

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DECISION ON FORM OF BALLOT

The Parties:

Unite the Union

and

Workplace Solutions Engie (GDF Suez)

Introduction

1. Unite the Union (the Union) submitted an application to the CAC dated 25 May 2016 that it should be recognised for collective bargaining by Workplace Solutions Engie (GDF Suez) (the Employer) for a bargaining unit comprising “All manual workers up to and including the grades of supervisors, and charge hands employed by Engie - Workplace Solutions within the EDF Nuclear power stations”. The locations of the bargaining unit were given as “All EDF Nuclear power stations in the UK, namely Hartlepool, Heysham 1, Heysham 2, Hinkley Point B, Hunterston B, Dungeness B, Sizewell B and Torness. The application was received by the CAC on 25 May 2016 and the CAC gave both parties notice of receipt of the application on 26 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 Kenny Miller, Chairman of the Panel, and, as Members, Ms Virginia

Branney and Mrs Maureen Chambers. The Case Manager appointed to support the Panel was Nigel Cookson and, for the purpose of this decision, Linda Lehan.

3. By its written decision dated 22 July 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. On 2 August 2016 the Employer emailed the CAC to confirm that it was happy with the bargaining unit of manual workers up to charge hands and supervisors that had been proposed by the Union.

4. The Employer's email was copied to the Union on 2 August 2016 and the Union was asked whether it claimed that a majority of workers constituting the bargaining unit were members of the Union. By an email dated 11 August 2016 the Union stated that it was not claiming majority membership within the agreed bargaining unit and would be happy to move to a ballot.

5. On 12 August 2016, the Panel, satisfied that a majority of the workers constituting the bargaining unit were not members of the Union, gave notice in accordance with paragraph 23(2) that a secret ballot would be held. The Panel also advised the parties that it would wait until the end of the notification period of ten working days, as specified in paragraph 24(5), before arranging a secret ballot. The parties were also asked for their views on the form the ballot should take.

6. The notification period under paragraph 24(5) of the Schedule ended on 25 August 2106. The CAC was not notified by the Union or by both parties jointly that they did not want the ballot to be held, as per paragraph 24(2).

Union's submissions on the form of ballot

7. In an email dated 19 August 2016 the Union stated it had decided on balance to request a workplace ballot. It believed that this was likely to lead to a higher turnout, which, regardless of

the outcome would give a definitive result and thus improve industrial relations within the company in the long run.

Employer's submissions on the form of ballot

8. In an email dated 18 August 2016 the Employer stated that it would be happy with a postal ballot. The Employer, in a letter from the CAC dated 22 August 2016, was asked to explain their reasons for wanting a postal ballot and in an email dated 23 August 2016 the Employer stated that they would like a postal ballot to be considered for the following reasons:

“Cost. There are 8 individual power station to be balloted and cost would be incurred in ensuring the ballots were overseen at each site.

Two stations are currently in or due to go into outage which sees employees working twelve hour shifts and rotas. Agreeing with our customer to allow them to leave work priority to ballot could prove difficult.

A postal ballot would give employees the freedom and anonymity to make their own decision and vote how they wished. No coercion by either party to vote in a certain way and no pressure from colleagues.

Our utmost concern is to enable employees to vote confidentially and we believe this will not be the case if completed at sites.”

Union's comments on Employer's submissions

9. The Union was given the opportunity to comment on the Employer's email of 23 August and in an email dated 31 August 2016 the Union stated that their reason for requesting a workplace ballot was, as already indicated, to ensure a high and decisive turnout and there was good evidence that a postal ballot was likely to yield a lower turnout.

10. The Union stated that it noted that the Employer had given as one of their reasons for requesting a postal ballot that “A postal ballot would give employees the freedom and anonymity to make their own decision and vote how they wished. No coercion by either party to vote in a certain way and no pressure from colleagues”. The Union stated that that showed a startling lack of faith in the process, since it was unaware of any accusation of coercion having been levelled

by anyone. The Union stated that people would of course be able to quite normally, express their views in either event and if complaints arose about the conduct of either side then they would be taken very seriously by them and would expect the Employer to do the same.

Considerations

11. When determining the form of the ballot (workplace, postal or a combination of the two methods), the CAC must take into account the following considerations specified in paragraphs 25(5) and (6) of the Schedule:

- (a) the likelihood of the ballot being affected by unfairness or malpractice if it were conducted at a workplace;
- (b) costs and practicality;
- (c) such other matters as the CAC considers appropriate.

12. The parties have put forward two different types of ballot for the Panel to consider. The Union has argued for a workplace ballot on the grounds that there would be a greater level of participation from the workers in the bargaining unit. On the other hand, the Employer has submitted that the ballot should be a postal ballot as a workplace ballot would be both disruptive and more expensive.

13. The Panel, having carefully considered the parties' submissions, has decided that, on the grounds of practicality and cost, the appropriate form of ballot in the circumstances would be a postal ballot. Firstly, which was not contested by the Union, the Employer stated that two stations are in/about to go into 'outage' which would see employees working twelve hours shifts and rotas. We were also reminded by the Employer that the sites do not belong to Workplace Solutions - Engie (GDF Suez) - Engie is the contractor working onsite, and that holding workplace ballots would require some organisational input on the part of the customer as well as the Employer. As stated by the Employer there are 8 individual power stations to be balloted. Therefore, given that the bargaining unit encompasses a number of power stations it would be far more practical to conduct a postal ballot than a workplace ballot. Secondly, it would be far more expensive to hold a workplace ballot than a postal one bearing in mind the number of sites the

QIP would have to attend. Additionally, the Panel takes the view that a postal ballot allows workers to arrive at a decision in a neutral environment away from the workplace without the possible danger of undue influence from either party.

Decision

14. The decision of the Panel is that the ballot be a postal ballot.

15. The name of the Qualified Independent Person appointed to conduct the ballot will be notified to the parties shortly as will the period within which the ballot is to be held.

Panel

Professor Kenny Miller, Chairman of the Panel

Ms Virginia Branney

Mrs Maureen Chambers

5 September 2016