

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

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 Sharmin Khan. Kate Norgate subsequently replaced Sharmin Khan as the Case Manager.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 18 April 2017. The acceptance period was extended to 8 May 2017 in order to allow time for the parties to comment on the results of a membership check 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 sent its formal request for recognition to the Employer on 15 March 2017. A copy of that letter was attached to the application. The Union explained that on the 16 March 2017 it had received a telephone call from the Employer requesting a list of its union members. An exchange of e-mails followed during which the Union had explained its obligations.

6. The Union stated that there were approximately 60 workers employed by the Employer, of whom 47 were in the proposed bargaining unit. Out of the 47 workers in the proposed bargaining unit the Union stated that 25 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 a petition circulated within the bargaining unit had obtained 37 signatures in support of union recognition.

7. The Union stated that the reason for selecting the proposed bargaining unit was because the bargaining unit covered a sensible and coherent group within the manual/shop floor area. The remainder of the company's employees held supervisory or management roles, or were office staff.

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 March.

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

9. The Employer confirmed that it had received the Union's written request letter on 15 March 2017. The Employer left blank the question on whether it had responded to the Union's request.

10. The Employer confirmed that it had received a copy of the application form from the Union on 31 March 2017.

11. 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 do you agree with the proposed bargaining unit the Employer answered "Unable to answer as informed by Unite it was inappropriate".

12. The Employer stated that it employed 64 workers. When asked if it agreed with the number of workers in the proposed bargaining unit as defined by the Union, the Employer stated "unable to answer as no information provided". When asked to give reasons for disagreeing with the Union's estimate of its membership in the agreed bargaining unit, the Employer again stated "unable to answer as no information provided." The Employer was asked to give reasons if it did not consider that a majority of the workers in the bargaining unit were likely to support recognition, to this it responded "As above".

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

14. Finally, the Employer left blank the question on whether it was aware of any previous application under the Schedule by the Union in respect of this or a similar bargaining unit.

The membership and support check

15. 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 name and date of birth) and a copy of their 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 24 April 2017 from the Case Manager to both parties. The information from both parties was received by the CAC on 24 April 2017.

16. The Union provided a list of 25 members and the Employer provided a list of 50 workers.

17. The Union's petition consisting of 37 names/signatories was set out as follows:

“APPENDIX 1 PETITION IN SUPPORT OF UNION RECOGNITION

Wheelbase Engineering

Unite the Union is asking your employer to recognise it for collective bargaining. We have to show the Central Arbitration Committee that a majority of workers favour our application. If you want your employer to recognise Unite for collective bargaining, please sign the petition.

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

This Petition **will not** be shown to the company until Unite is recognised”

PRINT NAME	JOB TITLE	SIGNATURE	DATE

18. The membership check established that there were 25 members of the Union within the bargaining unit; a membership level of 50%. The result of the comparison of the Union's petition with the Employer's list of workers revealed that a total of 36 workers (1 name/signature being unreadable) had indicated that they wanted the Union to be recognised which corresponded to 72% of the bargaining unit. 23 of the 36 were union members (46%) and 13 were non-members (26%). The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

19. A report of the result of the membership and support check was circulated to the Panel and the parties on 27 April 2017 and the parties were invited to comment on the results by the close of business on 2 May 2017.

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

20. By e-mail dated 28 April 2017 the Union stated that it appeared it had exceeded the two tests, in Paragraph 36(1)(a) by a margin of 40%, and 36(1)(b) by a margin of 21% and its application was therefore admissible.

21. No comments were received from the Employer.

Considerations

22. 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.

23. 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 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 contained in paragraph 36(1)(a) and paragraph 36(1)(b) are met.

Paragraph 36(1)(a)

24. 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.

25. The membership check conducted by the Case Manager (described in paragraphs 14 - 18 above) showed that 50% of the workers in the proposed bargaining unit were members of the Union which the Employer did not contest. As stated in paragraph 17 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)

26. 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.

27. As well as establishing that 50% 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 50 workers provided by the Employer indicated that 36 of the 37 petition signatories were identifiable as workers within the bargaining unit, a support level of 72%. Of those there were 23 union members (46%) and 13 non-members in the bargaining unit (26%). The Employer has not challenged the validity of the petition. 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

28. 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 David Bower

Ms Virginia Branney

8 May 2017