

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

Apcoa Parking (UK) Limited

Introduction

1. GMB (the Union) submitted an application to the CAC dated 21 November 2017 that it should be recognised for collective bargaining by Apcoa Parking (UK) Limited (the Employer) in respect of a bargaining unit comprising “All members employed on the Lambeth Council Parking Contract”. The application was received by the CAC on 22 November 2017. The CAC gave both parties notice of receipt of the application on 22 November 2017. The Employer submitted a response to the CAC dated 27 November 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, Chairman of the Panel, and, as Members, Ms Gail Cartmail and Mr Arthur Lodge. The Case Manager appointed to support the Panel was Kate Norgate.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 6 December 2017. The acceptance period was extended to 20 December 2017 in order to allow time for a membership and support check to be carried out by the Case Manager. It was further extended to 10 January 2018 for the parties to comment on the subsequent report, and finally extended until 15 January 2018 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 11 July 2017. A copy of that letter was attached to the application. The Union sent a further request for recognition to the Employer on 8 September 2017. A copy also attached to its application. The Union stated that "neither letter received a formal response."

6. The Union stated that there were approximately 1538 workers employed by the Employer, of whom 101 were in the proposed bargaining unit. Of the 101 workers in the proposed bargaining unit the Union stated that 34 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 referred to a petition signed by 51 employees in May 2017, stating "since which numerous attempts had been made to engage the company to achieve recognition informally". The Union stated that the 51 signatures represented a majority of the proposed bargaining unit.

7. The Union stated that the reason for selecting the proposed bargaining unit was because the contract represented a distinct body of staff who were jointly transferred to undertake work within the Borough of Lambeth. The Employer further stated that in the likely event of a change of contract in the future, staff would be expected to be transferred en masse to another

employer. The Employer explained that as such contracts were routinely subject to local bargaining, the proposed bargaining unit would “replicate industry norms”.

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 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 21 November 2017.

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

9. The Employer confirmed that it had received the Union’s written request letter on 12 July 2017. The Employer stated that there was “No response in writing.”

10. The Employer confirmed that it had received a copy of the application form from the Union on 22 November 2017.

11. 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, nor did it agree with the proposed bargaining unit, stating “we do not feel there is a need to have a bargaining unit.”

12. The Employer stated that it employed 118 workers. It further stated that it agreed with the number of workers in the bargaining unit as set out in the Union’s application.

13. When asked to give reasons for disagreeing with the Union's estimate of its membership in the proposed bargaining unit, the Employer stated “we have no evidence either way”.

14. The Employer was asked to give reasons if it did not consider that a majority of the workers in the bargaining unit were likely to support recognition. To this it responded that, whilst 51 employees had signed a petition in May 2017, during this period “we were a new contractor with ‘teething troubles’.” The Employer further stated “We have passed this period and now have no grievances and no outstanding complaints.”

15. The Employer stated that it was not aware of any existing recognition agreement in place

covering any of the workers in the proposed bargaining unit. The Employer also stated that, following receipt of the Union's request, it had not proposed that Acas be requested to assist.

16. Finally, the Employer did not state whether it was aware of any previous application under the Schedule by the Union in respect of this or a similar bargaining unit.

Union's comments on the Employer's response to the application

17. By letter dated 5 December 2017 the Union stated that on 11 July and 8 September 2017 it sent letters to the Employer to which it received no response. The Union explained how it had involved Acas during the process of seeking recognition "in the hope of resolving the matter informally". The Union further stating that the Employer "had not provided details of their dealings with Acas." The Union stated that having gained sufficient support from a petition, it acted in good faith in the hope that matters would be resolved amicably, until it became clear that a voluntary agreement would not be reached.

18. The Union considered the Employer's comments on whether there were any current grievances or complaints to be irrelevant. The Employer stated that "The staff in question signed a petition 'in support of formal GMB recognition for collective bargaining' which shows a desire for an on-going independent voice and expert representation, which recognition can provide."

19. The Union believed the Employer had misunderstood the question concerning the number of workers it employed, the Union stating that the total number was 1583.

20. The Union considered the Employer opposed any form of bargaining rather than disagreeing with the Union's proposed bargaining unit or the number of workers within the bargaining unit.

21. The Union explained that the delay in submitting its application to the CAC following its second formal request for recognition was following the long term absence of the GMB Officer running the process. Finally, the Union asked that the Panel proceed to a membership and support check.

The membership and support check

22. 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 names and dates of birth) and a copy of its 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 12 December 2017 from the Case Manager to both parties. The information from the Union was received by the CAC on 12 December 2017 and from the Employer on 13 December 2017. As the information submitted by the Employer did not contain the names of the individuals in the bargaining unit, following a query raised by the Case Manager, on 15 December 2017 the Employer submitted a further list containing all of the information requested.

23. The Union provided a list of 37 members and the Employer provided a list of 105 workers.

24. The Union's petition consisting of 51 names/signatories was set out as follows:

“Petition in support of formal GMB recognition for collective bargaining

With: Apcoa – Lambeth Contract

GMB is asking your employer to recognise it for collective bargaining.

We have to show the Central Arbitration Committee that a majority of workers favour our application. If you want your employer to recognise GMB for collective bargaining:

We the undersigned support the GMB's request for recognition, to conduct collective bargaining on pay, hours and holidays:

<u>Print Name</u>	<u>Job Title</u>	<u>Date</u>	<u>Signature</u>

“Please help the GMB fight for recognition, sign our petition if you are not already a member join today and help us help you”.

25. The dates on the petition ranged from 12-22 May 2017.

26. The membership check established that there were 34 members of the Union within the bargaining unit which constituted a membership level of 32.4%. The result of the comparison of the Union’s petition with the Employer’s list of workers revealed that a total of 42 workers had indicated that they wanted the Union to be recognised which corresponded to 40% of the bargaining unit. 14 of the 42 were union members (13.3%) and 28 were non-members (26.7%). The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

27. A report of the result of the membership and support check was circulated to the Panel and the parties on 21 December 2017 and the parties were invited to comment on the results by close of business on 3 January 2018.

The parties’ comments on the result of the membership and support check

28. By letter dated 3 January 2018 the Union stated that it had satisfied the statutory requirement in respect of Paragraph 36(1)(a), with 34 union members in the proposed bargaining unit, which represents 32.4% of the proposed bargaining unit. In respect of Paragraph 36(1)(b) the Union stated that it had also satisfied this test as the 42 signatures to the petition represents 40% of the bargaining unit. The Union further stated that the 28 signatories who were non-members, along with the 34 union members, represents 59% of the bargaining unit.

29. The Union explained that its understanding of the Schedule was that at the acceptance stage it is not required to demonstrate that it already enjoys majority support, rather that, if it were to proceed to a statutory ballot, that a majority would be likely to favour recognition. The

Union stating that “GMB has not, of course, had formal access to the workforce.” Finally, the Union stated that the CAC will be aware that membership itself is indicative of support for collective bargaining and non-members may also be “silently supportive” of collective bargaining. It was the Union’s view that the Case Managers report demonstrated that it had met the statutory tests and therefore asked that the CAC accept the application.

30. The Employer provided its comments on the result of the membership and support check, by e-mail dated 4 January 2018. The Employer accepted that the 10% of the workforce were union members. Further, it stated that “it cannot be denied that the petition was signed by colleagues back in May of 2017”. It was the Employer’s view that its colleagues were no longer in support of recognition. The Employer stated that the majority of workers who signed the petition were not union members, nor had they joined the Union since signing the petition back in May 2017, the Employer stating “surely they would have become members if they still felt the same?”

Considerations

31. 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 the evidence referred to above in reaching its decision.

32. 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 therefore whether the admissibility criteria contained in paragraph 36(1)(a) and paragraph 36(1)(b) are met.

Paragraph 36(1)(a)

33. 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.

34. The Panel is satisfied that the check conducted by the Case Manager (described in paragraphs 22 - 26 above), which showed that 32.4% of the workers in the proposed bargaining unit were members of the Union and which the Employer did not contest, 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)

35. 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.

36. The Case Manager's check of the Union's petition against the list of 105 workers provided by the Employer indicated that 42 of the 51 petition signatories were identifiable as workers within the bargaining unit, a support level of 40%. Of those there were 14 union members (13.3%) and 28 non-members in the bargaining unit (26.7%). If the non-union members who signed the petition are added to the number of union members within the bargaining unit this would equate to 62 workers (59%) of the bargaining unit. The Panel considers that union membership provides a legitimate indicator of the views of the workers in the proposed bargaining unit as to whether they would be likely to favour recognition of the Union.

37. The Panel has noted the Employer's comments in paragraph 30. However the Panel considers that it is not unreasonable to expect a campaign for union recognition to last a period of months and for a union to spend some time in gauging the level of support before taking the formal steps required by the statutory process. Furthermore the Panel has not received any evidence to suggest that the signatories to the petition are or were no longer in support of collective bargaining in the period since the petition. On the basis of the evidence before it, the Panel has decided 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

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

Panel

Mr Charles Wynn-Evans, Chairman of the Panel

Ms Gail Cartmail

Mr Arthur Lodge

15 January 2018