

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DECLARATION OF RECOGNITION WITHOUT A BALLOT

The Parties:

GMB

and

W.D. Close & Sons Ltd

Introduction

1. GMB (the Union) submitted an application to the CAC that it should be recognised for collective bargaining by W.D. Close & Sons Ltd (the Employer) for a bargaining unit comprising “All employees, excluding Office Staff, Salaried Staff, Senior Managers and Supervisors” based at Units 14-16 Valentia Avenue, Walkergate, NE6 4QR and 1 Carville Works, Hadrian Rd, Wallsend, NE28 6HF. The application was received by the CAC on 23 March 2017. The CAC gave both parties notice of receipt of the application on 23 March 2017. The Employer submitted a response to the CAC dated 29 March 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 Kenny Miller, chairman of the Panel, and, as Members, Mrs Maureen Chambers and Mr. Paul Talbot. The Case Manager appointed to support the Panel was Linda Lehan.

3. By a decision dated 18 April 2017, the Panel accepted the Union’s application. The parties then entered a period of negotiation in an attempt to reach agreement on the appropriate bargaining unit.

4. In an email dated 26 May 2017 the Employer confirmed that it agreed to the Bargaining Unit put forward by GMB. Following this the Panel instructed the Case Manager to ascertain whether the Union claimed that it had a majority of the workers in the bargaining unit as its members and should therefore be granted recognition without a ballot and, if it did so claim, to seek submissions from the Employer on whether or not a ballot should be held.

Issues

5. Paragraph 22 of Schedule A1 to the Act (the Schedule) provides that if the CAC is satisfied that a majority of the workers constituting the bargaining unit are members of the union, it must issue a declaration of recognition under paragraph 22(2) unless any of the three qualifying conditions specified in paragraph 22(4) applies. Paragraph 22(3) requires the CAC to hold a ballot even where it has found that a majority of workers constituting the bargaining unit are members of the union if any of these qualifying conditions is fulfilled. The three qualifying conditions are:

- (i) the CAC is satisfied that a ballot should be held in the interests of good industrial relations;**
- (ii) the CAC has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union (or unions) to conduct collective bargaining on their behalf;**
- (iii) membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the union (or unions) to conduct collective bargaining on their behalf. Paragraph 22(5) states that "membership evidence" is (a) evidence about the circumstances in which union members became members, or (b) evidence about the length of time for which union members have been members, in a case where the CAC is satisfied that such evidence should be taken into account.**

The Union's claim to majority membership

6. In a letter dated 26 May 2017 the Union was asked by the CAC if it claimed majority membership within the bargaining unit, and if so, whether it submitted that it should be recognised without a ballot. By an email dated 2 June 2017 the Union stated that it believed that it should be granted automatic recognition as it had proven that over 51% of the workers were members of the trade union and all supported their application. The Union stated that it had a great deal of support from non-members and had a number of signatures from workers

who were not members who had recently had the confidence to go forward and put that in writing.

7. With regards to industrial relations the Union stated that the workforce was worried that if a ballot was to take place there would be a great deal of pressure put on the workforce to vote in favour of the Employer. The Union asked to draw our attention to when they lodged their application the Employer submitted correspondence stating that they would potentially close the workplace.

8. The Union stated that the Employer had also spoken to a number of colleagues stating that if there was a ballot it would have to be a postal ballot as they would not allow the Trade Union to step foot in the workplace.

9. The Union stated that throughout the process they had been desperate to meet with the Employer informally, formally through the CAC or through Acas but the Employer had made it clear they had no intention to discuss the matter.

10. Finally the Union again stressed that it believed it had proven that the majority of the workforce wished to be recognised for collective bargaining by the GMB and, without a single piece of evidence by the Employer to contradict that, they should be granted automatic recognition.

11. On 2 June 2017 the Union's letter was copied to the Employer and it was invited to make submissions on the Union's claim to majority membership and the three qualifying conditions specified in paragraph 22(4) of the Schedule.

The views of the Employer

12. In an email dated 12 June 2017 the Employer stated that it believed a ballot would be the right thing to do as a large percentage of Union members were recently recruited by one of the workforce and these were mainly apprentices. After speaking to each member of the workforce the Employer believed it no longer wished for union representation.

Considerations

13. As set out in paragraph 5 above, the Act requires the Panel to consider whether it is satisfied that the majority of the workers constituting the bargaining unit are members of the Union. If the Panel is satisfied that the majority of the workers constituting the bargaining unit are members of the Union, it must then decide if any of the three conditions in paragraph 22(4) is fulfilled. If the Panel considers that any of them is fulfilled it must give notice to the parties that it intends to arrange for the holding of a secret ballot.

14. A membership check carried out by the Case Manager for the purposes of the Panel's decision on acceptance, the result of which was reported to the Panel and the parties on 7 April 2017, showed that 45 of the 88 workers in the bargaining unit were members of the Union, a membership level of 51.14%. In the absence of any evidence to the contrary, the Panel is satisfied that the majority of the workers in the bargaining unit are members of the Union.

Paragraph 22(4) (a)

15. The first condition is that the Panel is satisfied that a ballot should be held in the interests of good industrial relations. In this case neither party has submitted evidence that holding a secret ballot would be in the interests of good industrial relations. The Panel is therefore satisfied that this condition does not apply.

Paragraph 22(4) (b)

16. The second condition is that the CAC has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union to conduct collective bargaining on their behalf. The CAC has no such evidence and this condition does not apply.

Paragraph 22(4) (c)

17. The third condition is that membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of the union members within the

bargaining unit want the union to conduct collective bargaining on their behalf. In its email of 12 June 2017 the Employer submitted that a ballot should take place as the majority of the workers in membership were apprentices. However, we are not persuaded that this amounts to membership evidence so defined and we are satisfied that this condition does not apply.

Declaration of recognition

18. The Panel is satisfied in accordance with paragraph 22(1)(b) of the Schedule that the majority of the workers constituting the bargaining unit are members of the Union. The Panel is satisfied that none of the conditions in paragraph 22(4) of the Schedule are met. Pursuant to paragraph 22(2) of the Schedule, the CAC must issue a declaration that the Union is recognised as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit. The CAC accordingly declares that the Union is recognised by the Employer as entitled to conduct collective bargaining on behalf of the bargaining unit comprising “All employees, excluding Office Staff, Salaried Staff, Senior Managers and Supervisors” based at Units 14-16 Valentia Avenue, Walkergate, NE6 4QR and 1 Carville Works, Hadrian Rd, Wallsend, NE28 6HF.

Panel

Professor Kenny Miller, Chairman of the Panel

Mrs Maureen Chambers

Mr Paul Talbot

15 June 2017