did not provide any additional evidence of support for recognition, such as a petition. The Panel attaches some weight to the arguments of the Union regarding recruiting and maintaining membership without recognition for collective bargaining in the context of this industry. The evidence indicates a membership level of over 45% and the Panel considers that, in the absence of evidence to the contrary, union membership provides a legitimate indicator of the views of the workers in the agreed bargaining unit as to whether they would be likely to favour recognition of the Union. No evidence to the contrary was provided in this case and it is in the Panel's experience that there will be workers who are not members of the Union who would be likely to favour recognition of the Union.

43. The Panel noted the Employer's comment that if necessary they would make provision to petition their employees to demonstrate that the majority of employees on the site at Crowne Plaza would not support the application for collective bargaining but at the moment no evidence to support this has been produced.

44. On the basis of the evidence before it, the Panel has decided that, on the balance of probabilities, 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, as required by paragraph 36(1)(b) of the Schedule.

**Decision**

45. For the reasons given in paragraphs 39 to 44 above, the Panel's decision is that the application is accepted by the CAC.

**Panel**

Professor Linda Dickens MBE, Chairman of the Panel

Mr David Bower

Mr David Coats

11 July 2016