

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

EAT Limited

Introduction

1. GMB (the Union) submitted an application to the CAC which was received on 20 February 2017 that it should be recognised for collective bargaining by EAT Limited (the Employer) for a bargaining unit comprising "All hourly paid staff on site, not including clerical and administrative staff". The location of the bargaining unit was given as "the Wembley site" which referred to the Employer's premises at Fourth Way, Wembley, Middlesex. The CAC gave the parties notice of receipt of the application on 20 February 2017. The Employer submitted a response to the application to the CAC which was received on 27 February 2017 and 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 Lynette Harris, Chair of the Panel, and, as Members, Mr David Coats and Mr Arthur Lodge. 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 15 March 2017 in order to obtain more information and to allow the Panel to prepare its written decision.

Issues which the Panel has to determine

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 should therefore be accepted.

Summary of the Union's application

5. In its application to the CAC the Union stated that it had sent its request for recognition to the Employer on 21 November 2016 and that the Employer replied stating a desire to meet with the Union to discuss the most appropriate way forward. The parties were due to meet at the offices of Acas on 13 December 2016 but the Employer asked that the negotiations be postponed until the New Year. Another meeting was scheduled to take place on 16 January 2017. The Union did not supply either a copy of its formal request for recognition or the Employer's reply thereto with its application but did so on 21 February 2017 when requested to do so by the CAC. In its request letter of 21 November 2016 the Union stated that "The request concerns all of the hourly paid staff within the EAT Kitchen Factory, whom we wish to represent as our bargaining unit". The Union stated in its application that the Employer, following receipt of the request for recognition, did propose that Acas should be requested to assist, a proposal that the Union had accepted.

6. The Union stated that there were approximately 220 workers employed by the Employer and that all 220 workers were within the proposed bargaining unit. Asked whether the Employer agreed on the number of workers in the proposed bargaining unit the Union answered "not yet". According to the Union there were "120+" members of the Union within the proposed bargaining unit. Asked to provide evidence that the majority of the workers in the proposed bargaining unit would be likely to support recognition for collective bargaining the Union stated that since the start of its recognition campaign it had increased membership by 300%.

7. When asked to describe the bargaining unit in the application the Union stated "all hourly paid staff on site not including clerical and administrative staff." The Union stated that the reason for selecting the proposed bargaining unit was that all production staff and team members made up the vast majority of its members on site and therefore it was for these members for whom the Union had requested recognition.

8. When asked whether the bargaining unit had been agreed with the Employer the Union answered "not yet". As far as the Union was aware, there was no existing recognition agreement in force covering any of the workers in the proposed bargaining unit. The Union confirmed that it held a current certificate of independence. Finally, the Union stated that it had not made a previous application under the Schedule for the workers in this or a similar bargaining unit.

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

9. In its detailed response to the Union's application the Employer stated that it had received a written request for recognition from the Union on 21 November 2016 for a bargaining unit comprising "all of the hourly paid staff within EAT Kitchen Factory". A copy of this letter was attached to the response. The Employer responded by letter dated 1 December 2016, a copy of which was also attached, stating that it did not accept recognition but indicating a willingness to enter into negotiations and suggesting that Acas assist with the process. An initial meeting took place on 13 December 2016 which proved productive and so a further meeting was scheduled for 16 January 2017. On 21 December 2016 the Employer learned that the Union had submitted an application to the CAC. The Employer did not accept that there had been a failure to secure a voluntary agreement. Then, on 23 December 2016, a copy of the application was provided by the CAC. However, the application was withdrawn on 9 January 2017 by the Union prior to the Employer submitting its response.

10. The meeting on 16 January 2017 was productive but not conclusive and so a further meeting took place on 10 February 2017 with follow up actions agreed between the parties. A further meeting was scheduled for 27 February 2017 however, on 17 February 2017 the Union submitted a further application to the CAC. The Employer considered that the "second period" had been extended by mutual agreement and did not accept that, as at 17 February 2017, there had been a failure to secure a voluntary agreement.

11. The Employer confirmed that it had received a copy of the application form from the Union on 17 February 2017 by email.

12. When asked if the Employer and the Union agreed the bargaining unit before it received a copy of the application form from the Union the Employer stated "No. The appropriate bargaining had been the subject of discussion at the meeting on 10 February 2017 but no agreement had been reached." No agreement was subsequently reached.

13. When asked to briefly indicate its objections to the proposed unit the Employer stated that in its application the Union had referred to the bargaining unit as "All hourly paid staff on site, not including clerical and administrative staff" which was not consistent with the letter requesting recognition which described the bargaining unit as "all of the hourly paid staff within EAT Kitchen Factory". The Employer did not recognise either description as a grouping of staff. Further, in the draft agreement provided by the Union it referred to "permanent" staff which did not appear in either descriptions.

14. The application submitted by the Union on 17 February 2017 was essentially a copy of the application it had submitted on 21 December 2016. The Union was provided with an organisational chart (copy attached) following the meeting on 10 February 2017 but had not used the information contained in that chart nor the information provided during the meeting in defining an appropriate bargaining unit.

15. By way of amendment to the draft recognition agreement the Employer had proposed a bargaining unit of "all Real Team Members, Team Members, Senior Team Members, Low Care Admin Team Members and QA Technicians within the Kitchen Team and permanently employed at the site in Wembley (34 Fourth Way, Wembley, HA9 0LH)". However, on further reflection it was questionable as to whether there was any justification to exclude temporary employees and so the Employer contended that the following description of a bargaining unit would be consistent with the effective management of the site: "All Real Team Members, Team Members, Senior Team Members, Low Care Admin Team Members and QA Technicians within the Kitchen Team employed at the site in Wembley (34 Fourth Way, Wembley, HA9 0LH)."

16. Asked for the number of workers it employed, the Employer stated that it employed a total number of 1785 (including both permanent and temporary staff). Of that number, 225 were employed to work temporarily and permanently at the Wembley site. There were 174 (including 22 temporary employees) non-management employees and 51 employees who were either management or non-management but salaried employees.

17. The Employer stated that it did not agree with the number of workers in the bargaining unit as defined in the Union's application as it did not recognise the existence of a separate grouping in the terms proposed. Notwithstanding such and based on the proposed bargaining unit set out in the CAC application of "All hourly paid staff on site, not including clerical and administrative staff" there were 193 employees who could potentially be described in this way. This was on the assumption that the roles of "Low Care Admin Team Member" and "QA Technician" were not included in the proposed bargaining unit.

18. The Employer believed the proposed bargaining unit to be based on membership activity only and not with a mind to the structure within the business and effective management of the staff.

19. The Employer confirmed that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit. When asked if it was aware of any previous application under the Schedule for statutory recognition made by the Union in respect of the proposed bargaining unit or a similar bargaining unit, the Employer stated that a previous application was submitted but then withdrawn.

Union's comments on the Employer's response

20. On 1 March 2017 the Employer's response and attachments was forwarded to the Union and its comments on the response, in general and specifically on the assertion that the terms of the proposed bargaining unit differed between the letter setting out the Union's formal request for recognition and application form, were invited.

21. In a letter dated 3 March 2017 the Union stated, as far as was material, that it had been trying to agree the bargaining unit and it was happy to accept the Employer's revised proposal of "All Real Team members, Team Members, Senior Team Members, Low Care

Admin Team Members and QA Technicians within the Kitchen Team and permanently employed at the site in Wembley". The Union expressed its surprise that the Employer was seeking to extend the bargaining unit to include temporary staff as their tenure was, by definition, transitory. Their inclusion would potentially dilute the bargaining unit and that was perhaps the reason for the Employer's wish to have them included. Whilst the Union was happy to represent such employees if they wished to join the Union, it did not see the sense in including within the bargaining unit staff who would not be able to benefit from collective bargaining.

Considerations

22. In deciding whether to accept the application, the Panel must determine whether the validity and admissibility provisions referred to in paragraph 4 above are satisfied. The Panel has considered carefully the submissions of both parties and all the evidence relating to these provisions in reaching its decision.

23. Paragraph 1 of Schedule A1 states that a trade union seeking recognition to be entitled to conduct collective bargaining on behalf of a group of workers may make a request in accordance with this Part I of the Schedule. Paragraph 15(2)(a) requires the CAC to decide whether the request for recognition to which the application relates is valid within the terms of paragraphs 5 to 9. Paragraph 8 states that a request will not be valid unless it is in writing, identifies the union and the bargaining unit, and states that it is made under the Schedule. The Panel considers that the request for recognition which the Union made to the Employer by way of letter dated 21 November 2016 complied with paragraphs 5 to 9 and so was a valid request.

24. Having established whether or not the request is valid the provisions of paragraph 15(2)(b) then requires the Panel to decide whether the application is made in accordance with paragraph 11 or 12 of the Schedule. Paragraph 11 applies if, before the end of the period of 10 working days starting with the day after that on which the employer receives the request for recognition (the 'first period'), the employer fails to respond to the union's request for recognition or informs the union that it does not accept the request. Paragraph 12 applies if, before the end of the first period, the employer informs the union that it does not accept the request but is willing to negotiate. In this case the Employer, in its letter to the Union dated 1

December 2016, though not explicitly stating that it did not accept the Union's request for recognition, was clear in offering to meet with the Union to discuss recognition and so the Panel has concluded that paragraph 12 is the relevant paragraph under which the application was made.

25. Paragraph 12 of the Schedule states that:

12. - (1) Sub-paragraph (2) applies if-
(a) the employer informs the union (or unions) under paragraph 10(2), and
(b) no agreement is made before the end of the second period.
(2) The union (or unions) may apply to the CAC to decide both these questions-
(a) whether the proposed bargaining unit is appropriate;
(b) whether the union has (or unions have) the support of a majority of the workers constituting the appropriate bargaining unit...

26. Paragraph 2(2) states that references to the 'proposed bargaining unit' are to 'the bargaining unit proposed in the request for recognition'. Thus, paragraph 12(2) permits a union to apply to the CAC to decide whether the bargaining unit proposed in the request for recognition is appropriate as well as whether the union has the support of a majority of the workers constituting the appropriate bargaining unit.

27. In this case the bargaining unit proposed in the request for recognition was "all of the hourly paid staff within EAT Kitchen Factory". This is the bargaining unit in respect of which paragraph 12(2) of the Schedule would permit an application to be made to the CAC. However, in the Union's application to the CAC received 20 February 2017 it identified the proposed bargaining unit as "All hourly paid staff on site, not including clerical and administrative staff". In its response to the application the Employer highlighted the differing terms used by the Union to describe the proposed bargaining unit submitting that the description used in the application was not consistent with that in the letter requesting recognition. The Employer then went on to explain its difficulty with both variations proposed by the Union and put forward an alternative of its own and which is set out in paragraph 15 above. When asked to comment on the discrepancy the Union, in its letter of 3 March 2017, did not seek to persuade us that there were no differences in the composition of the bargaining units it had set out in its request for recognition and subsequent application but rather signalled its acceptance of the bargaining unit proposed by the Employer in its response, although the Union wanted temporary staff to be excluded.

28. The Panel's difficulty is that it is evident that the Union has not applied to the CAC to decide whether the bargaining unit proposed in the request for recognition is appropriate in accordance with the terms of paragraph 12(2). The wording of the Schedule is clear, paragraph 12(2) relates to the bargaining unit identified in the request for recognition. This is why the importance of the description being identical to that specified in the formal request letter to the employer is stated in the application form and accompanying notes.¹ The Panel is aware that at times it is not easy for a union that seeks to gain recognition within the workplace to be fully appreciative of the factual matrix of the Employer's workforce. The Panel hopes that the Union has now a better understanding of this from the clarification provided in the Employer's response.

Decision

29. For the reasons given in paragraphs above, the Panel has decided that the application is not made in accordance with paragraphs 11 or 12 of the Schedule and is therefore not accepted by the CAC.

Panel

Professor Lynette Harris, Chairman of the Panel

Mr David Coats

Mr Arthur Lodge

15 March 2017

¹ There is but one exception to this rule which is where the parties have agreed a bargaining unit in the period following the request being issued and the application made to the CAC but not that the union is recognised and the agreed bargaining unit differs to that originally proposed. Under these circumstances paragraph 12(4) of the Schedule allows for the Union to apply in respect of the different bargaining unit and for the Panel to decide only the question as to whether the union has the necessary support for recognition.