

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DECISION ON WHETHER THE APPLICATION IS VALID FOLLOWING
DETERMINATION OF THE BARGAINING UNIT

The Parties:

United Road Transport Union

and

UTL Consumer Solutions

Introduction

1. United Road Transport Union (URTU) (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 Chorley Consumer Solutions, Kimberley Clark RDC, Revolution Park, Buckshaw Avenue, Buckshaw Village, Chorley, Lancashire PR7 7DW”. The CAC gave the parties notice of receipt of the application on 4 November 2015. The Employer submitted a response to the application 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. A check of membership and support had revealed that 13 workers in the Union proposed bargaining unit were union members (constituting 42% of the total of 31) and 26 (84%) wanted the Union to be recognised, 12 of whom were union members.

4. No agreement was reached on the appropriate bargaining unit and a hearing to determine the issue was held in Birmingham on 21 March 2016. The Panel decided that the appropriate bargaining unit was "all workers other than Managers at UTL Consumer Solutions, Buckshaw Village, Chorley, Lancashire PR7 7DW". This bargaining unit differed to that proposed by the Union by the inclusion of the Shift Supervisors, Admin Staff and Stock Control Clerk.

5. As the determined bargaining unit differed from that proposed by the Union, the Panel is required by paragraph 20 of the Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992 (the Schedule) to determine whether the Union's application is valid or invalid within the terms of paragraphs 43 to 50 of the Schedule.

Issues

6. Paragraph 20 of the Schedule states that where an application has, as in the present case, been accepted under paragraph 11 and the CAC has determined an appropriate bargaining unit that differs from the proposed bargaining unit then the CAC must, within the decision period, decide whether the application is invalid within the terms of paragraphs 43 to 50 of the Schedule. The tests that the Panel must consider under these paragraphs are:-

- is there an existing recognition agreement covering any of the workers within the new bargaining unit? (*paragraph 44*)

- is there 10% union membership within the new bargaining unit? (*paragraph 45(a)*)
- are the majority of the workers in the new bargaining unit likely to favour recognition? (*paragraph 45(b)*)
- is there a competing application, from another union, where their proposed bargaining unit covers any workers in the new bargaining unit? (*paragraph 46*)
- has there been a previous application in respect of the new bargaining unit? (*paragraphs 47 to 49*)

7. In letters dated 29 March 2016 both parties were asked for their views as to whether the application remained valid following the determination of the bargaining unit.

Views of the Employer

8. In an email dated 4 April 2016 the Employer stated that the only test it believed needed to be addressed was whether the majority of the workers in the new bargaining unit were likely to be in favour of recognition. The Employer stated that for the avoidance of any doubt it was accepted that, based on the membership check carried out, the Union was likely to have more than 5 members in the new bargaining unit which would be more than the required 10% of the total workforce. The Employer stated that the first thing to say was that in their view, based on feedback through its forum and regular discussions with individual employees, the majority of the workers in the bargaining unit were not in favour of recognition.

9. The Employer stated that the level of union membership, which was determined by the membership check as being 13 members, clearly did not demonstrate that the majority of workers in the new bargaining unit were likely to favour recognition and that the only other evidence was the petition provided by the Union at an earlier stage when looking at the initial bargaining unit.

10. In respect of the petition the Employer stated that there was no way of knowing at what point in time the views expressed in the petition were held by those who signed it as the petition was undated and was at least 4 months old.

11. The Employer stated that the question asked by the petition was not relevant to the application as an application to the CAC was for recognition in respect of pay, hours and holidays only, not for wider recognition. The Employer stated that a petition where the question was about the Union 'being recognised' was unhelpful and potentially misleading those people who were asked to sign it.

12. The Employer stated that the wording of the petition suggested that people signing it did not necessarily have to support trade union recognition at the Chorley site and referred to the words in the petition 'this is purely a consultative exercise'. The Employer stated that in effect the petition was saying to those asked to sign it that there was no problem signing the petition because it would not be relied upon for any practical purposes and it was wrong of the union to say that and then seek to rely on it. The Employer stated that the fact of the matter was that the petition was used not for consultative purposes but as evidence in support of a formal application for trade union recognition.

13. Finally the Employer stated that on the assumption that the Panel will make its decision based on what the views of the workforce were likely to be in April 2016, it was hard to see any contemporaneous evidence to suggest that the majority of workers in the new bargaining unit favoured recognition.

Views of the Union

14. No Views were received from the Union.

Case Manager's membership and support check

15. To assist the determination of the two admissibility tests under paragraph 45 (a) and 45 (b) of Schedule A1, namely whether 10% of the workers in the new bargaining unit are members of the Union and whether a majority of the workers in this bargaining unit are likely to favour recognition of the Union, the Panel instructed that the Case Manager carry out checks on the level of union membership within the determined bargaining unit and the number of workers who had indicated support for recognition of the Union for the purposes of collective bargaining.

16. The parties agreed that the Employer would supply, to the Case Manager, a list of the names of workers within the determined bargaining unit and that the Union would supply, to the Case Manager, a list of its union members within that unit and a copy of its petition to enable a comparison to be undertaken. The information from both parties was received on 12 April 2016. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists would not be copied to the other party and that agreement was confirmed in a letter from the Case Manager to both parties dated 5 April 2016.

17. The Union provided a list of 13 union members in the determined bargaining unit, and a petition consisting of 30 signatures set out as follows:

URTU PETITION

8th/11th April 2016

WOULD YOU BE PREPARED TO SIGN THIS PETITION TO ASSIST THE APPLICATION TO THE CENTRAL ARBITRATION COMMITTEE FOR THE UNITED ROAD TRANSPORT UNION TO BE RECOGNISED AS THE SOLE TRADE UNION AT THE UTL SOLUTIONS SITE BASED ON BUCKSHAW VILLAGE, CHORLEY, LANCASHIRE.

THIS DOCUMENT WILL BE RELIED UPON TO SUPPORT THE URTU'S APPLICATION

NAME	YES ✓	NO ✓	SIGNATURE	DATE

The dates on the petition ranged from 8 April 2016 – 12 April 2016 and all signatories had ticked the 'YES' column.

18. The Employer provided a list of 49 workers.

19. The result of the membership and support check showed that 13 of the 49 workers in the bargaining unit were members of the Union, giving a membership level of 26.53%. The check on the Union's petition showed that it had been signed by 30 workers in the determined bargaining unit of which 2 names/signatures were unreadable. The remaining 28 who had signed the Union's petition in favour of recognition constituted 57% of the determined bargaining unit. There were 13 union members (constituting 26.53% of the bargaining unit). 15 non-union workers in the bargaining unit signed the petition (30.61%). The Panel is satisfied that the check was undertaken appropriately.

20. The report of the result from the membership and support check was circulated to the Panel and the parties on 13 April 2016. Both parties were then invited to comment on the check and the further tests.

21. An email received from the Employer dated 13 April 2016 expressed concern over the way it felt the claim was being dealt with. The Employer stated that the deadline for parties to provide any submissions or other matters relevant to the validity test was by the deadline of close of business on 4 April 2016 and it was confirmed to them that no submissions had been received from the Union. The Employer stated that subsequently on 5 April 2016 parties were asked for information in relation to the member and support check based on a membership list from URTU and the petition and at that point in time the only petition in existence was the petition referred to in some detail in their submissions dated 4 April 2016.

22. The Employer stated that they provided the details needed for the membership and support check and then discovered that the CAC had received and made use of a petition from URTU prepared between the 8 and 11 April 2016 long after the final date for submissions (4 April 2016), and after URTU had seen the submissions made on behalf of

the Employer, which the CAC then proceeded to use for the purposes of the support check details which were in the report.

23. The Employer stated that they were at a loss to understand why they had not been advised of the fact that there was a further petition and asked to comment upon it. The Employer also believed that they should have been advised of the fact that the CAC intended to make use of that petition in the membership and support check.

24. The Employer asked why the Union had been allowed to produce what they said could only be described as an additional submission after the deadline and after having had the opportunity to consider the submissions made by the Employer. The Employer stated that it was clear from the wording used that the Union had produced the latest petition having taken on board the submissions made on behalf of the Employer on 4 April 2016 as to the inadequacy and lack of relevance of the original petition.

25. The Employer stated that it was important that a body such as the CAC was seen to be even handed in its dealings with the Employer and the Trade Union; questioned the utility of having procedures with deadlines if the deadlines were not to be applied to both parties and said it raised questions of fairness, openness and transparency.

26. A reply was sent to the Employer on 18 April 2016 assuring them that their observations would be taken fully into account in the Panel's considerations and allowing further time in which to comment on the check. The Union was also given the same extended time.

Union's comments on membership /support check

27. The Union in an email dated 13 April 2016 referred to the Employer's email dated 4 April 2016 and noted their observations regarding their original petition. The Union stated that the Panel would now be in possession of a revised petition of which it believed all of the points raised in the Employer's email had been addressed. The Union stated

that it would like the Panel to understand that the Union attended the site at Chorley on the evenings of the 8th 11th and 12th of April, stood on the public footpath outside the site with employees both members and non-members who had clocked off from work and approached them to sign the petition of which they were happy to do.

28. The Union stated that as time was against them and they did not have the luxury of attending site internally to meet with all employees encompassed in the new bargaining unit, it believed that there was no known opposition from any employee for the Union to be recognised at the Chorley site.

29. Finally the Union submitted that it therefore challenged the comments made by the Employer in their email of 13 April 2016 and would hope that the Panel reach a fair decision in determining that the bargaining unit was valid and make the decision to allow a ballot to take place.

Employer's comments on membership/report check

30. The Employer, in an email dated 20 April 2016, stated that any submissions in relation the validity test being carried out by the CAC Panel were due to be received by close of play on 4 April 2016 and in the circumstances the Employer did not accept that the URTU petition prepared between 8 and 11 April 2016, which was clearly after the deadline for submissions, could be relied upon as evidence in support of URTU's claim that the majority of workers in the bargaining unit were likely to favour recognition. The Employer stated that in those circumstances it relied on the matters raised in the submissions forwarded to the CAC on 4 April 2016 as the basis upon which the Panel should determine the test.

31. The Employer stated that if the Panel proposed to include in its deliberations the petition that was prepared after the deadline then they would make the following additional submissions.

32. The Employer stated that whilst the petition was clearly up to date and the reference to it being consultative had been removed it still did not deal with the fundamental point that those signing it were not being made aware of the fact that any recognition would relate only to pay, hours and holidays. The Employer stated that the Union presumably chose not to include that information as it would materially affect the willingness of prospective supporters to sign the petition.

33. Finally the Employer submitted that from its knowledge of the workforce and from discussions with the workforce as to how signatures were secured for the latest petition it did not believe that the majority of workers in the new bargaining unit were in favour of recognition.

Considerations

34. The Panel is satisfied on the evidence available that the application is valid in terms of the tests laid down in paragraphs 44 and 46 to 49 of the Schedule, namely that there is no existing recognition agreement in force, that there is no competing application and that there has been no previous CAC application in respect of the new bargaining unit. The remaining tests before the Panel are whether, in accordance with paragraphs 45(a) and (b) of the Schedule, 10% of the workers constituting the new bargaining unit are members of the union and whether a majority of the workers constituting the new bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit.

Paragraph 45(a)

35. The membership and support check established that there was a membership level of 26.53% and this was not challenged by the Employer at any point in its representations to the Panel. The Panel is therefore satisfied that the test set out in paragraph 45(a) of the Schedule is met and that at least 10% of the workers constituting the new bargaining unit are members of the Union.

Paragraph 45(b)

36. The main argument between the parties is whether a majority of the bargaining unit would be likely to favour recognition of the Union (para 45(b)).

37. The relevant evidence consists of the checks of membership and support undertaken in November 2015 on the original bargaining unit and in April 2016 on the larger bargaining unit determined by the CAC, and the comments made on those checks by the parties. The Employer has indicated that from its discussions with individual employees and its forum it does not believe that a majority favour recognition but it has submitted no evidence in support of this view.

38. The April check revealed 26.5 % of the determined bargaining unit are members of the Union and 57% expressed support for Union recognition in a petition. The Employer invites us to exclude the April petition from our deliberations. In this connection, we note that recalculating the November petition data using the larger size of the determined bargaining unit indicates 53% of workers in support for recognition (assuming that none of those added to the original bargaining unit as a result of the CAC determination would be in support of recognition). However, for reasons indicated below, we do not consider that the April petition should be excluded from our deliberations.

39. The Panel has given careful and full consideration to the concerns raised by the Employer. We are invited to disregard the results of the April petition on the grounds that signatures were collected after the parties had been invited to comment on the validity tests in relation to the determined bargaining unit and also that the Union had enjoyed unfair advantage in being able to consider the submission made by the employer on 4th April in relation to perceived inadequacies in the earlier petition.

40. We do not regard the Union's April petition as a late or out-of-time submission. It was clear (from the email of 4th April) that the Employer did not accept that the validity

test in para 45(b) was met in relation to the new, larger bargaining unit. The Panel requested a membership and support check be undertaken to help us determine this issue. Deadlines for submission of relevant information and then for comments were set and then extended as detailed earlier in this decision. It is the usual practice of the CAC to request a new check where a determined or agreed bargaining unit differs from that originally proposed and doubt is expressed that the validity tests are met. It is common in such circumstances for the parties to provide new information on current levels of membership and support at that stage. There is no requirement on either party to inform the other that they intend to do this. We are satisfied that the Employer has been provided with sufficient time to comment on the information and the outcome of the check.

41. We do not accept that the Employer has been disadvantaged in any way by the Union's April petition being used in the new check. We note that certain of the points raised concerning alleged inadequacies of the original petition (which were addressed in the April petition) were made by the Employer at the time (in a letter dated 15th November 2015, copied to the Union on 1st December 2015) and thus the Union would have been aware of these even without sight of the Employer's response of 4th April 2016. We note also that the Employer's criticisms of the earlier petition as expressed in its letter of 15th November 2015 were taken into account by the Panel in deciding to accept the application (decision dated 8 December 2015).

42. The Employer offered no evidence to support the contention that workers support for recognition of the Union in the petition would have been materially lower if it had been specified that 'recognition' in the Schedule means recognition only in respect of pay hours and holidays.

43. The test under consideration calls upon the Panel to make an assessment, based on the evidence presented, as to whether a majority of the workers would be **likely** to favour recognition of the Union (emphasis added). Taking all the evidence into account, and for the reasons indicated above, the Panel is satisfied there is sufficient evidence to conclude that 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 and that the test set out in paragraph 45(b) of the Schedule is met.

Decision

44. The decision of the Panel is that the application is valid for the purposes of paragraph 20 of the Schedule and the CAC will therefore proceed with the application.

Panel

Professor Linda Dickens MBE, Chair of the Panel

Mr Bill Lockie

Mr Keith Sonnet

26 April 2016