

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:

IGWB
and
The Doctors Laboratory Limited

Introduction

1. IGWB (the Union) submitted an application to the CAC which was received on 31 July 2017 that it should be recognised for collective bargaining by The Doctors Laboratory Limited (the Employer) for a bargaining unit comprising “All walking, pushbike, scooter and motorbike couriers who work at The Doctors Laboratory (TDL), based at Whitfield Street Site”. The CAC gave both parties notice of receipt of the application on 1 August 2017. The Employer submitted a response to the CAC dated 14 August 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 Mr Charles Wynn-Evans, chairing the Panel, and, as Members, Mr Peter Martin and Mr Paul Noon OBE. The Case Manager appointed to support the Panel was Linda Lehan.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 14 August 2017. The acceptance period was extended to 1 September 2017 and subsequently to 12 September 2017 in order to allow time for a membership and support check to be carried out, 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 7 July 2017 and that, in brief, the Employer's response was that it had considered the request for voluntary recognition of the IWGB and confirmed that it did not accept the request and was unwilling to negotiate about it further. A copy of the Union's request letter and a copy of the Employer's response was attached to the Union's application.

6. The Union stated that the total number of workers employed by the Employer was 500 and in the proposed bargaining unit there were 59 workers, of whom 32 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 more than 50% of the couriers in the bargaining unit were member of the IWGB.

7. The Union stated that the reason for selecting the proposed bargaining unit was because 60 Whitfield Street was the primary location for couriers at the Employer. The Union stated that the section of workers that it represented had been chosen because of their terms and condition being similar to each other and different from office employees of the Employer.

8. The Union stated that it was not aware of any other existing recognition agreement which covered any of the workers in the proposed 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 31 July 2017.

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

9. The Employer confirmed that it had received the Union's written request letter for voluntary recognition on 7 July 2017 and a copy of that letter was attached to its response. The Employer stated that it had responded to the Union's written request by letter dated 19 July 2017 rejecting the Union's request and confirming that it was not willing to negotiate. A copy of the Employer's written response was also attached to the response.

10. The Employer confirmed that it had received a copy of the application form by email from the Union on 31 July 2017. The Employer stated that the Union had not provided it with any documents in support of their application nor was there any indication that the Union had provided the CAC with any supporting documents on a confidential basis.

11. The Employer stated that, before receiving a copy of the application form from the Union, other than the Union's letter of 7 July 2017 the Union had not proposed or discussed the proposed bargaining unit at any time nor had there been any communication of any kind about a bargaining unit.

12. The Employer stated that it did not agree the proposed bargaining unit, that the Union's proposed bargaining unit was unclear and that in any event the proposed bargaining unit was incompatible with effective management and had been inappropriately defined. The Employer said that it was unclear if train couriers (who delivered by foot and train) were contained within the term 'walking couriers'. The Employer stated that reference to 'office employees' was unclear as the majority of staff at its Whitfield Street site were laboratory staff and not office employees. The Employer stated that it made no business sense for the proposed bargaining unit to exclude those van driver couriers based at Whitfield Street whose terms and conditions and general circumstances were identical to those of the couriers that the Union had included in the proposed bargaining unit. The Employer also submitted a detailed argument as to why it believed that the Union's proposed bargaining unit was unsuitable, an issue which will, if necessary, be considered by the Panel at a later stage of the process.

13. The Employer stated that it did not agree with the number of workers in the bargaining unit, as defined in the Union's application, and that the number of couriers in the Union's proposed bargaining unit (if train walking couriers based at the Whitfield Street site were

excluded) was 61. The Employer stated that the Union had said there were 59 couriers and the reason for the difference between the respective figures was not known.

14. The Employer stated that there was no final existing agreement for recognition in force covering workers in the proposed bargaining unit, although it had reached an agreement, in principle, with representatives of Unite the Union and Unison about introducing similar recognition arrangements for its workforce (including its couriers) to those existing voluntary agreements reached elsewhere within the Employer's group of companies. The Employer stated that it supported appropriate recognition arrangements and had a history of good industrial relations with its trade unions.

15. In answer to the question whether it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer said that it was unable, at this stage, to confirm the Union's estimate of membership in the proposed bargaining unit as it had not seen any evidence in support of the Union's assertion, set out in its application, that 32 couriers within the proposed bargaining unit were members of the union.

16. As to whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer stated that it believed that the majority of the couriers within the Union's proposed bargaining unit would be likely to support recognition as part of a wider recognition agreement with more well established and better resourced trade unions than a fragmented recognition agreement with the Union. The Employer stated that it had not surveyed the proposed bargaining unit but it was likely that support for recognition of the Union would be limited.

17. The Employer confirmed that it was not aware of any previous application under Schedule A1 for statutory recognition being made by the Union nor had it received any other applications under Schedule A1 for statutory recognition in respect of any workers in the proposed bargaining unit.

The Union's comments on the Employer's response.

18. In a letter dated 17 August 2017 the Union stated that the proposed bargaining unit did not include the "train couriers" as they were not based at Whitfield Street and they were

subjected to a different chain of local control/management. The Union said that it sought to represent the couriers based at Whitfield Street who were working under the same terms and conditions and had the same status as they were workers not employees. The Union said that reference to “office employees” should be read in a broader sense which included all the people working for the Employer who fell under the category of employees, with consequent employment rights. In respect of van drivers the Union stated that that section of the workforce was highly fragmented, being employees or self-employed, working under a variety of terms and conditions and being subject to a different chain of local control. The Union went into further detail as to why their proposed bargaining unit was not fragmented or incompatible with effective management, an issue which will again, if necessary, be considered by the Panel at a later stage of the process.

Employer’s further comments

19. In an email received from the Employer dated 24 August 2017 the Employer addressed in detail the Union’s indication that the couriers based at the Whitfield Street site were somehow different from the Employer’s other couriers being incorrect and why its application would result in a fragmented bargaining unit, an issue which again will, if necessary, be considered by the Panel at a later stage of the process.

The membership and support check

20. 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 and support 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). It was explicitly agreed with both parties that in order to preserve confidentiality the parties’ respective lists would not be copied to the other party. These arrangements were confirmed in a letter dated 21 August 2017 from the Case

Manager to both parties. The requisite information from the Employer was received by the CAC on 24 August 2017 and from the Union on 21 August 2017. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

21. The list supplied by the Employer indicated that there were 60 workers in the proposed bargaining unit. The list of members supplied by the Union contained 31 names. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was 30, a membership level of 50%.

22. A report of the result of the membership check was circulated to the Panel and the parties on 25 August 2017 and the parties were invited to comment on the result and to bear in mind the two admissibility tests set out in paragraph 36 (1)(a) and paragraph 36 (1)(b) in so doing.

Comments from the parties' on the result of the membership and support check

23. By e-mail dated 31 August 2017 the Union stated that the check established that a 50% of the workers in the proposed bargaining unit were members of the Union and it had therefore met the statutory requirement in respect of Paragraph 36(1)(a). In respect of Paragraph 36(1)(b) the Union believed that a majority of the workers constituting the bargaining unit would be likely to favour recognition. The Union explained that 50% of the workers in the proposed bargaining unit were already members of the Union at the date of the Union's application to the CAC. Since January 2017 there had been a dramatic increase in union membership and this was "since discussion circulated regarding union recognition". Three more couriers had joined the Union and it could provide evidence of this, on a confidential basis, if required by the CAC. In view of this, the Union believed the current level of union membership was 57.4%. It stated that 35 union members within the proposed bargaining unit consisting of 61 couriers showed that support for the Union's application was "widespread" and it expected a further increase to membership in the coming months. The Union was unsure as to why one member did not appear on the Employer's list but it assumed that this was due to it being unable to supply their date of birth.

24. The Union also asked the Panel to consider the comments it had made in relation to courier training and cover. However any such observations are not relevant to the issue to be

determined in this decision.

25. No further comments were received from the Employer on the result of the membership and support check.

Considerations

26. 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 available to it in reaching its decision.

27. 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 of the Schedule. 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 in relation to whether the application should be accepted are whether the admissibility criteria contained in paragraph 36(1)(a) and paragraph 36(1)(b) are met.

Paragraph 36(1)(a)

28. 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.

29. The membership check conducted by the Case Manager showed that 50% of the workers in the proposed bargaining unit were members of the Union. The Employer did not contest this conclusion. As stated in paragraph 20 above, the Panel is satisfied that the membership check was conducted properly and impartially and in accordance with the arrangements agreed with the parties. The Panel is therefore satisfied 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)

30. 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.

31. As noted above the level of union membership derived from the membership check is 50%. The Union did not provide any additional evidence of support for recognition, such as a petition. Nonetheless, the Panel considers that, in the absence of evidence to the contrary, union membership provides a legitimate and cogent indicator of the likely views of the workers in the proposed bargaining unit as to whether they would be likely to favour recognition of the Union. No specific evidence to the contrary was provided by the Employer. other than, as noted above, the Employer's assertion that the relevant workers would be more likely to support recognition as part of a wider recognition agreement with what it suggested would be more well established and better resourced trade unions than what it described as a fragmented recognition agreement with the Union pursuant to this application. On the basis of the evidence before it, the Panel has decided that, on the balance of probabilities, 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

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

Panel

Mr Charles Wynn-Evans, chairing the Panel,

Mr Peter Martin

Mr Paul Noon

8 September 2017