

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:

GMB

and

Carillion PLC

Introduction

1. GMB (the Union) submitted an application dated 28 April 2016 to the CAC that it should be recognised for collective bargaining purposes by Carillion PLC (the Employer) for a bargaining unit comprising "All cleaning operatives working for Carillion at Nationwide House Swindon". The location of the bargaining unit was given as "Nationwide House, Pipers Way, Swindon, Wiltshire SN3 1TA". The application was received by the CAC on 24 May 2016 and the CAC gave both parties notice of receipt of the application on 25 May 2016. The Employer submitted a response to the CAC dated 1 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 Gillian Morris, Panel Chair, and, as Members, Mr Len Aspell and Ms Bronwyn McKenna. 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 8 June 2016. The acceptance period was extended to 17 June 2016 in order to allow time for the parties to comment on the results of a membership check and for the Panel to consider said 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 of the Schedule; and therefore to be accepted.

Summary of the Union's application

5. In its application to the CAC the Union stated that it had sent its request to the Employer on 15 April 2016. A copy of this letter was attached to the Union's application. The Union stated that it had received a response from the Employer on 25 April 2016 stating that it rejected the Union's request and would upon any application about this matter to the CAC resist an award of 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".¹ 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. When asked for the total number of workers employed by the Employer the Union answered 21,092. The Union stated that there were 20 workers in the proposed bargaining unit, all of whom were union members. When called upon to provide evidence that the majority of the workers in the proposed bargaining unit were likely to support recognition for collective

¹ This answer is incorrect. The Union submitted a previous application on 29 April 2016. This application was rejected by the CAC because it was made before the expiry of the "first period" and was not, therefore, made in accordance with paragraph 11: see TURI/960/2016, decision of 16 May 2016.

bargaining, the Union reiterated that all employees in the bargaining unit were union members and said that a membership list would be provided on a confidential basis on request.

8. The Union said that the reason for selecting the proposed bargaining unit was that this group of employees was treated as a separate entity by the Employer in relation to pay, terms and conditions. The Union said that the bargaining unit had not been agreed with the Employer and that, as far as it was aware, there was no existing recognition agreement in force covering any of the workers in the proposed bargaining unit.

9. The Union confirmed that it held a current certificate of independence. The Union stated that it had copied its application and supporting documents to the Employer on 20 May 2016.

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

10. In its response to the Union's application the Employer stated that it had received the Union's written request for recognition on 15 April 2016 and that it had rejected that request in a letter dated 25 April 2016. The Employer enclosed a copy of that letter.

11. The Employer stated that it had received a copy of the application form from the Union on 20 May 2016.

12. 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 and that it did not agree it. The Employer stated that it provided facilities management services to Nationwide Building Society under the terms of a Facilities Agreement and that Nationwide House, Swindon was one of 18 UK sites for which the Employer was responsible under the Agreement and was one of 10 sites based in the Swindon area. The Employer stated that it managed the Facilities Agreement centrally and that the cleaning services provided at Nationwide House were not distinct from the other sites either operationally or in employment terms. The Employer stated that the proposed bargaining unit was not appropriate as it was not compatible with effective management and would lead to a small and fragmented bargaining unit. The Employer stated that the only appropriate bargaining

unit was cleaning operatives working for it at all Nationwide sites covered by the Facilities Agreement.

13. The Employer stated that, following receipt of the Union's request, it had not proposed that Acas should be requested to assist.

14. The Employer stated that it employed a total of approximately 21,092 workers in the UK. Asked whether it agreed with the number of workers in the proposed bargaining unit as defined in the Union's application the Employer stated that the correct number was 21. The Employer confirmed that there was no existing agreement for recognition in force covering workers in that bargaining unit.

15. In answer to the question whether it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer said that it had no knowledge of membership and that, whilst it had no reason to doubt the Union's estimate, this needed to be proven. The Employer answered "not applicable" when invited to give its reasons if it did not consider that a majority of workers in the bargaining unit would be likely to support recognition. The Employer also answered "not applicable" when asked if it was aware of any previous application under the Schedule for statutory recognition by the Union in respect of this or a similar bargaining unit² and whether it had received any other applications under the Schedule in respect of any workers in that unit.

The membership check

16. 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 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 in the proposed bargaining unit. It was agreed with the parties

² See note 1 above, however.

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. 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 3 June 2016 from the Case Manager to both parties. The information from the Union was received by the CAC on 3 June 2016 and the information from the Employer was received by the CAC on 7 June 2016. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

17. The list supplied by the Employer showed that there were 20 workers in the proposed bargaining unit. The list of members supplied by the Union contained 19 names. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was 18, a membership level of 90%.

18. A report of the result of the membership check was circulated to the Panel and the parties on 7 June 2016 and the parties were invited to comment on the result.

Parties' comments on the result of the membership check

19. In a letter to the CAC dated 7 June 2016 the Employer said that it noted the numbers recorded in the membership check report but that it was unable to say whether the majority of workers constituting the relevant bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit. The Employer stated that it continued to oppose the Union's application for recognition on the grounds that the proposed bargaining unit was not appropriate.

20. In an e-mail to the CAC dated 10 June 2016 the Union stated that the details were right as far as its system was concerned, and that it could not account for the discrepancy without sight of the actual names. The Union stated that as the vast majority of its members were Goan, it may be that an application form may have had an inaccuracy which was put on to its system.

Considerations

21. 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.

22. 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 set out in paragraph 36(1)(a) and paragraph 36(1)(b) are met.

Paragraph 36(1)(a)

23. 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 (described in paragraphs 16 and 17 above) showed that 90% of the workers in the proposed bargaining unit were members of the Union. As stated in paragraph 16 above, the Panel is satisfied that this check was 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 as required by paragraph 36(1)(a) of the Schedule.

Paragraph 36(1)(b)

24. 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 paragraph 23 above, the level of union membership shown by the membership check is 90%. 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 proposed bargaining unit as to whether they would be likely to favour recognition of the Union. No such evidence to the contrary was received in this case. 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.

Concluding observations

25. The Panel notes that, in its comments on the membership check, the Employer reiterated its view that the Union's proposed bargaining unit was not appropriate. The Panel reminds the parties that the question of whether the Union's proposed bargaining unit is appropriate or, if not appropriate, which bargaining unit is appropriate (if the parties are unable to agree an appropriate bargaining unit) falls to be decided at a later stage of the statutory process and the parties will have an opportunity to make submissions on that matter at that stage.

Decision

26. For the reasons given in paragraphs 22 to 24 above, the Panel's decision is that the application is accepted by the CAC.

Panel

Professor Gillian Morris, Panel Chair

Mr Len Aspell

Ms Bronwyn McKenna

13 June 2016