

18 April 2017

**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:**

GMB

and

W.D. Close & Sons Limited

**Introduction**

1. GMB (the Union) submitted an application to the CAC dated 21 March 2017 that it should be recognised for collective bargaining by W.D. Close & Sons Limited (the Employer) for a bargaining unit comprising “All employees, excluding Office Staff, Salaried Staff, Senior Managers and Supervisors” based at Units 14-16 Valentia Avenue, Walkergate, NE6 4QR and 1 Carville Works, Hadrian Rd, Wallsend, NE28 6HF. The application was received by the CAC on 23 March 2017. The CAC gave both parties notice of receipt of the application on 23 March 2017. The Employer submitted a response to the CAC dated 29 March 2017 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, Mrs Maureen Chambers and Mr Paul Talbot. The Case Manager appointed to support the Panel was Linda Lehan.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 6 April 2017. The acceptance period was extended to 21 April 2017 in order to allow time for a membership check to take place, the parties to comment on the results of a membership check 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 emailed the Employer on 27 February 2017 and also sent its formal request for recognition to the Employer on 6 March 2017. A copy of the letter dated 6 March 2017 was attached to the application. The Union stated that there had been a response from the Employer dated 1 March 2017, a copy of which was attached, confirming that the Employer was willing to meet. The Union stated that they had then written to the Employer giving a number of dates and a copy of that email was also attached to the application. The Union said that, after receiving no response to their correspondence regarding a meeting, they received a letter from the Employer dated 10 March 2017 stating that they did not wish to enter into correspondence but would respond to any application made to the CAC.

6. The Union stated that there were approximately 90 workers employed by the Employer, of whom approximately 75 were in the proposed bargaining unit. Out of the 75 workers in the proposed bargaining unit the Union stated that 51 were members of the Union. 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 on speaking to its members, they were informed that the majority would support the trade union for full recognition. The Union stated that it had been reliably informed by its members that it now

had more than half of the workers in the bargaining unit who were adamant that they wanted the trade union recognised for collective bargaining.

7. The Union stated that the reason for selecting the proposed bargaining unit was because that group of workers for some time had been members of the Union and had always shown an interest in the Union being recognised for collective bargaining.

8. The Union stated that the bargaining unit had not been discussed with the Employer and it was not aware that there was any recognition agreement at present with any trade unions. The Union confirmed that it held a current certificate of independence. The Union stated that it had copied the application made to the CAC, and supporting documents, to the Employer on 21 March 2017.

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

9. The Employer stated that it had received the Union's written request letter on 27 February 2017 and enclosed a copy of its response dated 1 March 2017. The Employer stated that it had received a copy of the application form from the Union on 22 March 2017.

10. The Employer stated that it did not agree the proposed bargaining unit and said that it had 180 (exactly) workers not 90 as stated on the application form from the Union and that the 180 worker figure excluded office staff but included 5 supervisors.

11. The Employer stated that it did not agree with the number of workers in the Union's proposed bargaining unit as stated by the Union of 75 and that the number of workers in the Union's proposed bargaining unit including foremen and supervisors was 180. The Employer stated that they were counting all workers regardless of contractual status.

12. The Employer stated that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit.

13. In answer to the question whether it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer said they employed 180 workers not 90 in that area, and the Union stated that they had 51 members. The Employer stated that they were not

aware of membership but did not believe that the Union had a majority.

14. As to whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer stated that it had been a successful business for 30 years and in those 30 years had not had 1 minute of lost time due to any dispute of any sort and had a good safety record. The Employer said that it had just successfully negotiated a 1 year pay deal of a 3% increase and did not require a trade union to negotiate that deal. The Employer explained that it had implemented a redundancy process in 2016/2017 with direct consultation with affected staff and had maintained good relations between management and staff without Union involvement. The Employer believed that that reflected the good relationship and working practices that continued without Union involvement and that the majority of staff, in whatever notional bargaining unit might be suggested, would not support recognition.

15. The Employer confirmed that it was not aware of any previous application in respect of the proposed bargaining unit.

#### **Clarification regarding workers**

16. In a letter to the Employer dated 31 March 2017 the CAC asked the Employer to clarify the workers they were referring to in their response when they stated that they were counting “all workers regardless of contractual status” (see paragraph 11 above). In an email dated 31 March 2017 the Employer confirmed that when referring to “all workers” they had included temporary workers of which they had at least 80 – 100 on their books. The Employer stated that that figure had exceeded 300 temporary workers within the last 12 month period and that the figure fluctuated to suit their client’s demands. The Employer stated that they would be taking on another 40 workers in the next 2 weeks to enable them to fulfil a new contract they had just been awarded and those workers would be temporary workers as the job was estimated to take 4-5 weeks.

17. In an email received from the Union, dated 31 March 2017, the Union stated that having spoken with their members at W.D. Close & Sons Ltd it was clear that the Employer was including agency workers in their total number of employees.

18. Both the above emails were cross copied and the Employer was asked to confirm the number of workers in the Union's proposed bargaining unit excluding agency workers. In an email dated 4 April 2017 the Employer confirmed that there were currently 88 permanent workers in the Union's proposed bargaining unit with various skilled, semi-skilled, unskilled roles and apprentices. The Employer stated that the number did not include supervisory staff and, as they understood it, the Union's claimed numbers of members in respect of their proposed bargaining unit might not represent a majority in respect of every appropriate bargaining unit that might exist in the workforce.

### **The Membership Check**

19. 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, dates 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 5 April 2017 from the Case Manager to both parties. The information from the Union was received by the CAC on 6 May 2017 and from the Employer was received on 5 May 2017. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

20. The list supplied by the Employer indicated that there were 88 workers in the proposed bargaining unit. The list of members supplied by the Union contained 48 names. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was 45, a membership level of 51.14%.

21. A report of the result of the membership check was circulated to the Panel and the

parties on 7 April 2017 and the parties were invited to comment on the result.

### **The parties' comments on the result of the membership check**

22. In an email dated 11 April 2017 the Union stated that they believed that they had satisfied the tests laid out and had proven that the majority of workers within their proposed bargaining unit wished to be recognised for collective bargaining.

23. No comments were received from the Employer.

### **Considerations**

24. 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.

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 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)*

26. 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.

27. The membership check conducted by the Case Manager (described in paragraphs 19 and 20 above) showed that 51.14% of the workers in the proposed bargaining unit were members of the Union. As stated in paragraph 19 above, the Panel is satisfied that this check was conducted properly and impartially and in accordance with the arrangements agreed 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)*

28. 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. For the reasons given in the previous paragraph the level of union membership is 51.14%. The Union did not provide any additional evidence of support for recognition, such as a petition, but the Panel considers that, in the absence of evidence to the contrary, union membership provides a legitimate indicator of the views of the workers in the proposed bargaining unit as to whether they would be likely to favour recognition of the Union. No evidence to the contrary was provided in this case. It is also the Panel's experience that there will be workers who are not members of the Union who would be likely to favour recognition of the Union. On the basis of the evidence before it, the Panel has decided that, on the balance of probabilities, 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, as required by paragraph 36(1)(b) of the Schedule.

**Decision**

29. For the reasons given in paragraphs 25 to 28 above, the Panel's decision is that the application is accepted by the CAC.

**Panel**

Professor Kenny Miller, Chairman of the Panel

Mrs Maureen Chambers

Mr Paul Talbot

18 April 2017