

CENTRAL ARBITRATION COMMITTEE

TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992

SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION

**DECISION ON WHETHER TO ARRANGE FOR THE HOLDING OF A SECRET
BALLOT**

The Parties:

Unite the Union

and

Wheelbase Engineering Limited

Introduction

1. Unite the Union (the Union) submitted an application to the CAC dated 30 March 2017 that it should be recognised for collective bargaining by Wheelbase Engineering Limited (the Employer) for a bargaining unit comprising “All shop floor workers excluding 2 foremen”. The application was received by the CAC on 31 March 2017. The CAC gave both parties notice of receipt of the application on 3 April 2017. The Employer submitted a response to the CAC dated 7 April 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 Kenneth Miller, Chairman of the Panel, and, as Members, Mr David Bower and Ms Virginia Branney. The Case Manager appointed to support the Panel was Kate Norgate.

3. By a decision dated 8 May 2017 the Panel accepted the Union's application. The parties then entered a period of negotiation in an attempt to reach agreement on the appropriate bargaining unit. As no agreement was reached the parties were invited to supply the Panel with, and to exchange, written submissions relating to the question of the determination of the appropriate bargaining unit and for which a hearing was held on 25 August 2017. By a decision dated 8 September 2017 the Panel determined that the appropriate bargaining unit was "All shopfloor workers excluding foremen". As the determined bargaining unit was the same as that proposed by the Union in its application, the Panel moved to the next stage in the statutory process.

Issues for the Panel

4. Paragraph 22 of Schedule A1 to the Act (the Schedule) provides that if the CAC is satisfied that a majority of the workers constituting the bargaining unit are members of the union, it must issue a declaration of recognition under paragraph 22(2) unless any of the three qualifying conditions specified in paragraph 22(4) applies. Paragraph 22(3) requires the CAC to hold a ballot even where it has found that a majority of workers constituting the bargaining unit are members of the union if any of these qualifying conditions is fulfilled. The three qualifying conditions are:

- a. the CAC is satisfied that a ballot should be held in the interests of good industrial relations;
- b. the CAC has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union (or unions) to conduct collective bargaining on their behalf;
- c. membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the union (or unions) to conduct collective bargaining on their behalf.

Paragraph 22(5) states that "membership evidence" is:

(a) evidence about the circumstances in which union members became members, or

(b) evidence about the length of time for which union members have been members, in a case where the CAC is satisfied that such evidence should be taken into account.

The Union's claim to majority membership and submission it should be recognised without a ballot

5. In a letter dated 8 September 2017 the Union was asked by the CAC whether it claimed majority membership within the bargaining unit and, if so, whether it submitted that it should be granted recognition without a ballot. The Union, in an e-mail dated 8 September 2017, stated that it did claim to have majority membership within the bargaining unit and therefore submitted that it should be granted recognition without a ballot.

Membership Report

6. The Panel, having considered the length of time that had elapsed since the first membership report was produced at the acceptance stage, asked that the Case Manager conduct a further membership check to establish the current level of union membership. It was explicitly agreed with both Parties that, to preserve confidentiality, the information supplied by each party would not be copied to the other party and that agreement was confirmed in a letter from the Case Manager to both Parties dated 13 September 2017.

7. The membership report (the second report) established that there were 45 workers in the bargaining unit of which 24 were union members giving a membership level of 53.33%.

8. The result of the membership check was served on the Parties on 18 September 2017 and the Employer was invited to make submissions on the three qualifying conditions specified in paragraph 22(4) of the Schedule.

Summary of the Employer's submissions

9. In a response to the CAC dated 22 September 2017 the Employer submitted that the Union should not be recognised without a ballot because it contended that two of the qualifying conditions were met. Firstly in accordance with paragraph 22(4)(a) of the Schedule, holding a ballot would be in the interests of good industrial relations and secondly, in accordance with paragraph 22(4)(c) of the schedule, membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the union to conduct collective bargaining on their behalf. The Employer reached these conclusions for the following reasons.

10. It believed the majority of the workforce had been misled by the Union or its representative within the bargaining unit concerning the expectations that the “collective members” would all be on the same pay conditions “if they agreed for Unite to represent them by becoming members of their union.” The Employer stated that it had made no case to the workers, negatively or otherwise, in relation to recognition and it believed it had missed the opportunity.

11. It was the Employer’s view that holding a ballot would allow workers to express themselves confidentially and freely and ensure that all voices were heard. It would “clear the air” and give both parties the opportunity to make an informed decision. The Employer stated that it would also address the “them and us” divisive atmosphere being fostered within the workplace.

12. The Employer further stated that although it had not received any credible evidence from a significant number of union members in the bargaining unit that they do not want the Union to conduct collective bargaining on their behalf, it believed this may

change if a ballot was held. The Employer believed that holding a ballot would enable the members within the bargaining unit to express their view about recognition “having understood the new bargaining procedures that would be put in place.” The Employer believed that without consultation there was doubt as to the understanding of the members of the bargaining unit going forward.

13. The Employer stated that “it had verbal notification from the shop floor employees that the Union have claimed through the representative that they will get the same pay if they became part of the bargaining unit and therefore become a member of the union.” The Employer explained that during the hearing to determine the appropriate bargaining unit it had challenged the Union that this had been said to the workforce. The Employer stated that the Union, in its response, commented that the pay structure should be the same pay for doing the same job. The Employer stated that this was challenged again with regards to the company’s appraisal system and how the business was run based on times for jobs, flexibility, multi skills, and attendance etc. The Employer stated that a copy of the appraisal system that worked for all employees was presented at the hearing.

14. Finally, the Employer submitted that some employees had stated that although they were members of the union, they were not paying the membership fee. The Employer therefore requested that the Panel reaffirm that the Union has shown that regular payments were coming from the workers within the bargaining unit.

Summary of the Union's submissions

15. By e-mail dated 27 September 2017 the Union submitted its response to the membership check and the Employer’s submissions. The Union stated it had not misled workers to say that they would be on the same pay as everyone within the bargaining unit. The company’s statement was untrue and it challenged the company to prove this. The Union explained that it had said that “the pay structure should be fair for everyone”.

16. The Union explained that it was in fact the company representatives, including the former foreman, who were spreading rumours that “if the union get in they will move work down to their other site and make the factory a 9-5 site and stop over time.” The Union stated that it could prove this if required.

17. The Union believed that this was another delaying tactic by the Employer hoping that the longer things took, there was more chance of members leaving the Union. The Union stated that it had fully met the criteria for automatic recognition. It believed it had “played by the rules” but it was now the company’s time to concede that it had done all that is legally required to gain automatic recognition. Finally, the Union stated that it would still be willing to agree a voluntary agreement with the Employer providing the Employer signed the agreement at the end of the meeting without further delay.

Considerations

18. The Schedule requires the Panel to consider whether it is satisfied that the majority of the workers in the bargaining unit are members of the Union and if the Panel is satisfied that the majority of the workers in the bargaining unit are members of the Union, it must declare the Union recognised by the Employer, unless it decides that any of the three conditions in paragraph 22(4) are fulfilled. If the Panel considers any of the conditions are fulfilled it must give notice to the parties that it intends to arrange for the holding of a secret ballot.

19. The Case Manager's membership check established that 24 workers in the bargaining unit of 45 workers, that is 53.33% of the total, were members of the Union and the Union has asked the Panel to declare recognition of the Union for collective bargaining without a ballot. The Panel accepts that the majority of workers in the bargaining unit are members of the Union but it must now consider whether any of the three qualifying conditions stated in paragraph 22(4) (described in paragraph 5 of this decision) applies in this case.

20. The Panel has noted the parties' comments in their submissions but believes that in this case the outcome of a secret ballot scrutinised by a Qualified Independent Person would provide a clear mandate from the workers one way or other as regards their preference. In the longer term, holding a ballot would help create a better, more sustainable and workable environment where the parties could work effectively together. It is the Panel's view that a ballot, where both parties would be able to present their cases in a regulated environment is the better way to resolve the issues raised by the parties and would create for a more stable and respectful relationship in the future. In our view, what the ballot will achieve for the union, should it succeed, will be to give it the necessary legitimacy in its relations with the Employer and a mandate from the workers in the bargaining unit to bargain on their behalf. Furthermore, the Panel is persuaded by the Employer's argument that a ballot would 'clear the air' and should be held in the interests of good industrial relations. As was said in **Unite the Union and Gillette UK Ltd (TUR1/667/2009)** "It is true that the process of balloting runs the risk of accusatory exchanges between the Union and the Employer but that may be a price worth paying to have the matter determined by the majority of individual workers in the bargaining unit".

21. For the reasons provided above, the Panel is satisfied that in view of this finding it does not need to further consider in detail the qualifying conditions specified in paragraphs 22(4)(b) and (c).

Decision

22. For the reasons provided above, the Panel's decision is that a ballot should take place as it is satisfied that it would be in the interests of good industrial relations to do so. The Panel now gives notice pursuant to paragraph 22(3) of the Schedule, namely that it intends to arrange for the holding of a secret ballot in which the workers constituting the bargaining unit will be asked whether they want the Union to conduct collective bargaining on their behalf.

Panel

Professor Kenneth Miller, Chairman of the Panel

Mr David Bower

Ms Virginia Branney

12 October 2017