

11 August 2015

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:

Bakers Food and Allied Workers Union
(BFAWU)

and

Tulip Limited

Introduction

1. The Bakers Food and Allied Workers Union (the Union) submitted an application to the CAC dated 24 June 2015 which was received by the CAC on 26 June 2015 that it should be recognised for collective bargaining purposes by Tulip Ltd (the Employer) for a bargaining unit comprising "all hourly paid workers employed at Mantle Lane, Coalville, Leicestershire, LE67 3DW within the following posts/job titles:

- CV Production Op Cooked Meats;
- CV Production Op Uncured;
- CV Production Op Curing Room;
- CV Production Op Cutting Room;
- CV Production Op Despatch;
- CV Production Op High Risk;
- CV Production Op Hygiene;
- CV QA / Tech;
- CV Production Op Drivers and
- CV Stores"

adding "The Union does not seek recognition in relation to managers, and for clarity confirm that the union considers the term 'manager' to cover team leader, line managers and supervisors". The CAC gave the parties notice of receipt of the application on 26 June 2015. The Employer submitted a response to the application on 2 July 2015 which was duly cross 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 Her Honour Judge Stacey, Chairman of the Panel, and, as Members, Mr David Crowe and Ms Judy McKnight CBE. The Case Manager appointed to support the Panel was Miss Sharmin Khan and for the purpose of this decision Linda Lehan.

Issues

3. 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 should be accepted.

Summary of the Union's application

4. The Union confirmed in its application that it had a current certificate of independence and attached a copy of its formal written request for recognition to the Employer dated 2 June 2015. A copy of the Employer's response, dated 12 June 2015 rejecting the request was also attached.

5. When asked if it had made a previous application for statutory recognition under the Schedule for workers in the bargaining unit or similar unit the Union explained that it had applied on 2 April 2015, CAC reference TUR1/908/2015, but that at the membership and support check stage it had decided that it wished to recast the proposed bargaining unit and therefore withdrew its application prior to any acceptance decision. The Union stated that the new proposed bargaining unit was slightly smaller than the originally proposed bargaining unit.

6. The Union stated that there were 250 - 300 workers employed by the Employer and that 191 of these were within the proposed bargaining unit of which over a hundred were Union members.

7. The Union explained that the proposed bargaining unit had been selected on the basis that the Employer organised its business in this manner as a coherent whole and this was where the Union had membership and support for recognition.

8. When asked to provide evidence that the majority of the workers in the bargaining unit were likely to support recognition for collective bargaining the Union stated that recruitment for membership had been steadily increasing throughout the period in which it had attempted to seek voluntary recognition and its petition calling for recognition had over 120 signatures. The Union stated that it relied on the petition submitted for the previous application to the CAC which it considered to be still valid for the purposes of the current application. The CAC had retained the original petition.

9. The Union confirmed that the bargaining unit was not agreed by the Employer and that it was not aware of any existing recognition agreement that covered any of the workers in the proposed bargaining unit. In its covering letter to the CAC attaching the application dated 2 June 2015, the Union confirmed that it was sending a copy of its covering letter, and all enclosures (application and supporting letters) to the Employer. The Union also stated that the Employer had not requested the assistance of Acas.

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

10. In its response to the Union's application the Employer stated that it had received the Union's formal request for recognition on 4 June 2015 which it had declined. The Employer stated that it was content with its current arrangements and therefore did not have cause to recognise the Union for collective bargaining. The Employer explained that it already had an effective and full Works Council in place which provided a representative and effective means of collectively raising and addressing employee issues. It also had an extensive training programme which was accessible to all employees and it offered numerous benefits to employees free of charge and gave a detailed explanation of what benefits it actually offered its employees.

11. When asked if it agreed with the proposed bargaining unit, the Employer answered "yes". The Employer explained that even though the parties had not expressly agreed the bargaining unit in relation to this current application, at the time of the Union's previous application, some discussion had taken place and an agreement was reached about the appropriate bargaining unit prior to the Union withdrawing its application.

12. The Employer stated that as at 2 July 2015 it employed 288 workers. The Employer disagreed with the Union's number of workers in the proposed bargaining unit and stated that as at 2 July 2015 there were 206 workers in the proposed bargaining unit not 191. It did not know the reason for the difference.

13. The Employer stated that it had no evidence of the Union's membership level as it did not operate check off for the BFAWU. The Employer also stated that the Union's estimate of membership was unlikely to be accurate as the Company's current annual turnover rate was 27% and due to the number of leavers since the Union's last application their figures were likely to be out of date

14. The Employer did not consider that a majority of the workers in the bargaining unit were likely to support recognition of the Union. In its view, the Union's petition should be disregarded for the purposes of the current application as it was out of date with the earliest signature dated 2 February 2015 and the most recent being 16 February 2015. The Employer stated that despite there having been some union activity on site a number of employees did not understand the implications of collective bargaining. In addition the Employer pointed out that there had been no union representatives accompanying employees at any disciplinary or grievance meeting.

15. The Employer stated that the only previous application for statutory recognition under the Schedule in respect of any of the workers in the proposed bargaining unit made by the BFAWU was the Union's original application to the CAC dated 8 April 2015 which was subsequently withdrawn on 27 May 2015.

16. Finally, when asked if it had received any other applications under the Schedule for statutory recognition in respect of any workers in the bargaining unit the Employer informed that in 2008/2009 the Employer had agreed to a ballot with Unite the Union who were not voted in. The Employer also confirmed that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit.

Membership and support check

17. To assist the Panel in its determination of two of the admissibility criteria specified in the Schedule, namely, whether 10% of the workers in the relevant bargaining unit are

members of the Union (paragraph 36(1)(a)) and whether a majority of the workers in the relevant bargaining unit are likely to support recognition of the Union as entitled to conduct collective bargaining on behalf of the relevant bargaining unit (paragraph 36(1)(b)), the Panel proposed independent checks of the level of union membership and support in the proposed bargaining unit.

18. The Case Manager conducted the check on a confidential basis, the arrangements for which were confirmed in a letter to the parties dated 10 July 2015. The agreement stated that the Employer would supply to the Case Manager a list of the full names, addresses, dates of birth and posts/job titles of the workers in the proposed bargaining unit and that the Union would supply a list of the full names, addresses and dates of birth of its paid up members in the proposed bargaining unit. The CAC already had the original of the petition the Union relied on (see paragraph 8 above). The Case Manager was to compare the Employer's information with the Union's and to preserve confidentiality would not copy to the other party the respective lists and petition. The Case Manager's checks established the level of Union membership and support for recognition of the Union the results of which were issued to the parties and the Panel in a report from the Case Manager dated 30 July 2015.

Results of the membership and support check

19. The comparison of the Union's list of members with the Employer's list of workers established that there were 185 workers within the proposed bargaining unit of which 105 were members of the Union; a Union membership level of 56.8%.

20. The comparison of the Union's petition with the Employer's list of workers established that 112 (60.5%) of the workers in the proposed bargaining unit were in favour of recognition of the Union of which 90 (48.6%) of the proposed bargaining unit were Union members and 22 (11.9%) of the proposed bargaining unit were non-Union members. The remaining entries were reported as illegible or duplicate entries.

The parties' comments

21. By its letter to the CAC dated 31 July 2015 the Union noted that its members made up 56.8% of the bargaining unit and therefore the statutory tests for acceptance of the application were met.

22. The Union also noted that the Employer in its response to the application agreed with the proposed bargaining unit. Therefore, in the circumstances it also considered that paragraphs 22(1)(b) and 22(2) of the Schedule applied.

23. The Employer in an e-mail dated 6 August 2015 stated that it did not wish to comment on the membership check but it believed that they had already agreed to the bargaining unit.

Considerations

24. In deciding whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 3 of this decision are satisfied. The Panel has considered all the evidence submitted by the parties 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 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. In accordance with paragraph 36(1)(a) of the Schedule the Panel must determine whether or not members of the Union constitute at least 10% of the workers in the relevant bargaining unit. The result of the check carried out by the Case Manager established that 56.8% of the workers in the proposed bargaining unit were members of the Union and in the absence of any evidence to the contrary, the Panel is therefore satisfied that this test is met.

Paragraph 36(1)(b)

27. Paragraph 36(1)(b) of the Schedule states that, for an application to be admissible, the CAC must be satisfied that a majority of the 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 Panel is therefore required to determine likely, not

actual, majority support for recognition of the Union. Based on its knowledge and experience of industrial relations, the Panel accepts that being a member of a union is often indicative of an individual's support for that same union to represent them in matters of collective bargaining. The Panel accepts the figures established by the Case Manager's check of the information declared by the parties that there was a membership level of 57.8% within the proposed bargaining unit as there was no evidence produced to contradict the actual level of membership.

28. The Panel acknowledges the Employer's concern about the reliability of the Union's petition because of the date of that petition but on the membership evidence alone and for the reasons given above the Panel can reasonably conclude that at least 57% of the bargaining unit would be likely to favour recognition of the Union for the purposes of collective bargaining. Again the Employer has not contested these findings. For these reasons the Panel concludes that there is sufficient evidence demonstrating that a majority of 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 and so the requirements of paragraph 36(1)(b) of the Schedule are met.

Decision

29. The Panel is satisfied that the application is valid within the terms of paragraphs 5 to 9, is made in accordance 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

Her Honour Judge Stacey – Chairman

Mr Christopher Ball

Mr David Crowe

11 August 2015