

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

Bowood Care Homes Limited

Introduction

1. GMB (the Union) submitted an application to the CAC dated 18 January 2017 that it should be recognised for collective bargaining by Bowood Care Homes Limited (the Employer) for a bargaining unit comprising "All staff below level of manager and deputy managers". The location of the bargaining unit was given as "Bowood Court, Bowood Mews, Hewell Road, Redditch, Worcestershire B97 6AT". The application was received by the CAC on 19 January 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 30 January 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 Lynette Harris, Chairman of the Panel and, as Members, Mr Paul Gates OBE and Mr Rod Hastie. 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 2 February 2017. The acceptance period was then extended upon request of the Union whilst the parties entered into negotiations over a voluntary agreement. However, no such agreement was reached. Finally, time was extended to 17 May 2017 in order to allow time for a membership and support check to be conducted 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 initially approached the Employer on an informal basis with no success and that it then issued a formal request for recognition on 25 November 2016 to which it received no reply. The Union attached copies of the letters it send on an informal basis as well as its formal request 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. The Union stated that the Employer employed a total of 108 workers with 105 of this number in the proposed bargaining unit. The Union stated that there were 32 members within the proposed bargaining unit. 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 had 59 signatures on a petition which it was willing to submit to the CAC on a confidential basis.

8. The Union stated that the reason for selecting the proposed bargaining unit was that it proposed a traditional bargaining unit comprising staff below the level of manager and deputy manager at the Employer's single site. It believed that this made industrial common sense and was fully compatible with effective management. This was the bargaining unit for which the Union was recognised by the former employer HC1. 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 18 January 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 25 November 2016 to which it did not respond.

11. The Employer stated that it had received a copy of the application form from the Union on 23 January 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 108 workers. The Employer stated that it agreed with the number of workers in the proposed bargaining unit as set out in the Union's application and 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 "not applicable" and stated the same when asked to give its reasons if it did not consider that a majority of the workers in the proposed bargaining unit would be likely to 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 that it had acquired the company through share acquisition about a year ago and was aware of a previous union recognition agreement which had been terminated by the previous owners prior to acquisition. The Employer did not know the terms of the agreement nor have access to any related paperwork. 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 "Not applicable".

16. In its covering letter with its response the Employer stated that it wished to commence voluntary discussions with the Union aimed at achieving a mutually agreeable recognition agreement and that it would be happy if Acas were to facilitate such discussions.

17. On 31 January 2017, having had sight of the Employer's covering letter, the Union applied for a stay in the CAC proceedings whilst the parties engaged in discussions with the assistance of Acas. However, no agreement was reached and on 24 April 2017 the Union asked that the CAC lift the stay and continue with the application.

The membership check

18. To assist the determination of two of the admissibility criteria specified in the Schedule, namely, whether 10% of the workers in the agreed bargaining unit are members of the union (paragraph 36(1)(a)) and whether a majority of the workers in the agreed 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 the unit who

had signed a petition supporting recognition of the Union as well as an analysis of the results of a survey conducted by the Employer. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists, the petition and the survey results would not be copied to the other party and that agreement was confirmed in a letter from the Case Manager to both parties dated 25 April 2017. The information from the Union was received by the CAC on 26 April 2017 and from the Employer on 2 May 2017. The Panel is satisfied that the checks were conducted properly, impartially and in accordance with the agreement reached with the parties.

19. The list supplied by the Employer showed that there were 98 workers in the agreed bargaining unit. The list of members supplied by the Union contained 33 names. According to the Case Manager's report the number of Union members in the proposed bargaining unit was 23, a membership level of 23.47%.

20. The Union provided a petition containing 59 undated signatures and which was set out as follows:

**PETITION IN SUPPORT OF
RECOGNITION
Adept Care Homes Ltd
Bowood Court and Bowood Mews**

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 GMB trade union as entitled to conduct collective bargaining on pay, hours and holidays on behalf of....Staff at Bowood court and Bowood Mews below the level of manager.

Each page of the petition had rows with columns headed NAME IN BLOCK CAPITALS and SIGNATURE.

21. The Case Manager's report showed that the petition was signed by 44 workers in the agreed bargaining unit, a figure which represents 44.9% of the bargaining unit. Of those 44 signatories 20 were members of the Union (20.41% of the agreed bargaining unit) and 24 were non-members (24.49% of the agreed bargaining unit).

22. The Employer also indicated on its list whether or not each worker was surveyed and, if so, indicated the preference of each individual. The Employer then confirmed the method of survey as to whether the individual signed in person or was surveyed by telephone. The three options that an individual could select from were:

- 1) I would like to continue without GMB union recognition.
- 2) I would like GMB recognition
- 3) I have no preference.

There was no indication as to the dates the survey was conducted. Out of the 98 workers noted as being in the proposed bargaining unit 78 were annotated as having been surveyed with 28 surveyed by telephone and 50 as having completed by hand. The following table represents an analysis of the Employer's survey results by union membership:

| | | 1* | 2* | 3* |
|----|---|----|----|----|
| a) | Preferences expressed by Union members that had not signed the Union's petition | 4 | 0 | 2 |
| b) | Preferences expressed by Union members that had signed the Union's petition | 4 | 6 | 5 |
| c) | Preferences expressed by non-members that had not signed the Union's petition | 23 | 3 | 11 |
| d) | Preferences expressed by non-members that had signed the Union's petition | 10 | 0 | 10 |
| | Totals | 41 | 9 | 28 |

- 1* I would like to continue without GMB union recognition.
 2* I would like GMB recognition
 3* I have no preference.

23. A report of the result of the membership and support check was circulated to the Panel and the parties on 3 May 2017 and the parties were invited to comment on the results by the close of business on 9 May 2017.

Parties' comments on the result of the membership check

24. In a letter dated 5 May 2017 the Union submitted that, from the information supplied, it fulfilled the first part of the requirement in that it had at least 10% of the workforce in membership. But it appeared the Union fell short on the requirement to show the majority of workers wished the Union to be recognised for collective bargaining. The Union relied solely on a petition raised at the end of November 2016, a substantial time ago.

25. In the spirit of proper negotiations the Union had not then pursued any further evidencing due to the willingness of the Employer to find a mutually agreed way forward leading to a voluntary agreement. At all times the Union based its approach on what appeared to be a willingness on the part of the Employer to work together to achieve a mutual benefit for all its workers within the agreed bargaining unit. However, it appears now that the Employer sought to delay and elongate the process in order to dilute the petition and reduce the number of members in the bargaining unit through natural wastage.

26. The Employer was stating that it had undertaken an assessment of whether workers wanted trade union recognition. The Union was not made aware of this, despite being in discussions with the Employer. The Union could not comment on the veracity of the assessment, but it did have concerns about the way the workers were approached. Based on this, the Union questioned the outcome of the Employer's assessment. The Union was also concerned that this had delayed the application considerably.

27. Based on the above, the Union respectfully requested that the application moved to the next step in the process and that the CAC conduct a truly independent ballot of the workforce to establish what the workers really wanted. The Union would, of course, abide by any outcome.

28. In an email dated 5 May 2017 the Employer simply stated that its survey had been conducted over the last 3 weeks i.e. more recently¹.

¹ The Panel assumes that here the Employer means "than the Union's petition".

Considerations

29. 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 carefully considered the parties' submissions and all the evidence in reaching its decision.

30. The Panel is satisfied that the Union's letter of 25 November 2016 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 failed to respond to 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)

31. 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 18 to 23 above, showed that 23.47% of the workers in the agreed bargaining unit were members of the Union. As stated 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)

32. Paragraph 36(1)(b) of the Schedule states that 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. This is not a strict arithmetical test of support but rather a gauge of likely support, which by its very nature is a hypothetical measure, based on the evidence presented, the parties submissions and the weight given to both of these by the Panel using the industrial relations expertise for which it was appointed. In this case we have conflicting evidence presented by the parties. The Union has put forward a petition which calls for the Employer to recognise it for the purposes of collective bargaining and this petition, which was conducted at the end of November 2016, was signed by a fraction short of 45% of the workers in the agreed bargaining unit. Twenty-four of the signatories were non-members which represents 24.49% of the agreed bargaining unit. On the other hand, the Employer put forward the results of a survey it had conducted and which was completed either by the individual concerned or over the phone in a conversation between Employer and worker, by 78 workers out of the total of 98. Forty-one of the workers surveyed stated that they would like to continue without the Union being recognised. This amounts to some 41.84% of the bargaining unit. Nine workers stated their preference was for the Union to be recognised which amounts to 9.18% of the bargaining unit and 28 workers said that they had no preference (28.57% of the bargaining unit). A total of 20 workers (20.41% of the bargaining unit) were not surveyed and so their views on the subject remain unknown.

33. There is only a fraction of a difference in the petition/survey evidence put forward by the Union and the Employer – one showing 44.9% support and the other showing 41.84% support the other way. From the comparison of the petition against the Employer's survey results a small number of individuals had signed both the petition in favour of the Union and, when surveyed, said that they were happy to continue without union recognition. Crucially though, the Panel has not been informed as to the circumstance surrounding the Employer's survey – how it was conducted and what was said to the workers concerned. It is conscious that workers may well feel under pressure when asked to give their views on trade union recognition if it is the Employer that is posing the question. Furthermore, it has to be taken into account that the Union has not as yet had the opportunity of direct communication with the workers in the bargaining unit and perhaps some workers would view recognition of the Union more favourably having had the opportunity of finding out more information as to what it entails. Having considered the

evidence in the round we believe that the Union has an arguable case. A fifth of the workers in the bargaining unit were not surveyed by the Employer and so have not expressed a view one way or another and it may well be that the same group of workers were not petitioned by the Union (perhaps for the same reason that they were not surveyed if they were away from work for any length of time). The Panel has, therefore, formed the view that the Employer's survey is not definitive evidence that a majority would not be likely to support recognition of the Union. It has concluded that there is sufficient strength in the Union's case based on its membership, its petition and the lack of conclusive evidence on the part of the Employer's survey, that, on the balance of probabilities, a majority of the workers in the agreed 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

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

Panel

Professor Lynette Harris, Chairman of the Panel

Mr Paul Gates OBE

Mr Rod Hastie

16 May 2017