

6 June 2017

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

Cellbeam Limited

Introduction

1. The GMB (the Union) submitted an application to the CAC dated 4 May 2017 that it should be recognised for collective bargaining by Cellbeam Limited (the Employer) for a bargaining unit comprising “all workers engaged in production, Quality Assurance, office based staff, Cleaners and Maintenance up to and including the level of Supervision working for Cellbeam, Unit 40 – 50, Wigan Enterprise Park, Seaman Way, Ince-in-Markerfield, Wigan WN2 2LE.” The CAC gave both parties notice of receipt of the application on 5 May 2017. The Employer submitted a response dated 11 May 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 Linda Dickens MBE, as chair of the Panel, and, as Members, Mr Mike Regan and Mr Keith Sonnet. The Case Manager appointed to support the Panel was Miss Sharmin Khan.

3. The CAC Panel extended the acceptance period on two occasions to allow time for the CAC to carry out a membership and support check; for the parties to comment on that check and to provide more time for the Panel to consider all the evidence before arriving at a decision. The initial acceptance period expired on 18 May 2017 and the last extension ends the acceptance period on 8 June 2017.

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 of the Schedule; and therefore should be accepted.

Summary of the Union's application

5. The Union enclosed with its application to the CAC a copy of its formal request letter for recognition to the Employer dated 12 April 2017 and informed in the application that it had not received a response from the Employer.

6. The Union stated that the Employer employed approximately 52 workers. It stated that there were 19 workers in the proposed bargaining unit of which 13 were members of the Union.

7. When asked to provide evidence that a majority of the workers in the bargaining unit were likely to support recognition for collective bargaining, the Union stated that it had a clear majority of trade union members (68%) within the workforce based at the Wigan Facility. It had selected the proposed bargaining unit as the request had come from the employees working at the Wigan facility. The proposed bargaining unit had not been agreed with the Employer.

8. The Union informed that it had made a previous application under Schedule A1 for statutory recognition for the workers in the bargaining unit on 10 February 2017 but then during the CAC process with new information and CAC guidance decided to withdraw the original application on 10th April and re submit a new application. Finally, when asked whether there

was any existing recognition agreement of which it was aware which covered any workers in the proposed bargaining unit the Union answered “N/A”.

The Employer’s response to the Union’s application

9. The Employer completed the CAC’s Employer’s Response Questionnaire. The Employer confirmed it had received the Union’s written request under the Schedule on 12 April 2017 to which it did not respond. The Employer confirmed it received a copy of the Union’s application and supporting documents on 4 May 2017 and stated it had not proposed Acas be requested to assist. The Employer had not agreed the proposed bargaining unit before receiving the application. The Employer also confirmed that it still did not agree to the proposed bargaining unit. The Employer briefly indicated its reason for its objection to the proposed bargaining unit in answer to the question in the Questionnaire but these comments are not set out here as this is not relevant to the Panel’s decision on whether the application is admissible or not.

10. The Employer stated that the number of workers employed by it was 72 of which 20 were workers at the Wigan facility. It did not agree with the number of workers in the proposed bargaining unit as stated by the Union in its application and stated there were 20 workers in the proposed bargaining unit. It also disagreed with the Union’s estimate of membership in the proposed bargaining unit on the basis that on at least 3 occasions, it had advised the Union that if it could provide information to show it had membership of more than 50% at the Wigan facility, it would consider recognising the Union on a voluntary basis. The Union had failed to provide that information and it was the Employer’s view that the Union did not have the requisite membership in the proposed bargaining unit.

11. The Employer did not consider that a majority of the workers in the proposed bargaining unit would be likely to support recognition because it had good employee relations at the Wigan facility which was reinforced by the existence of an Employee Forum. The forum was made up of management and employee representatives and enabled the workforce to raise any concerns it had with the Employer.

12. Finally, the Employer stated that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit and that the question as to whether any other applications had been received under Schedule A1 for statutory recognition in respect of any of the workers in the proposed bargaining unit was not applicable.

Membership and Support Check

13. 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, addresses and job titles of workers within the proposed bargaining unit, and that the Union would supply to the Case Manager a list of the names and addresses of its paid up members within that unit. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists would not be copied to the other party. These arrangements were confirmed in a letter dated 19 May 2017 from the Case Manager to both parties. The information was received from the Union and Employer on 19 and 22 May 2017 respectively.

14. The check established that there were 13 members of the Union on the list of 20 in the bargaining unit provided by the Employer, a membership level of 70%. The job functions listed by the Employer in the proposed bargaining unit included: Plater; Welder; Apprentice; Foreman; Machine Operator and Labourer.

15. A report of the result of the membership check was circulated to the Panel and the parties on 26 May 2017. The parties were invited to comment on the results and asked to bear in mind the two admissibility tests set out in paragraph 36 (1)(a) and paragraph 36 (1)(b) in so doing. Neither party submitted comments in respect of the results of the check or the contents of the Case Manager's report. The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

Considerations

16. 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.

17. The Panel is satisfied that the Union made a valid request to the Employer within the terms specified in 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.

18. 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)

19. In accordance with paragraph 36(1)(a) of the Schedule the Panel must determine whether or not members of the Union constitute at least 10% of the workers in the Union's proposed bargaining unit. The check of Union membership in the proposed bargaining unit as conducted by the Case Manager established that Union membership stood at 70%. The Panel is therefore satisfied that this test is met.

Paragraph 36(1)(b)

20. 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.

21. The membership check conducted by the Case Manager indicated a paid up

membership constituting 70% of the bargaining unit of 20 workers. The Panel needs to be satisfied that a majority of the workers in the Union's proposed bargaining unit are *likely* to support recognition of the Union for the purposes for collective bargaining. In the Panel's experience, being a member of a Union can be taken as indicative of support for collective bargaining unless there is evidence to the contrary. We note the high level of Union membership and that the Union states that it was approached by the employees at the Wigan facility. Although the Employer expressed the view that a majority of workers were unlikely to support collective bargaining because of the existence of good industrial relations and an Employee forum, no evidence was provided in support of this.

22. On the basis of the evidence before it the Panel has decided that, on the balance of probabilities and for the reasons provided above, 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, as required by paragraph 36(1)(b) of the Schedule.

Decision

23. The Panel is satisfied that the application is valid within the terms of paragraphs 5 to 9, is made in accordance with paragraph 11 and is admissible within the terms of paragraphs 33 to 42 of the Schedule. The application is therefore accepted by the CAC.

Panel

Professor Linda Dickens MBE

Mr Keith Sonnet

Mr Mike Regan

6 June 2017