

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:

Unite the Union

and

Krones UK Limited

Introduction

1. Unite (the Union) submitted an application to the CAC dated 30 August 2017 that it should be recognised for collective bargaining by Krones UK limited (the Employer) in respect of a bargaining unit comprising “Mobile Engineers”. The application was received by the CAC on 30 August 2017. The CAC gave both parties notice of receipt of the application on 30 August 2017. The CAC gave both parties notice of receipt of the application on 30 August 2017. The Employer submitted a response to the CAC dated 5 September 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 Nicholas Caton and Mr Gerry Veart. The Case Manager appointed to support the Panel was Kate Norgate.

3. The CAC Panel has extended the acceptance period in this case on three occasions. The initial period expired on 13 September 2017. The acceptance period was extended to 28 September 2017 in order to allow time for the Panel to obtain more information from the parties concerning the clarification of the proposed bargaining unit. It was further extended to 11 October 2017 to allow for a membership and support check to be carried out by the Case Manager, for the parties to comment on the subsequent report, 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 written to the Employer on 12 June 2017 requesting a meeting to discuss recognition but the Employer did not respond. Subsequently, on 20 June 2017 the Union sent its formal request for recognition to the Employer but received no response. A copy of the Union's letter of 20 June 2017 was attached to the application.

6. The Union stated that there were approximately 140 workers employed by the Employer, of whom 62 were in the proposed bargaining unit. Out of the 62 workers in the proposed bargaining unit the Union stated that 38 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 an e-mailed petition was sent to its members in the proposed bargaining unit. The Union stated that it had obtained 38 electronic signatures in support of union recognition.

7. The Union stated that the reason for selecting the proposed bargaining unit was because it was a defined group who all carried out similar roles within the company.

8. The Union stated that the bargaining unit had not been agreed with the Employer and that

it was not aware of any other existing recognition agreement which covered any of the workers in the bargaining unit. 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 30 August 2017.

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

9. The Employer confirmed that it had received the Union's written request letter on 22 June 2017. The Employer stated that it did not respond as it did not believe that trade union recognition was appropriate to its business. To support its view on recognition the Employer provided some detailed background on the business.

10. The Employer stated that it had not received a copy of the Union's application or supporting documents. It had received a copy of the application from the CAC on 30 August 2017 and until this date it was unaware that an application had been made to the CAC. The Employer believed that the Union's application did not therefore meet the admissibility requirements.

11. The Employer stated that it had not, before receiving a copy of the application form from the Union, agreed the bargaining unit. Nor did the Employer agree with the proposed bargaining unit. The Employer stated that it was unclear which engineers were included within the proposed bargaining unit. The Employer further presented a detailed argument as to why it believed that the Union's proposed bargaining unit was unsuitable and that any bargaining unit should encompass the whole of Kronos UK Ltd, an issue which will, if necessary, be considered by the Panel at a later stage of the process.

12. The Employer stated that it employed 135 workers. The Employer explained that it did not agree with the number of workers in the bargaining unit as defined in the Union's application as it was not clear which employees the Union had included within the definition of "Mobile Engineers". The Employer stated that it did not use the title "Mobile Engineer".

13. When asked to give reasons for disagreeing with the Union's estimate of its membership in the proposed bargaining unit, the Employer stated that it was unable to comment on the Union's estimate of its membership as it did not understand which workers were included in

the proposed bargaining unit.

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 did not believe a majority of the workers within the Union's proposed bargaining unit would be likely to support recognition. To support its view the Employer stated that "we know that the shop steward has been actively seeking members from all areas of the business with limited success."

15. The Employer stated that it was not aware of any existing recognition agreement in place covering any of the workers in the proposed bargaining unit. The Employer also stated that, following receipt of the Union's request, it had not proposed that Acas be requested to assist.

16. Finally, the Employer responded "N/A" when asked whether it was aware of any previous application under the Schedule by the Union in respect of this or a similar bargaining unit.

Further Comments from the parties

17. On 7 September 2017 the CAC copied the Employer's response to the application to the Union and invited its comments. By e-mail dated 12 September 2017 the Union stated that it had sent, by e-mail, a further copy of its application to the Employer. The Union also attached an e-mail dated 11 September 2017 from an employee within the company. Attached to this e-mail was, the employee stated "a cover sheet from its latest terms and conditions of employment at Krones UK." The employee further stated "It states as my employment area within Krones UK as Field Service added to which we all add the term 'engineer' as that is what we are. Obviously the apprentices eventually become an engineer."

18. The Union sent a further e-mail on 12 September 2017 in which it stated the Union's definition of "Mobile Engineers" covered all Field Service Engineers.

19. The Employer responded by email dated 13 September 2017 in which it stated that it had received by e-mail a further copy of the Union's application. The Employer also stated that "The copy stated that it was posted to Krones on 30 August 2017, which we received in the post 1st September 2017. This was the same day in which we received the CAC correspondence." The Employer explained that it had never received a copy of the application

prior to this date and it questioned whether it needed to take any further steps now that it had received a copy of the application from the Union.

20. By a further e-mail dated 15 September 2017 the Employer reiterated its point that it did not receive a copy of the application from the Union but from the CAC. It also set out its concerns with the Union's proposed bargaining unit. It again referred to its concerns about its disagreement with the Union's proposed bargaining unit and referred to the points it raised concerning this in its response to the Union's application. The Employer stated that it did not know whether the Union were including apprentices in the proposed bargaining unit. Finally, it stated that apprentices were not covered by the term "Field Service Engineers" nor were there 62 Field Service Engineers.

21. The Union responded by telephone call to the Case Manager on 19 September 2017 in which it confirmed that its proposed bargaining unit includes all Field Service Engineers, excluding Apprentices.

The membership and support check

22. 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 names and dates of birth) and a copy of its petition. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and petition would not be copied to the other party. These arrangements were confirmed in a letter dated 20 September 2017 from the Case Manager to both parties. The information from the Employer was received by the CAC on 21 September 2017. The information from the Union was received by the CAC on 22 September 2017.

23. The Union provided a list of 37 members.

24. The Employer provided a list of 53 workers. The titles provided for each individual on the list was “Field Service Engineer”. From the information provided it appeared clear that the Employer had a reasonable understanding of the bargaining unit proposed by the Union that was, for clarification, re-defined by the Union as “All Field Service Engineers excluding Apprentices”.

25. The Union also provided a copy of its petition consisting of 39 e-mails. Each individual was sent an e-mail under the subject “RE: Krones UK – Union Recognition – Private and Confidential” with the following wording within the body of the e-mail:

“Unite the Union is asking your employer, Krones UK to recognise it for collective bargaining. We have to show the Central Arbitration Committee that a majority of the workers favour our application. If you want your employer to recognise Unite for collective bargaining, please type your name below and return this e-mail to Susan.Brady@UnitetheUnion.org

I support recognition of Unite as entitled to conduct collective bargaining on pay, hours and holidays:

Name.....

Job Title.....

Date.....

This e-mail **will not** be shown to the Employer until Unite is recognised.”

26. The dates on the e-mails ranged between 19 May 2017 and 8 June 2017.

27. The membership check established that there were 31 members of the Union within the bargaining unit, which constituted a membership level of 58.4%. The result of the comparison of the Union’s petition with the Employer’s list of workers revealed that a total of 32 workers had indicated that they wanted the Union to be recognised which corresponded to 60.3% of the bargaining unit. 28 of the 32 were union members (58.8%) and 4 were non-members (7.5%).

The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

28. A report of the result of the membership and support check was circulated to the Panel and the parties on 27 September 2017 and the parties were invited to comment on the results of the check.

The parties' comments on the result of the membership and support check

29. By e-mail dated 27 September 2017 the Union stated that it had satisfied the criteria on both tests and informed that it was happy to move forward in the process.

30. The Employer stated it still required clarity or agreement regarding the Union's proposed bargaining unit. The Employer explained that the proposed bargaining unit only included a fragment of the workforce and therefore was not an appropriate bargaining unit, an issue which again will, if necessary, be considered by the Panel at a later stage of the process.

31. The Employer further stated that without clarity regarding which employees were in the proposed bargaining unit it was unable to confirm whether a majority of the workers support recognition.

Considerations

32. 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 the evidence referred to above in reaching its decision.

33. 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 must be 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.

34. Paragraph 34 reads as follows:

34. An application under paragraph 11 or 12 is not admissible unless the union gives (or unions give) to the Employer –

(a) notice of the application, and

(b) a copy of the application and any supporting documents to it.

35. The Union gave notice of the application in its initial request letter to the Employer dated 20 June 2017. The Panel notes that in its response to the application and in subsequent correspondence the Employer stated that it had not received from the Union a copy of its application. The Panel also notes however, the Employer's e-mail dated 13 September 2017 in which the Employer acknowledged receipt of the Union's application, which it received by post on 1 September 2017. The Employer also stated that on 1 September 2017 it received by e-mail a further copy of the Union's application. The Panel is therefore 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.

36. The remaining issues for the Panel to decide are therefore whether the admissibility criteria contained in paragraph 36(1)(a) and paragraph 36(1)(b) are met.

Paragraph 36(1)(a)

37. 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.

38. The membership check conducted by the Case Manager (described in paragraphs 22 - 27 above) showed that 58.4% of the workers in the proposed bargaining unit were members of the Union. The Employer has stated that, given the lack of clarity concerning the proposed bargaining unit, it is unable to comment on whether union members constitute at least 10% of the workers in the proposed bargaining unit. The Panel is satisfied that following the information provided by the Employer for the check, it appeared clear that the Employer understood which workers were included within the proposed bargaining unit. As stated in paragraph 27 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, in the absence of any evidence to the contrary, 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)

39. 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.

40. As well as establishing that 54.8% of the workers in the proposed bargaining unit were union members, the Case Manager's check of the Union's petition against the list of 53 workers provided by the Employer indicated that 32 of the 39 petition signatories were identifiable as workers within the bargaining unit, a support level of 60.3%. Of those there were 28 union members (52.8%) and 4 non-members in the bargaining unit (7.5%). The Employer stated that, given the lack of clarity concerning the proposed bargaining unit, it is unable to comment on whether a majority of the workers constituting the bargaining unit would be likely to favour recognition. As stated in paragraph 38 above, the Panel is satisfied that following the information provided by the Employer for the check, it appeared clear that the Employer understood which workers were included within the proposed bargaining unit. In its comments the Employer has not challenged the validity of the petition. Therefore, given the level of union membership and support demonstrated by the petition, and in full consideration of the evidence made available, the Panel finds that the majority of the workers would be likely to favour recognition of the Union for the purposes of collective bargaining. The Panel is therefore satisfied that the test required by paragraph 36(1)(b) of the Schedule has been met.

Decision

41. For the reasons given above the Panel's decision is that the application is accepted by the CAC.

Panel

Professor Kenneth Miller, Chairman of the Panel

Mr Nicholas Caton

Mr Gerry Veart

10 October 2017