

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:

BFAWU
and
Wealmoor Ltd

Introduction

1. BFAWU (the Union) submitted an application to the CAC dated 7 September 2017 that it should be recognised for collective bargaining by Wealmoor Ltd (the Employer) for a bargaining unit described as: “All hourly paid employees who are retained on non-seasonal full-time or part-time contracts. We do not seek recognition in respect of seasonal workers; workers on contracts of less than 6 months duration; line leaders; supervisors or managers”. The bargaining unit was stated to be at the company’s site at the Industrial Estate, Atherstone on Stour, Stratford-upon-Avon, Warwickshire CV37 8BJ. The application was received by the CAC on 11 September 2017 and the CAC gave both parties notice of receipt of the application on the same day. The Employer submitted a response to the CAC dated 14 September 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 James Tayler, Chairman of the Panel, and, as Members, Rod Hastie and Paul Gates OBE. The Case Manager appointed to support the Panel was Linda Lehan.

3. The CAC Panel has extended the acceptance period in this case on two occasions. The initial period expired on 25 September 2017. The acceptance period was extended to 9 October 2017 and subsequently to 23 October 2017 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 the Panel to consider the 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 26 July 2017. The Union stated that the letter was delivered at 10:08am on 27 July 2017, signed for by "Ayaz", and that no formal acknowledgement or reply was received. A copy of the request letter and the Royal Mail proof of delivery note was attached to the application.

6. The Union stated that there were c.340 workers employed by the Employer and in the proposed bargaining unit there were c.300 workers, of whom c.110 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 it had a petition signed by 254 members of the proposed bargaining unit and also had significant membership levels within it. The Union stated that it was happy to provide proof of both to the CAC on a confidential basis.

7. The Union stated that the reason for selecting the proposed bargaining unit was because the unit represented most of the staff at the site and thus avoided fragmented bargaining units and believed it was compatible with effective management.

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 7 September 2017.

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

9. The Employer's response was received by the CAC on 15 September 2017 and in a covering email the Employer made several observations. The Employer stated that in its application the Union had stated that no formal acknowledgement or reply was received to their request letter which the Employer said was not the case. The Employer stated that the request was rejected and they suggested that the Union pursue through the formal process if they wished to do so. The Employer said that the Union had stated that it had a petition signed by 254 of the proposed bargaining unit and also had significant levels of membership within the proposed bargaining unit. The Employer stated that they did not accept that 110 members out of a petition of 254 was significant. The Employer also questioned the figure of 110 members stating that there was not a single deduction from salary to this or any other union. The Employer stated that their workers were particularly transient and believed that some 'members' did not work there anymore. The Employer also questioned why the Union believed it should not include either Line Leaders and Supervisors or indeed their workforce at their sister site in Greenford who were subject to the same environment and terms and conditions. The Employer in its response form stated that it had received the Union's written request letter on 30 May and that they rejected the request and advised the Union to pursue through the statutory process. The Employer confirmed that it had received a copy of the application form from the Union on 11 September 2017. The Employer did not agree with the proposed bargaining unit stating that they employed more people than stated by the Union i.e. 549 and also had another site in Greenford London which employed around 430 people on the same terms and conditions. The Employer stated that any agreement made at Atherstone would directly affect them. The Employer stated that they did not propose ACAS be requested to assist initially but had since been contacted by ACAS direct and now did propose that ACAS be requested to assist. The Employer stated that it employed around 1000 workers and that it did not agree with the number of workers in the proposed bargaining unit as defined in the Union's application and stated that they had 451 employees in the proposed bargaining unit.

10. The Employer stated that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit.

11. When asked to give reasons for disagreeing with the Union's estimate of its membership in the proposed bargaining unit, the Employer referred to documents attached which it said showed manning levels at both sites. The attached documents were headed and set out as follows:

Please find below a table of staff from each department against the budgeted amount

Departments	Proposed 20.02.2017	Current 14.09.2017

Actual Summary

	Hourly	Salary

Both the above tables showed job titles in the first columns with relevant numbers in the other two columns.

12. When asked "if you do not consider that a majority of the workers in the bargaining unit are likely to support recognition indicting reasons for taking that view" the Employer stated that even if they accepted the Union's figure of 110 members, it was nowhere near 50% at Atherstone and only a small figure if both sites were included.

Further comment from the parties

13. In an email from the Union's solicitor dated 21 September 2017 it flagged up concerns about the information provided in the Employer's response concerning the numbers in the proposed bargaining unit. The Union's solicitor stated that the Employer in their response to question 8 said that there were 451 employees in the proposed bargaining unit but in its schedule headed 'Actual Summary' it showed a total of 502. The Union's Solicitor also went into further detail concerning further inconsistencies in respect of the numbers. The Union's Solicitor highlighted the job categories in the 'Actual Summary' which he said were within the

proposed bargaining unit and attached a copy of the highlighted chart which the Union suggested showed a bargaining unit total of 422. The Union's solicitor stated that apart from the arithmetic problems there was no formal indication that the figures quoted by the Employer were limited so as to exclude seasonal workers, workers on contracts of less than 6 months duration supervisors or managers. The Union's Solicitor stated that the Employer's internal correspondence about compiling that information did not refer to those categories, and without doing so there was no reason why they would have been excluded. The Union's Solicitor said that he noted the employer's observation that 'our workforce is particularly transient' even though the schedules made no such distinction. The Union's Solicitor stated that the Employer had not given the "question 8" explanation for the difference between the union's figure of c.300 and its own of 451 and suggested that could account for at least some of the difference.

14. In an email from the Employer dated 22 September 2017 the Employer stated that their reply to the questionnaire was sent on the 14th September and there were often changes in the exact figures due to staff leaving or being hired and therefore likely to be minor discrepancies. The Employer stated that Supervisors and Managers had not been included in the figures. The Employer apologised for there not being a formal indication of 'seasonal workers' or workers on contracts of less than 6 months and said they did not refer to them as they do not issue contracts of less than 6 months anymore or have seasonal workers. The Employer stated that the summary only showed the Operations Department and did not show other services such as Accounts or HR who work at Atherstone which is why the figure of 549 was quoted. The Employer apologised for not answering question 8 but noted that the Union quoted a figure of 300 in the bargaining unit but accepted on the summary that the figure was 422. The employer did not accept the higher figure of 422 and contended that the Union simply had their figures wrong. Finally, the Employer did not consider the proposed bargaining unit to be a fair one and contended it would fragment the Management of the Company.

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 18 September 2017 from the Case Manager to both parties. The information from the Employer was received by the CAC on 21 September 2017 and from the Union on 20 September 2017.

16. The Union provided a list of 97 members and the Employer provided a list of 477 workers. Alongside some of the workers names was the word TEMP.

17. The Union’s petition consisting of 247 names/signatories was set out as follows with dates ranging from 27 June 2017 to 12 July 2017:

We would like Bakers Food and Allied Workers to represent us on all terms and conditions at Wealmoor Ltd, Stratford-Upon-Avon, Warwickshire CV37 8BJ.

NO	Forename	Surname	Signature	date

This information will be treated in the strictest confidence and will be available to the CAC

18. The membership check established that there were 71 members of the Union; a membership level of 14.88%. The comparison of the Union’s petition with the Employer’s list of workers revealed that a total of 193 workers (17 name/signatures being unreadable, 4 being duplicates and 33 not appearing on the Employer’s list) had indicated that they wanted the Union to be recognised which corresponded to 40.46%. 58 of the 193 were union members (12.16%) and 135 were non-members (28.30%).

19. A report of the result of the membership and support check was circulated to the Panel and the parties on 26 September 2017 and the parties were invited to comment on the results and to bear in mind the two admissibility tests set out in paragraph 36 (1)(a) and paragraph 36 (1)(b) in so doing. The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

Continuing dispute as to the number of employees in the proposed bargaining unit

20. In an email received from the Employer dated 28 September 2017 the Employer stated that the word TEMP being next to some of the names on the schedule of employees was an oversight. The Employer said that the word TEMP was put in the column for two main reasons either it was someone who was a temporary worker through an agency and was now permanent or someone who had been taken on temporarily and was now permanent. The Employer said that either way the word should have been removed as they only used the information to determine the most effective form of recruitment either through the agency or direct.

21. The Union's Solicitor in a letter dated 28 September 2017 asked for a 7-day extension in which to comment on the membership and support check which was granted. The Union's Solicitor also enclosed a copy of a letter from an employee who had recently been dismissed stating that the explanation given was "The UK season has now come to an end and therefore it is with regret that I must inform you that your contract will be terminated". The Union's Solicitor also pointed out that Mr. Oliver, who had been corresponding with the CAC on behalf of the employer, was nominated as the appeal officer in the letter and therefore it seemed unlikely that he would be unaware of the dismissal of that seasonal member of staff or of the 30-40 seasonal staff who they were told were dismissed in the previous week. The Union's Solicitor said they understood all of them had started working in around March 2017 i.e. 6 months ago.

22. The Employer in an email dated 29 September 2017 stated that temporary contracts were not issued anymore and that the fact that they had had a downturn of work, and were allowing some people to exit the company, was nothing to do with giving people temporary contracts. The Employer also denied that 30 to 40 people were dismissed from the Company in the previous week.

23. In a letter received from the Union's Solicitor dated 6 October 2017 he stated that his client disputed the Employer's claim that there were 477 hourly paid employees at the Atherstone site who were retained on non-seasonal full time or part-time contracts and who were not seasonal workers; workers on contracts of less than 6 months duration; line leaders; supervisors; or managers and their instruction was that the number was around 300. The Union's Solicitor enclosed four statements from staff supporting the Union's assertion. The

Union's Solicitor stated that their client's ability to gather evidence was hampered by the fact that the definitive records were within the Employer's control and protected by various duties of confidentiality, however, even the evidence provided directly contradicted Mr. Oliver's statement that temporary staff were neither hired nor fired. The Union's Solicitor said that the Union believed that the Employer's figures were unreliable.

24. In an email dated 9 October 2017 the Employer stated that in respect of the four statements provided by the Union, one was from a worker who no longer worked there, he had been dismissed, one had a disciplinary action against them and one currently had a grievance being heard. The Employer asked whether taking that into account could the panel reasonably accept that the statements about the Company would be fair and unbiased. The Employer stated that they had had no agency workers for weeks and would happily supply a statement from their agency supplier to confirm that.

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

25. The Employer in an email dated 28 September 2017 stated that they did not agree the proposed bargaining unit and although the members constituted just over 10% of the proposed bargaining unit, there was not a majority.

26. In the letter received from the Union's Solicitor dated 6 October 2017 it was stated that their argument was without prejudice to their primary position that the number of employees that the employer stated were within the bargaining unit was wrong.

27. In respect of the 10% membership the Union's Solicitor said that the membership and support checked showed that the Union had 14.88% of the workers in its proposed bargaining unit in membership and that comfortably passed the 10% minimum level required by paragraph 36.

28. In respect of "likely to" the Union's Solicitor gave a summary of what he suggested the Panel should take into account when deciding whether to accept the Union's application. The Union's Solicitor contended that the majority of the workers in the proposed bargaining unit were **likely** to support recognition.

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 considered carefully the submissions of both parties and all the evidence in reaching its decision.

30. 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. It does not at this stage determine whether the proposed bargaining unit is appropriate.

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.

32. The membership check conducted by the Case Manager showed that 14.88% of the workers were members of the Union which the Employer did not contest. As stated in paragraph 27 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)

33. 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.

34. The Case Manager's check of the Union's petition against the list of 477 workers provided by the Employer indicated that 193 of the 247 petition signatories were identifiable as workers within the proposed bargaining unit, a support level of 40.46%. The identified signatories were composed of 58 union members (12.16%) and 135 non-members in the proposed bargaining unit (28.30%).

35. At this stage the panel does not need to be satisfied that a majority in the proposed bargaining unit actually does support recognition of the union, rather that a majority would be *likely* to do so.

36. The Panel considers that members of the Union would be likely to favour recognition of the Union for collective bargaining (14.88%), as would non-union members who signed the petition (28.30%); giving a total of 43.18%. The Panel notes that the number of employees said by the employer to be within the proposed bargaining unit used for the calculations is larger than the Union believes is appropriate and therefore the numbers could reduce. This will ultimately be resolved at the next stage of the process, if necessary. However, we consider that if there are employees included in the above figures who are seasonal, or on contracts of less than six months duration; so do not fall within the proposed bargaining unit; this, if anything, is likely to increase the percentage of support for recognition as permanent employees are likely to have more to gain from ongoing negotiation conducted on their behalf by the union. In any event, even disregarding that possibility, the bandwagon effect is likely to increase support for recognition as a result of union campaigning and the possibility of recognition drawing closer. On the evidence before it, the Panel has decided, on the balance of probabilities, that 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

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

Panel

Mr James Tayler, Chairman of the Panel

Mr Rod Hastie

Mr Paul Gates OBE

17 October 2017