

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

Mears Group PLC

Introduction

1. Unite the Union (the Union) submitted an application to the CAC on 27 April 2017 that it should be recognised for collective bargaining by Mears Group PLC (the Employer) for a bargaining unit comprising "24 craft workers - carpenters, electricians, multi traders, plumbers, painters bricklayers, roofers, plasterers, fencers" located at Crawley Borough Council. The CAC gave both parties notice of receipt of the application on 28 April 2017. The Employer submitted a response to the CAC which was received on 8 May 2017 and 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 Her Honour Judge Stacey, Chairman of the Panel, and, as Members, Mr Simon Faiers and Ms Judy McKnight CBE. The Case Manager appointed to support the Panel was Linda Lehan.

Issues

3. 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

4. In its application to the CAC the Union stated that it had sent its formal request letter to the Employer on 10 July 2015. A copy of the Union's request letter to the Employer was attached and was dated 8 February 2017. The Union also enclosed a copy of the posting receipt which was dated 7 April 2017.

5. 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.

6. The Union stated that there were 24 workers employed by the Employer. The Union stated that there were 24 workers in the bargaining unit of whom 13 were members of the Union. The Union stated that the Employer did agree with the number of workers in the bargaining unit. Asked to provide evidence that a majority of the workers in the bargaining unit were likely to support recognition for collective bargaining, the Union said information was available for the CAC only.

7. The Union explained that it had selected the bargaining unit based on their trade skills.

8. The Union confirmed that it held a current certificate of independence and that there was no existing recognition agreement that covered any of the workers in the proposed bargaining unit.

9. Finally the Union confirmed that the bargaining unit had been agreed with the Employer.

The Employer's response to the Union's application

10. In its response to the application the Employer explained that the Union had originally requested recognition in July 2015 following which they engaged with them on an informal basis. The Employer said that they responded in October 2015 (attaching a copy of that letter) to confirm that they would be happy to continue to work with Unite informally, but were not in a position to agree anything more formal at that time.

11. The Employer stated that on 21 September 2016 they were informed by Unite that they were making an application for statutory recognition to the CAC but received no confirmation from the CAC that the application had been received. The Employer stated that on further contact from them Unite stated on 23rd September 2016 that they would withdraw their application in order to discuss a voluntary agreement.

12. The Employer stated that in their previous response to the CAC, which was submitted on 5th April 2017,¹ they stated that they did not receive a further written request from Unite however, this was incorrect and they apologised for the error.

13. The Employer stated that they met with the Union again on 28th February 2017 to discuss the possibility of a voluntary agreement and prior to providing a written response to the 28 February meeting, they received a formal application from Unite on 24th March 2017. The Employer stated that they had continued to pursue the possibility of a voluntary agreement with Unite whilst they proceeded with that application and had also been in contact with Chris Haines at ACAS to continue to pursue that possibility.

14. The Employer enclosed a copy of a letter dated October 2015 which they said was the response to the original request in July 2015. The Employer went on to explain that since their meeting with the Union on 28th February 2017, they had sent an e-mail to them on 24th March 2017 confirming their willingness to enter into a voluntary agreement and Unite had responded saying their members wished for them to continue with the statutory route, but had continued to pursue a voluntary agreement as stated above.

¹ Reference being made to earlier application submitted by Unite the Union TUR1 1004 (2017) which was withdrawn prior to any decisions being made by the CAC.

15. The Employer stated that they had not received a copy of the application form from Unite (or any supporting documents) for the latest application but were informed of the application via the CAC's email on 28 April 2017².

16. The Employer confirmed that the bargaining unit had been agreed before they received a copy of the application form from the Union and that they agreed the proposed bargaining unit.

17. When asked whether, following receipt of the Union's request, the Employer proposed that ACAS be requested to assist, the Employer said that they had not needed to take that step as ACAS made contact directly with them following the formal application made by Unite on 24 March 2017. The Employer stated that they had been corresponding with Chris Haines via email since then regarding pursuing a voluntary agreement.

18. Asked whether it agreed with the Union's figure as to the number of workers in the proposed bargaining unit, the Employer replied "Yes". Asked whether it disagreed with the Union's estimate of membership in the proposed bargaining unit and for its views as to whether a majority of the workers in the bargaining unit were likely to support recognition, the Employer answered "N/A".

19. In response to the question asking whether it was aware of any previous application under the Schedule by the Union in respect of this or a similar bargaining unit the Employer stated that on 21 September 2016, and following their written request on July 2015, the application previously submitted by Unite was withdrawn in order for discussions to take place regarding voluntary recognition. The Employer stated that Unite then submitted a further written request on 24 March 2017 which was withdrawn by them on 7 April 2017.

Considerations

² The CAC has subsequently been copied into an email from the Union to the Employer enclosing a copy of the application form which they said was sent recorded delivery.

20. In deciding whether to accept the application the Panel must determine whether the admissibility and validity provisions referred to in paragraph 3 of this decision are satisfied. The Panel has considered all the evidence submitted by the parties in reaching its decision.

21. 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 and that it was made in accordance with paragraph 11 of the Schedule. The remaining issue for the Panel to address is whether the admissibility criteria set out in paragraph 36(1) of the Schedule are met.

Paragraph 36(1)(a)

22. Paragraph 36(1)(a) of the Schedule calls for the Panel to determine whether members of the Union constitute at least 10% of the workers in the Union's bargaining unit. In its application the Union said that there were 24 workers in the agreed bargaining unit which the Employer confirmed. The Union said that within the bargaining unit of 24 workers 13 workers were in membership. In light of the Union's assertion of its level of membership that was not contradicted or disputed by the Employer in its response, and on balance of probabilities on the information available, the 10% threshold has been satisfied.

Paragraph 36(1)(b)

23. The test in paragraph 36(1)(b) is whether 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. In its application the Union show that it has a majority of the workers in membership. As noted above, the Employer responded "N/A" when asked whether it disagreed with the Union's estimate of membership in the proposed bargaining unit and for its views as to whether a majority of the workers in the bargaining unit were likely to support recognition.

24. As with the test in paragraph 36(1)(a), the Employer has not disputed the Union's assertion that it has a majority of workers in the proposed bargaining unit in membership. The Panel therefore conclude that in light of the Union's declaration of its level of members within the bargaining unit it is likely that a majority favour recognition.

25. For the reasons given above the Panel is satisfied that, on the balance of probabilities, a majority of the workers in the proposed bargaining unit would be likely to support recognition of the Union and the test set out in paragraph 36(1)(b) is therefore met.

Decision

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

Panel

Her Honour Judge Stacey, Chairman of the Panel,
Mr Simon Faiers
Ms Judy McKnight CBE.

12 May 2017