

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:

Public and Commercial Services Union (PCS)

and

DOC Cleaning Ltd

Introduction

1. PCS (the Union) submitted an application to the CAC dated 13 February 2017 that it should be recognised for collective bargaining by DOC Cleaning Ltd (the Employer) for a bargaining unit comprising “All staff employed by DOC Cleaning to deliver the cleaning contract within the National Gallery” located at Trafalgar Square, WC2N 5DN. The application was received by the CAC on 13 February 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 20 February 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, chairing the Panel, and, as Members, Mr David Bower and Ms Bronwyn McKenna. 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 27 February 2017. The acceptance period was extended to 15 March 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 18 November 2016 by email and recorded delivery. A copy of that letter was attached to the application. The Union stated that the Employer's response was sent to them on 23 November 2016 saying that unfortunately that was not something that they were in a position to consider and therefore needed to reject their offer. The Union stated that the Employer also said that staff members were free to make their own choices but as a company they were not, nor did they want to be, affiliated to any trade union. A copy of the Employer's response dated 23 November 2016 was also attached to the application.

6. The Union stated that it did not know the number of workers employed by the Employer but in the proposed bargaining unit there were 35 workers, of whom 22 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 the majority of workers in the bargaining unit were already in the PCS and that they had a petition which they could supply, if required, signed by 25 members of staff in support of the PCS application for statutory recognition to represent workers in the bargaining unit..

7. The Union stated that the reason for selecting the proposed bargaining unit was because the staff employed by DOC Cleaning Ltd to work at the National Gallery were a discreet group of workers who were employed specifically to work on the National Gallery contract.

The Union also stated that DOC Cleaning Ltd had a specific contract with the Gallery and had held this contract for more than 25 years with the same National Gallery site manager.

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 13 February 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 19 November 2016. The Employer confirmed that it had responded in writing and enclosed a copy of that letter rejecting the union's request for recognition which was dated 23 November 2016.

10. The Employer confirmed that it had received a copy of the application form from the Union on 13 February 2017.

11. The Employer stated that, before receiving a copy of the application form from the Union, it had not agreed the bargaining unit with the Union. Subsequently when asked do you agree with the proposed bargaining unit the Employer answered "yes".

12. The Employer stated that it employed 1207 workers and that it did not agree with the number of workers in the bargaining unit, as defined in the Union's application, and that in the National Gallery site they had 36 employees.

13. The Employer stated that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit. All further questions on the response form the Employer had answered by putting N/A against.

The membership and support check

14. 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 22 February 2017 from the Case Manager to both parties. The information from the Employer was received by the CAC on 24 February 2017 and from the Union on 27 February 2017.

15. The Union provided a list of 22 members and the Employer provided a list of 38 workers. Two workers were listed as Casual and in a Notes column alongside these two workers it stated “cover maternity leave”. In an exchange of emails between the Case Manager and the Employer details of the two workers on maternity leave were given and it was confirmed that the 2 staff members covering maternity were casual workers working directly to DOC Cleaning. As all 4 of these workers were employed in the bargaining unit they have been included in the check.

16. The Union’s petition consisting of 25 names/signatories was set out as follows with dates ranging from 11/11/16 to 6/12/16:

We the undersigned support the PCS trade union applying for statutory recognition to represent workers employed at National Gallery by DOC Cleaning Ltd

NAME	SIGNATURE	DATE

17. The membership check established that there were 18 members of the Union within the bargaining unit; a membership level of 47.37%. The comparison of the Union’s petition with the Employer’s list of workers revealed that a total of 18 workers (1 name/signature being

unreadable and 6 not appearing on the Employer's list) had indicated that they wanted the Union to be recognised which corresponded to 47.37% of the bargaining unit. 16 of the 18 were union members (42.11%) and 2 were non-members (5.26%).

18. A report of the result of the membership and support check was circulated to the Panel and the parties on 3 March 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.

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

19. No comments were received from the Union and in an email dated 9 March 2017 the Employer confirmed that they had no further comments.

Considerations

20. 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.

21. 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.

Paragraph 36(1)(a)

22. 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.

23. The membership check conducted by the Case Manager showed that 47.37% of the workers in the proposed bargaining unit were members of the Union which the Employer did not contest. As stated in paragraph 18 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)

24. 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.

25. The Case Manager's check of the Union's petition against the list of 38 workers provided by the Employer indicated that 18 of the 25 petition signatories were identifiable as workers within the bargaining unit, a support level of 47.37%. This is the same as the level of Union density shown by the check. The signatories were composed of 16 union members (42.11%) and 2 non-members in the bargaining unit (5.26%). At this stage we do 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. In considering this we note the level of membership and petition support, including the fact that some support comes from those not in membership of the Union. We further note that the size of the bargaining unit used for the calculations is enlarged through the inclusion of two casual staff covering maternity leave and that numbers are likely to change. At the time of application the Union believed it had a majority of the proposed bargaining unit in membership. Some 4 names on the Union membership list and 6 names on the petition were not found on the current list of employees which suggests turnover. There is no evidence to suggest new employees would differ from those leaving in their propensity to support/not support recognition of the union. 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

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

Panel

Professor Linda Dickens MBE, Chairman of the Panel

Mr David Bower

Ms Bronwyn McKenna

15 March 2017