

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

Senior Aerospace BWT Poynton

Introduction

1. Unite the Union (the Union) submitted an application to the CAC dated 22 August 2016 that it should be recognised for collective bargaining by Senior Aerospace BWT Poynton (the Employer) for a bargaining unit comprising “Shop floor production members” based at BWT Poynton. The application was received by the CAC on 22 August 2016. The CAC gave both parties notice of receipt of the application on 23 August 2016. The Employer submitted a response to the CAC dated 9 September 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, Mr Bill Lockie and Mr Gerry Veart. The Case Manager appointed to support the Panel was Linda Lehan.

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

expired on 6 September 2016. The acceptance period was extended to 30 September 2016, 21 October 2016 and to 2 November 2016 in order to allow time for further information to be obtained, a membership check to take place, for the parties to comment on the subsequent report, 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 an email to the Employer on 2 March 2016 asking for voluntary recognition and had met with the Employer over the next 4 months but no ground was made. The Union stated that a formal letter was sent to the Employer on 5 July 2016 and that the Employer's response was attached to their application. The Union confirmed that ACAS was engaged on 25 July 2016. Copies of the request letter, Employer's response together with subsequent emails between the parties were attached to the application.

6. The Union stated that ACAS had been put forward by them as a way of mediating and that a meeting had been arranged for 20 September after earlier dates in August were rejected.

7. The Union stated that there were 356 workers employed by the Employer, of whom 174 were in the proposed bargaining unit. Out of the 174 workers in the proposed bargaining unit 112 were members of the Union. The Union stated that the Employer did not agree with the number of workers in the proposed bargaining unit. 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 circulated a petition for the employees to say if they agreed for Unite

to gain recognition.

8. The Union stated that the reason for selecting the proposed bargaining unit was that the shop floor production operatives were on the same or similar terms, conditions and rates of pay, were also flexible and moved within the boundaries of the different areas of the site when required with adequate training. The Union stated that the workers were managed as a group or groups of individuals and were subject to the same disciplinary and grievance procedure and company handbook. The Union further stated that representation of them by a Union would be entirely consistent with their management by the company.

9. The Union stated 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. The Union confirmed that it held a current certificate of independence.

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

10. The Employer confirmed that it had received the Union's written request letter on 5 July 2016 by email. The Employer stated that on 18 July 2016 it acknowledged receipt of the Union's letter requesting voluntary recognition and that it was unwilling to accept the Union's request but was willing to continue their discussions regarding the Union's request using the auspices of ACAS.

11. The Employer confirmed that it had received a copy of the application form from the Union on 23 August 2016. The Employer stated that it had not, before receiving a copy of the application from the Union, agreed the bargaining unit and still did not agree it. The Employer stated that it did not recognise any such category of worker as "shop floor production member" nor did they have a specific department or function by that name. The Employer stated that the Union's proposed bargaining unit should be clear and unambiguous and reflect job categories and roles used by the business to ensure that they had identified an appropriate unit. The Employer confirmed that, following receipt of the Union's request, the Union proposed engaging ACAS and an initial meeting took place on 3 August 2016. The Employer

said that as a result of that meeting it was agreed they would meet again but due to annual leave commitments on behalf of all parties the earliest mutually available date to meet was 20 September 2016.

12. The Employer stated that it employed 373 workers. The Employer stated that it did not agree with the number of workers in the proposed bargaining unit as it was inadequately defined and did not refer to job functions or roles and, in any event, there were considerably more employees engaged in so called “shop floor” related roles. The Employer stated that in trying to be helpful and deduce what the Union meant when determining their proposed bargaining unit, it had considered “shop floor function members” job functions and roles and believed the number in the proposed bargaining unit to be 286 employees. The Employer stated that the number excluded all office based and administrative roles and people in management roles confirming that all employees in the total were employed on the same or similar terms and conditions and rates of pay.

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 stated that it could not comment on membership numbers as it did not monitor trade union status and believed union membership was a personal matter and the employer policy was to fully respect the personal choice and legal right to join a union or not.

15. As to whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer stated that it believed union membership was not necessarily determinative of support for union recognition. The Employer stated that the Union’s claim to have 112 members, as a percentage of 286 workers in their proposed bargaining unit, only amounted to circa 39% which was well below half of the workers and could not be said to be indicative that the majority of those workers would be likely to support collective bargaining. The Employer stated that employees had told managers and team leaders, during team briefings, that they disliked union pressure when gate-leafleting, did not want to join the Union and

did not support the Union's campaign.

16. In respect of the Union's petition(s) the Employer, in brief, stated that it was not a reliable indicator of support for union recognition and that the wording was ambiguous as it only called on the Company to enter into full and meaningful **discussions** with the Union to secure union recognition and called for recognition agreement to cover (union) **members**. The Employer stated that the petition did not signify explicitly that employees who signed the petition wished the Union to negotiate on their behalf and signatories may have misunderstood what union recognition entailed. The Employer stated that it had no knowledge of how the petition was circulated or how signatures were obtained and believed, from discussions with employees, that there may have been more than one petition circulated. Finally the Employer stated that it operated a well-established Works Council which met on a monthly basis, covering the whole workforce and discussed a range of topics. The Employer explained that the Employee Representatives were elected by employees to represent defined groups across the site.

Correspondence between parties

17. In a letter dated 12 September 2016 from the CAC the Union was asked to provide its comments on the Employer's statement that the Union's proposed bargaining unit did not correspond to job categories and that the proposed bargaining unit was unclear and ambiguous. The Union was also asked for its comments on the points made by the Employer concerning the petition.

18. In a letter dated 16 September the Union stated that the company had, across the site at Poynton, numerous categories of roles and responsibilities, the different departments being called names such as QC/QA inspection, PD, Good in/out, Kitting, Lagging, Sheeting, Development, Winding and Flexible (Tubing) and all those departments had the same common thread in that it had members of Unite who were classed under the job description of Production Operatives. The Union stated that it had on numerous occasions, in the earlier meetings with the company, stated that their intention for recognition was only to represent that group of employees and that was still their aim. The Union stated that they believed the total number of employees to

be just over 200 not 174 as originally thought and stated in their application. The Union stated that it was and never had been their intention to include any supervisory roles in the bargaining unit.

19. In respect of the petition the Union stated that it had only ever used one petition, which it had shared with the company when asked, and believed that it was signed freely by over 180 members and non-members from the shop floor and at no time were they forced or pressured into signing it. As to the employees not understanding what recognition meant the Union stated that the Employer had in previous bulletins described exactly what it would mean to employees and that they had freely shared newsletters answering questions on their intentions and what recognition meant.

20. The Union in a letter dated 20 September 2016 requested a stay in proceedings whilst parties conducted talks with ACAS which was agreed.

21. In response to the Union's comments in its letter of 16 September 2016 the Employer, in a letter dated 22 September 2016, explained that it was correct that the Poynton site employed numerous categories of roles and responsibilities within differing departments but not all those individuals, who worked on product in a Shop Floor role, had within their title the term "Production Operative". The Employer stated that what had become increasingly evident from discussions with the Union and ACAS was that the Union intended to exclude from their proposed bargaining unit all office based staff and, although, they did not accept that that was an appropriate bargaining unit, to assist the CAC in making progress with ascertaining the number of employees in the Union's proposed bargaining unit, it believed that employees in the following categories and functions were intended to be included in the proposed bargaining unit; Quality Control, Maintenance, Production Tooling, Despatch, Production Support, Materials Control, Development, Plasters, PD Lay-up, Flexible, Shaping, Silencer, Winding, Mixing, PD-PDF Sheet, PD Finishing, PDF, PDS, Tapers, Product Validation, Lagging and Holding Register & Dormant. The Employer stated that it also proposed to include all Team Leaders working in production in a Shop Floor capacity as at no time in the Union's proposed description of their intended bargaining unit had they specifically sought to exclude Team Leaders and those individuals were just as much "Shop Floor Production members" as

all the other individuals employed in the categories they had identified.

22. In respect of the petition the Employer stated that it stood by its comments made in the Employer's Response Form and did not believe that the majority of its employees favoured Union recognition. The Employer said that at the time employees may have signed a petition it considered that there was considerable misunderstanding in terms of what people were signing.

23. In a letter received from the Union dated 30 September it advised that, due to limited information being received from the Employer concerning information on roles and responsibilities, it had no alternative but to ask that their application be put forward to the CAC.

The Membership and support Check

24. 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 within the proposed bargaining unit. It was agreed with the parties that the Employer would supply to the Case Manager a list of the names, date 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 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 3 October 2016 from the Case Manager to both parties. The information from the Union was received by the CAC on 6 October 2016 and from the employer on 7 October 2016. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

25. The Employer in a covering letter stated that it had been reported to them that

the Union were offering a discounted membership viz part time subscriptions for full-time employees.

26. The list supplied by the Employer indicated that there were 289 workers in the proposed bargaining unit. Alongside the name of each worker the Employer listed their function description and job role and these details were described in an Appendix attached to the membership check. The list of members supplied by the Union contained 106 names. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was 99, a membership level of 34.36%.

27. The Union's petition was set out on their headed paper as follows:

SENIOR AEROSPACE BWT

We the undersigned employees of Senior Aerospace BWT based at the facility in Poynton call on the Company to enter into full and meaningful discussions with UNITE the Union to secure a recognition agreement for its members. (sic)

We have signed this petition without been put under any undue stress or pressure by any of our colleagues, UNITE the Union or any third party. (sic)

NAME (Print)	SIGNATURE	SECTION

28. According to the Case Manager's report the petition contained 175 names/signatures. Of these 155 were on the Employer's list of names, representing 53.63% of the proposed bargaining unit. The number of petition names/signatures who were Union members was 86 (29.76% of the proposed bargaining unit) and the number of petition names/signatures who were non-members was 69 (23.88% of the proposed bargaining unit).

29. A report of the result of the membership check was circulated to the Panel and the parties on 10 October 2016 and the parties were invited to comment on the result

and the Union was also asked to comment on the Employer's comment concerning the fees as referred to in paragraph 25 above.

Union's comments on the result of the first membership and support check

30. The Union in a letter received by the CAC on 10 October 2016 stated that it was not within their remit to offer discounted membership fees and fees, in line with costs, were altered per scale in September 2016. The Union further stated that it believed it did satisfy the membership rules under Schedule A1 in that the majority of the named bargaining unit favoured recognition by them. The Union stated that it would question the company numbers of 289 as recent information given at the meeting with ACAS the number was 284 and then reduced to 272 after cell leaders were withdrawn and in the Employer's Response Form quoted 286.

Employer's comments on the result of the membership and support check

31. The Employer in a letter dated 14 October 2016 stated that it noted that the number of union members in the proposed bargaining unit stated 99 amounting to circa 34% of the proposed bargaining unit whereas in the Union's application it claimed 112 members. The Employer stated that what was also clear from the report was that the Union had declining membership and support as evidenced by the drop in membership. The Employer reiterated its comments about the discounted membership being offered as referred to in paragraph 25 above.

32. In respect of the petition the Employer asked the CAC to take into account their concerns in relation to that document referring the CAC to the comments they had made in their Response Form detailed in paragraph 16 above. The Employer stated that the petition made a case for meaningful discussion between the Company and Unite to secure recognition for **its members**. The Employer further stated that the petition was ambiguous and believed a significant number of signatories were not aware of how the petition was to be used by Unite or in fact the full implication of what recognition meant in contrast to being a union member.

Union's further comments

33. In a letter dated 14 October 2016 the Union reiterated that it did not have any authority to offer any membership reductions that was not agreed by their National Executive Council. In response to the Employer's comments about the petition the Union stated that once again the company were casting doubts on their employees ability to understand something that the company had clearly spelt out in a previous communications.

Considerations

34. 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.

35. 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 12. 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)

36. 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.

37. The membership check conducted by the Case Manager (described in paragraphs 24 and 25 above) showed that 34.26% of the workers in the proposed bargaining unit were members of the Union. As stated in paragraph 24 above, the Panel is satisfied that the 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)

38. 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. As discussed in the previous paragraph, the level of union membership identified by the membership check is 34.26%. The Union also provided a petition, described in paragraph 27 above, in support of its submission that the test in paragraph 36(1)(b) was met. As shown in the membership and support check there are a lot more workers in the proposed bargaining unit than the Union estimated (roughly 100) and the Union, as can be seen in paragraph 30 above, have only questioned at most 17 of these individuals which would still only give a membership level of circa 36%.

39. To meet the test in paragraph 36(1)(b) the Union would need their additional evidence to be taken into consideration to add weight to the Union's case. However, in the view of the Panel the evidential value of the petition in this case is very low. The Panel has noted comments from both parties concerning the petition and it would seem that the petition was generated at a particular time to support the union's request to agree **voluntary** recognition with the employer. The petition asks the employer "to enter into full and meaningful discussions" with UNITE "to secure a recognition agreement for its **members**". The petition does not require the signatories to express their support for recognition or refer to the statutory process. Moreover, it requests recognition only for UNITE members and it is therefore possible that some non-members signed the petition in the belief that it did not apply to them because they were not members of UNITE.

40. The Panel notes that paragraph 36(1)(b) requires it to determine that a majority of the workers in the proposed bargaining unit would be likely to favour recognition. The Panel is not persuaded by the Union's petition that those who signed it necessarily supported the Union's request for recognition by the Employer. The Panel does not, therefore, consider that it has sufficient evidence before it to decide that a majority of the workers in the proposed bargaining unit would be likely to favour recognition.

Decision

41. For the reasons given in paragraphs 38 – 40 above, the Panel's decision is that the application is not accepted by the CAC.

Panel

Professor Kenny Miller, Chairman of the Panel

Mr Bill Lockie

Mr Gerry Veart

2 November 2016