

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

Gledhill Building Products Ltd

Introduction

1. GMB (the Union) submitted an application to the CAC dated 20 February 2017 that it should be recognised for collective bargaining by Gledhill Building Products Ltd (the Employer) for a bargaining unit comprising "all workers engaged in production and maintenance up to and including first line managers/team leaders, excluding all other managers at Gledhill Building Products, Sycamore Trading Estate, Squires Gate, Blackpool, FY4 3RL." The application was received by the CAC on 20 February 2017 and the CAC gave both parties notice of receipt of the application that same day. The Employer submitted a response to the CAC dated 27 February 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, the Chairman of the Panel, and, as Members, Ms Virginia Branney and Mr Bill Lockie. The Case Manager appointed to support the Panel was Nigel Cookson.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 6 March 2017. The acceptance period was extended to 21 March 2017 in order to allow time to conduct a membership check and to allow time for the parties to comment thereon before the Panel arrived 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.

Summary of the Union's application

5. In its application to the CAC the Union stated that it had made its formal request for recognition to the Employer on 3 February 2017 and that the Employer rejected the request by way of letter dated 16 February 2017. The Union attached both of these letters to its application.

6. When asked whether the Union had made a previous application under the Schedule for statutory recognition for workers in the proposed bargaining unit or a similar unit the Union answered "No". The Union stated that, following receipt of the request for recognition, the Employer had not proposed that Acas should be requested to assist the parties.

7. When asked for the total number of workers employed by the Employer the Union answered "Unknown". The Union stated that there were approximately 85 workers in the proposed bargaining unit, of whom 33 were Union members. When called upon to provide evidence that the majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining, the Union stated that it was willing to provide membership details to the CAC Case Manager on a confidential basis to enable a statistical check to be carried out in the usual way. The Union was also prepared to provide further evidence by way of a petition to the CAC Case Manager on a confidential basis.

8. The Union stated that the reason for selecting the proposed bargaining unit was that the Union sought a traditional bargaining unit comprising hourly paid workers up to the level of first line managers/team leaders. It believed that this made sense and was compatible with effective management. The Union said 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.

9. The Union confirmed that it held a current certificate of independence. The Union stated that it had copied its application and supporting documents to the Employer on 20 February 2017.

Summary of the Employer's response to the Union's application

10. In its response to the Union's application the Employer stated that it had received the Union's written request for recognition on 3 February 2017 and that it had responded on 16 February 2017. A copy of this letter was attached to the response.

11. The Employer stated that it had received a copy of the application form from the Union on 20 February 2017. The Employer stated that it had not, before receiving a copy of the application form from the Union, agreed the bargaining unit with the Union. When asked whether it did agree the proposed bargaining unit the Employer answered "YES".

12. The Employer stated that, following receipt of the Union's request, it had not proposed that Acas should be requested to assist.

13. The Employer stated that it currently employed a total of 186 workers. Asked whether it agreed with the number of workers in the proposed bargaining unit as defined in the Union's application the Employer answered in the affirmative. The Employer confirmed that there was no existing agreement for recognition in force covering workers in that 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 said that it had no evidence of union membership. In answer to the question 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 that the Employee Forum worked well as a two-way communication and did not know if the workers would support recognition.

15. When asked if it was aware of any previous application under the Schedule for statutory recognition by the Union in respect of this or a similar bargaining unit the Employer answered "No". When asked whether it had received any other applications under the Schedule in respect of any workers in the proposed bargaining unit, the Employer answered "N/A".

Whether there was a statutory declaration of recognition already in place

16. Although both parties had stated that there were no existing bargaining arrangements covering workers in the proposed bargaining unit the Panel, being conscious of a CAC case involving a similar named party located at the same address as in paragraph 1 above, directed the Case Manager to forward to the parties a copy of the relevant declaration of recognition dated 17 May 2004 in respect of Gledhill Water Storage Ltd and to seek confirmation as to the relationship, if any, between the Employer and Gledhill Water Storage Ltd and to also seek confirmation as to whether or not the CAC declaration of recognition extended to any workers in the bargaining unit as currently proposed by the Union.

17. On 1 March 2017 the Union emailed stating that it had no knowledge of any collective bargaining on the site and also noted that the Employer also indicated that there was no recognition agreement in place. In a further email dated 3 March 2017 the Union added that it had since learnt that "Gledhill Water Storage Ltd" went into administration/bankruptcy but that Gledhill set up the new company "Gledhill Building Products".

18. The Employer, in an email dated 7 March 2017, confirmed that Gledhill Water Storage Limited was a separate legal entity to Gledhill Building Products Limited, though both were in

common ownership. Each company was run separately and serviced/supported entirely separate markets. The CAC declaration in 2004 applied to a bargaining unit in Gledhill Water Storage Limited only, there was no extension to any employees employed by Gledhill Building Products Limited. Gledhill Water Storage Limited went into administration in 2009. All the staff were made redundant and therefore the bargaining unit ceased to exist along with any union recognition. Gledhill Building Products Limited continued to operate independently, it had never recognised a Union and had no CAC declaration which was applicable to it.

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 are 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 independent checks of the level of union membership in the proposed bargaining unit and the number of workers in that unit who had signed the Union's petition in support of recognition. It was agreed with the parties that the Employer would supply to the Case Manager a list of the full 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 the full names and dates of birth of the paid up union members within that unit and a copy of the petition. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and the petition would not be copied to the other party and that agreement was confirmed in a letter from the Case Manager to both parties dated 8 March 2017. The information from the Union was received by the CAC on 9 March 2017 and the information from the Employer was received by the CAC on 10 March 2017. The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

20. The list supplied by the Employer showed that there were 82 workers in the proposed bargaining unit. The list of members supplied by the Union contained 31 names. According to

the Case Manager's report the number of Union members in the proposed bargaining unit was 30, a membership level of 36.59%.

21. The Union provided a petition containing 63 undated signatures and which was set out as follows:

**"PETITION IN SUPPORT OF RECOGNITION
GLEDHILL BUILDING PRODUCTS LTD, SYCAMORE TRADING ESTATE,
SQUIRES GATE, BLACKPOOL, FY4 3RL**

GMB Trade Union is asking your employer to recognise it for collective bargaining. We have to show the Central Arbitration Committee that a majority of workers in the "bargaining unit" support our application. If you do support us, please sign this petition.

I support recognition of the GMB Trade Union as entitled to conduct collective bargaining on pay, hours and holidays on behalf of "all workers engaged in production and maintenance up to and including first line managers/team leaders, excluding all other managers".

<u>NAME - IN BLOCK CAPITALS</u>	<u>SIGNATURE</u>

At the foot of each page it stated:

"This petition is for Central Arbitration Committee purposes only and will not be divulged to your employer."

22. The Case Manager's report showed that the petition was signed by 57 workers in the proposed bargaining unit, a figure which represents 69.51% of the bargaining unit. Of those 57 signatories 24 were members of the Union (29.27% of the proposed bargaining unit) and 33 were non-members (40.24% of the proposed bargaining unit).

23. A report of the result of the membership and support check was circulated to the Panel and the parties on 13 March 2017 and the parties were invited to comment on the results by the close of business on 17 March 2017.

Parties' comments on the result of the membership check

24. In a letter dated 15 March 2017 the Union stated that it wished to make the following observations bearing in mind that the Employer already agreed with the Union's defined bargaining unit. In respect of the first test, namely; "Does the union have at least 10% membership of the relevant bargaining unit?" This requirement was satisfied with the Union having 36.59% membership in the bargaining unit. In respect of the second test, namely; "Are the majority of the workers in the relevant bargaining unit likely to favour recognition of the union?" This requirement was also satisfied when taking into account the level of Union membership and petition signers in the relevant bargaining unit.

25. In an email dated 21 March 2017 the Employer stated that from the Case Manager's report it appeared that there was sufficient support from the employees in the bargaining unit in favour of Union recognition. For this reason, the Employer would now look to arrange a meeting with the Union to negotiate a suitable recognition agreement.

Considerations

26. 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.

27. The Panel is satisfied that the Union's letter of 3 February 2017 formed a valid request to the Employer within the terms of paragraphs 5 to 9 of the Schedule and that the application was made in accordance with paragraph 11 in that before the end of the "first period", which is defined in paragraph 10(6) of the Schedule as "the period of 10 working days starting with the

day after that on which the employer receives the request for recognition", the Employer informed the Union that it did not accept the request. Further, 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 set out in paragraph 36(1)(a) and paragraph 36(1)(b) are met.

Paragraph 36(1)(a)

28. 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. The membership check conducted by the Case Manager as described in paragraphs 19 to 23 above, showed that 36.59% 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)

29. 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 well as establishing that 36.59% of the workers in the proposed bargaining unit were union members, the check conducted by the Case Manager also showed that 69.51% of the workers in the proposed bargaining unit had signed a petition in support of recognition with the proportion of non-union members signing the petition being 40.24%. The Employer has not challenged the validity of the petition. Indeed, from its email of 21 March 2017, it appears to accept the strength of likely support for recognition that the petition, on paper, indicates. Therefore, on the evidence put 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

30. For the reasons given in paragraphs 25 to 27 above, the Panel's decision is that the application is accepted by the CAC.

Panel

Professor Kenny Miller, Chairman of the Panel

Ms Virginia Branney

Mr Bill Lockie

21 March 2017