

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DETERMINATION OF THE BARGAINING UNIT

The Parties:

United Road Transport Union

and

UTL Consumer Solutions

Introduction

1. United Road Transport Union (the Union) submitted an application to the CAC dated 2 November 2015 that it should be recognised for collective bargaining by UTL Consumer Solutions (the Employer) for a bargaining unit comprising "all warehouse operatives/shunters based at UTL Consumer Solutions, Kimberley Clark RDC, Revolution Park, Buckshaw Avenue, Buckshaw Village, Chorley, Lancashire PR7 7DW". The CAC gave both parties notice of receipt of the application on 4 November 2015. The Employer submitted a response to the CAC dated 17 November 2015 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 Mr Chris Chapman, the Panel Chair subsequently replaced by Professor Linda Dickens MBE and, as Members, Mr Bill Lockie and Mr Keith Sonnet. The Case Manager appointed to support the Panel was Linda Lehan.

3. By a decision dated 8 December 2015 the Panel accepted the Union's application. As no agreement was reached on the appropriate bargaining unit the parties were invited to supply the Panel with, and to exchange, written submissions ahead of a

hearing to determine the matter. The hearing was held in Birmingham on 21 March 2016 and the names of those who attended the hearing are appended to this decision.

4. The Panel is required, by paragraph 19(2) of the Schedule to the Act (the Schedule), to decide whether the Union's proposed bargaining unit is appropriate and, if found not to be appropriate, to decide in accordance with paragraph 19(3) a bargaining unit which is appropriate. In order to accommodate the hearing the Panel extended the period within which it must make its decision to 4 April 2016.

Background

5. The Employer explained that it is a leading provider of logistics, field services and repair solutions to the mobile telecoms, consumer electronics and consumer retail sectors. It operates from 9 sites across the UK including the site the subject of this application which is a Distribution Centre at Buckshaw Village, Chorley, Lancashire. The Employer took over the Distribution Centre at Buckshaw Village on 1st October 2014 under a contract with its customer Kimberley Clark (the Customer). The previous provider of the services to the Customer was Norbert Dentressangle. The Distribution Centre is a self-contained operation servicing a single customer and all of the employees at the site are engaged in delivery of the services to the Customer. The Employer stated that there are 56 employees at the site of which 8 are Managers.

Summary of the submission made by the Union

6. The Union stated that its proposed bargaining unit was all warehouse operatives and shunters based at the Chorley site. The Union explained that they were the only union dedicated to serving the interests of workers in the road haulage industry – people it said who could properly be described as the “industries driving force”. The Union stated that it was a totally independent union and was not affiliated to any political party and was affiliated to a number of trade union umbrella organisations and trade union bodies throughout the world. The Union stated that it had a proven record within the industry with such companies as DHL, KNDL and Wincanton to name a few preferring to work with them and its members within the workplace. The Union explained that they were the sole remaining and oldest established road haulage trade union in the UK

and their firm foundations were based on a dedicated and experienced team of staff.

7. The Union stated that it had a proven history at the site in Chorley looking after the driver population and were in the midst of seeking recognition with the previous employer for the warehouse operatives and shunter drivers when the transfer took place from XPO Logistics to UTL Consumer Solutions.

8. The Union explained that when the transfer took place a group of approximately 13 warehouse operatives contacted them asking that they continue trying to seek a recognition agreement with the new employer.

9. The Union stated that they were purely seeking recognition for the warehouse operatives and shunter drivers as in the main the operatives' pay, terms and conditions were the same save for premiums for night work etc. The Union said it was their understanding that the warehouse operatives worked in small teams on shift with assistance from a shunter to move trailers on and off bays full of the prepared palletised goods.

10. The Union stated that they had no interest in formulating a bargaining unit for Administrative staff, Team Leaders and Managers as they believed that group of workers were subject to different rates of pay and terms and conditions of employment. The Union thought it would complicate bargaining if diverse groups were included in the same bargaining unit.

11. The Union stated that the Employer had never mentioned at any of their discussions that they wanted the bargaining unit to include all the workers apart from Managers and felt very frustrated that they had not been able to have informative discussions prior to the hearing which would have helped, for example, clarify the roles of supervisors.

12. Finally the Union confirmed that it wished to still proceed with its proposed bargaining unit being all warehouse operatives and shunters.

Summary of the submission made by the Employer

13. The Employer explained that the Chorley site was dedicated to one customer being Kimberley Clark and all negotiations concerning that site was dictated by the customer.

14. The Employer explained a number of people were moved from their Lancaster site to their Chorley site and as a result of this last year they looked at making changes to harmonise terms and conditions of employment.

15. The Employer stated that everyone on the site was salaried and had common terms and conditions although different job titles. The Employer stated that the pay was different and even workers within the proposed bargaining unit were on different rates of pay. The Employer explained that there was a rate of pay for each job although not much difference between rates of pay. The Employer stated that the same pay rise was applied to all the employees and there was no obvious distinction between them insofar as the Employer was concerned.

16. The Employer stated that it recognised that Managers should not fall within the bargaining unit but believed the remaining 48 employees should be within the bargaining unit as they all worked closely together as part of a team. The Employer stated that if recognition was to be granted for the bargaining unit as suggested by the Union there would be 10 people based at the Chorley site who would be left 'in limbo'.

17. The Employer stated that the categories of the workers in their proposed bargaining unit were:

4 x Shift Supervisors who worked on a 4 on 4 off shift pattern and worked as part of a team of Distribution Centre Operatives. The Shift Supervisors spend the vast majority of their time carrying out direct operational tasks e.g. loading and unloading trailers, re-palletising cases of product and were based on the warehouse floor. The Employer stated that the Shift Supervisors attended daily communication cells with the Distribution Centre Operatives, led by the Shift Manager, and decisions were then made as to who carried out what task each day. In answer to a question from the Panel the Employer confirmed that the Shift Supervisors had no direct management

responsibilities, for example in relation to discipline.

5 x Admin Staff who worked on a 4 on 4 off shift pattern following the same shift rotation as the Distribution Centre Operatives and Shift Supervisors. The main duties of the Shift Administrators was to liaise with third party drivers and Distribution Centre Operatives and Shift Supervisors. They were required to maintain accurate and timely records on a transport scheduling system provided to them by the Shift Manager. The Shift Administrators had no authority to provide direction or instruction to others. There were Distribution Centre Operatives who were trained to work as Shift Administrators as and when required.

1 x Stock Control Clerk who worked on a Monday to Friday day shift to fall in line with the Line Manager and Stock Control Manager who worked a day shift to fall in line with the Customer's core working hours. The Employer stated that the Stock Control Clerk's time was split between carrying out stock investigation using the warehouse management system and then physically finding or rectifying the stock issues. The Employer stated that the Stock Control Clerk had no authority to provide direction or instruction to others and was expected to work as part of the team with the Shift Supervisors, Shift Administrators and Distribution Centre Operatives.

30 x Distribution Centre Operatives

4 x Co Pack

4 Shunters

18. The Employer explained that at present they had a consultative staff forum which covered all the of the employees at the Chorley site and if the employees preferred trade union recognition to the forum then the appropriate course would be for the recognition agreement to cover all of those employees who were currently represented through the forum. In response to questions from the Panel, the Employer explained that the local forum had been set up last year and that workers from all areas of the Chorley site had elected members on the forum which met on a monthly basis.

19. In summing up the Employer stated that the proposed bargaining unit put forward by the Union was not compatible with effective management: it created artificial barriers between groups of workers and would cause a problem in dealing with the 10 workers excluded from the bargaining unit. The Employer stated that it could see no logical reason for the 10 workers to be excluded as all the workers were on the same terms and conditions and everyone was paid a salary according to their job role, even those within the bargaining unit put forward by the Union. The Employer stated its view was that excluding only the Managers would produce the ideal bargaining unit at this site both in terms of effective management and effective representation.

20. The Employer put forward as their alternative bargaining unit “all workers at the Buckshaw Village, Chorley site, excluding Managers”.

Considerations

21. The Panel is required, by paragraph 19(2) of the Schedule to the Act, to decide whether the proposed bargaining unit is appropriate and, if found not to be appropriate, to decide in accordance with paragraph 19(3) a bargaining unit which is appropriate. Paragraph 19B(1) and (2) state that, in making those decisions, the Panel must take into account the need for the unit to be compatible with effective management and the matters listed in paragraph 19B(3) of the Schedule so far as they do not conflict with that need. The matters listed in paragraph 19B(3) are: the views of the employer and the union; existing national and local bargaining arrangements; the desirability of avoiding small fragmented bargaining units within an undertaking; the characteristics of workers falling within the bargaining unit under consideration and of any other employees of the employer whom the CAC considers relevant; and the location of workers. Paragraph 19B(4) states that in taking an employer’s views into account for the purpose of deciding whether the proposed bargaining unit is appropriate, the CAC must take into account any view the employer has about any other bargaining unit that he considers would be appropriate. The panel must also have regard to paragraph 171 of the Schedule which provides that “[i]n exercising functions under this Schedule in any particular case the CAC must have regard to the object of encouraging and promoting fair and efficient practices and arrangements in the workplace, so far as having regard to that object is consistent with applying other provisions of this

Schedule in the case concerned.” The Panel’s decision has been taken after a full and detailed consideration of the views of both parties as expressed in their written submissions and amplified at the hearing.

22. The Panel’s first responsibility is to decide whether the Union’s proposed bargaining unit is appropriate. The Union put forward a bargaining unit consisting of warehouse operatives and shunters, currently numbering 38, in a workforce of 56.

23. The Panel notes that at the hearing, in the light of the Employer’s evidence, the Union conceded that it was most likely mistaken in its belief that those categories included in its proposed bargaining unit had the same pay and terms and conditions, and that these differed from those applicable to staff outside the proposed unit. This belief had formed the main rationale stated by the Union in its submission; little other evidence or argument was forwarded in support of its proposed bargaining unit.

24. The proposed bargaining unit excluded 10 staff, classified as non-Managerial by the Employer, 4 of these are shift supervisors. The Union stated that it had not been able to ascertain the exact nature of the role performed by supervisors at the site and had assumed that they performed a managerial role and so excluded them from the bargaining unit along with higher level managers. The implication of the Union’s position as set out at the hearing is that it would have been willing to consider including the supervisors within its proposed bargaining unit had their non-managerial position been made clearer to it in meetings with the employer. We accept the Employer’s evidence that supervisors are not managerial staff and that they have similar terms and conditions to those workers in the proposed bargaining unit, with pay determined in the same way. To exclude them would not be compatible with effective management.

25. For the reasons outlined the Panel has taken the view that the Union’s proposed bargaining unit is not an appropriate one. Having so determined we now need to decide a bargaining unit which is appropriate.

26. The Panel considered the bargaining unit which the Employer forwarded which was “all workers at the Buckshaw Village, Chorley site, excluding Managers”. The Panel noted that there are common terms and conditions for all non-managerial employees and that the work performed requires them to operate as a team. The Panel

noted also that the staff forum included elected representatives from all categories of workers at the site. Bearing in mind the desirability of avoiding fragmented bargaining units we have taken into account also the size of the workforce at the site and the Employer's business model where the Chorley site is 'stand-alone'.

27. In reaching its decision the Panel has taken into account the need for the unit to be compatible with effective management and the matters listed in paragraph 19B(3) of the Schedule so far as they do not conflict with that need.

Decision

28. We determine that the appropriate bargaining unit is "all workers other than Managers at UTL Consumer Solutions, Buckshaw Village, Chorley, Lancashire PR7 7DW".

29. As the appropriate bargaining unit differs from the proposed bargaining unit, the Panel will proceed under paragraph 20(2) of the Schedule to decide if the application is invalid within the terms of paragraphs 43 to 50 of the Schedule.

Panel

Professor Linda Dickens MBE, Chair of the Panel,

Mr Bill Lockie

Mr Keith Sonnett

29 March 2016

Appendix

Names of those who attended the hearing:

For the Union

Mr Lee Pimbley - URTU Regional Officer

For the Employer

Mr Peter Norbury - Eversheds LLP

Ms Angela Dixon - HR Director

Mr Ryan Conway - Head of UK Operations