

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DECISION ON WHETHER THE APPLICATION IS VALID FOLLOWING
DETERMINATION OF THE BARGAINING UNIT

The Parties:

Unite the Union

and

Skanska

Introduction

1. Unite the Union (the Union) submitted an application dated 18 September 2017 to the CAC that it should be recognised for collective bargaining purposes by Skanska (the Employer) in respect of a bargaining unit comprising "General Operatives, Traffic Management, Aborist, Road Worker, Ganger, Groundman, Highways Operative, Electrician, Storeman, Overhead Lineman, Labourer, JCB Driver, Supervisor, Truck Driver and Apprentice." The location of the bargaining unit was given as "Hampshire County Council Contract – street and highways maintenance." The application was received by the CAC on 19 September 2017 and the CAC gave both parties notice of receipt of the application on 20 September 2017. The Employer submitted a response to the CAC dated 28 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 Professor Gillian Morris, Panel Chair, and, as Members, Mr Simon Faiers and Mr Malcolm Wing. The Case Manager appointed to support the Panel was

Kate Norgate.

3. By a decision dated 16 October 2017 the Panel accepted the Union's application. No agreement was reached between the parties as to the appropriate bargaining unit. Following a hearing held on 7 December 2017 the Panel decided, by a decision dated 19 December 2017, that the appropriate bargaining unit was "Operatives; Grounds Maintenance Operative; Highways Maintenance Operative; Stores Person; Ganger; Depot Supervisor; and Apprentices who transferred to Skanska under TUPE, working on the Hampshire County Council Highways Contract".

Issues

4. The appropriate bargaining unit determined by the Panel differs from that proposed by the Union in its application. The Panel is therefore required by paragraph 20 of Schedule A1 to the Act (the Schedule) to decide whether the Union's application is invalid within the terms of paragraphs 43 to 50 of the Schedule. In a letter dated 19 December 2017 the Case Manager invited each party to make submissions on this matter for consideration by the Panel.

5. In a letter to the Case Manager dated 20 December 2017 the Employer made the following comments on the validity tests:

- a) Is there an existing recognition agreement covering any of the workers within the new bargaining unit. "No".
- b) Is there 10% union membership within the new bargaining unit? "According to Unite, although we cannot substantiate this".
- c) Are the majority of the workers in the new bargaining unit likely to favour recognition? "We do not believe so as there has not been a ballot, and the petition information provided by Unite was from prior to Skanska becoming the employer on 1 August 2017. Our employee engagement with this group during our first 5 months on this contract has been very positive".
- d) Is there a competing application, from another union, where their proposed bargaining unit covers any workers in the new bargaining unit"? "No".
- e) Has there been a previous application in respect of the new bargaining unit? "Not to our knowledge".

6. In a letter to the Case Manager dated 20 December 2017 the Union stated that it understood from the Panel's decision that the only change from the bargaining unit proposed by the Union was the removal of the apprentices who were not TUPE-transferred to the Employer and that there were currently no such apprentices working on the Hampshire Contract. On that basis the Union gave the following comments on the validity tests:

- a) Is there an existing recognition agreement covering any of the workers within the new bargaining unit. "No".
- b) Is there 10% union membership within the new bargaining unit? "Yes".
- c) Are the majority of the workers in the new bargaining unit likely to favour recognition? "Yes".
- d) Is there a competing application, from another union, where their proposed bargaining unit covers any workers in the new bargaining unit"? "No".
- e) Has there been a previous application in respect of the new bargaining unit? "No".

Considerations

7. Paragraph 43 of the Schedule states that paragraphs 44 to 50 apply if the CAC has to decide whether an application is valid. In reaching its decision the Panel has taken into account the submissions of both parties and all the other evidence before it.

8. The Panel is satisfied that the application is not rendered invalid by any of the provisions in paragraphs 44 and 46 to 50 of the Schedule. The remaining issues for the Panel to decide is whether the application is invalid under paragraph 45. Paragraph 45 provides that the application in question is invalid unless the CAC decides that –

- (a) members of the union constitute at least 10 per cent of the workers constituting the bargaining unit decided by the CAC,¹ and
- (b) a majority of the workers constituting the bargaining unit decided by the CAC would be likely to favour recognition of the union as entitled to conduct collective

¹ Paragraph 45 uses the term "relevant bargaining unit", defined in paragraph 44(2)(b) as "the bargaining unit agreed by the parties or decided by the CAC".

bargaining on behalf of the bargaining unit.

To assist the determination of these criteria for the purposes of its decision on whether the application should be accepted the Panel proposed an independent check by the Case Manager of the level of union membership within the proposed bargaining unit and of a petition compiled by the Union. A detailed account of this check is given in paragraphs 17-20 of the acceptance decision.² The list supplied by the Employer indicated that there were 133 workers in the Union's proposed bargaining unit. The list of members supplied by the Union contained 67 names. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was 56, a membership level of 42.1%. The petition supplied by the Union contained 73 names and signatures, of which 63 were in the proposed bargaining unit, a figure that represents 47.4% of the proposed bargaining unit. Of those 63 signatories, 28 were members of the Union (21.1% of the proposed bargaining unit) and 35 were non-members (26.3% of the proposed bargaining unit). A report of the result was circulated to the Panel and the parties on 6 October 2017.

9. The distinction between the Union's proposed bargaining unit, which was the subject of the membership and support check described above, and the bargaining unit determined by the Panel lies in the fact that the latter includes only those apprentices working on the Hampshire County Council (HCC) Highways Contract who transferred to the Employer under TUPE and not apprentices working on that contract who did not transfer.³ Evidence given by the Employer at the hearing to assist the Panel to determine the appropriate bargaining unit confirmed that all the apprentices currently working on the HCC Highways Contract had transferred from the previous contract-holder, Amey.⁴ The Employer has not provided any evidence that any additional apprentices have been employed since the hearing on 7 December 2017 nor is there any evidence before the Panel that the size or composition of the bargaining unit has changed substantially in any other respect since the list of workers was provided by the Employer for the purposes of the October 2017 check. The Panel therefore considers it reasonable to rely on the figures contained in that check for the purposes of this decision.

² TURI/1023(2017), 16 October 2017.

³ It was accepted by the parties that the remaining changes constituted changes in nomenclature only resulting from the TUPE transfer and as such constituted a clarification rather than a change in the bargaining unit: see TURI/1023/2017, 19 December 2017, paragraph 7.

⁴ Above, paragraph 16.

Paragraph 45(a)

10. Paragraph 45 provides that the application in question is invalid unless the CAC decides that members of the union constitute at least 10 per cent of the workers constituting the bargaining unit decided by the CAC. As stated in paragraph 8 above, the membership check conducted by the Case Manager showed that 42.1% of the workers in the proposed bargaining unit were members of the Union. 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 45(a) of the Schedule.

Paragraph 45(b)

11. Paragraph 45(b) provides that the application in question is invalid unless the CAC decides that a majority of the workers constituting the bargaining unit determined by the CAC would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit. The Panel notes that the support check conducted by the Case Manager showed that 47.4% of the workers in the proposed bargaining unit (63 out of 133 workers) had signed a petition in support of recognition of the Union (see paragraph 8 above). Of those who had signed the petition, 28 were union members (21.1% of the proposed bargaining unit) and 35 were non-members (26.3%). The check also showed that the level of Union membership is 42.1%. The Panel considers that, in the absence of evidence to the contrary, union membership provides a legitimate indicator of the views of workers in the proposed bargaining unit as to whether they would be likely to favour recognition of the Union. No such evidence to the contrary was submitted by the Employer or is otherwise before the Panel in this case. In relation to the Union's petition, the Panel notes the Employer's submission that the petition provided by the Union was conducted prior to workers transferring to it on 1 August 2017⁵ and that its employee engagement with this group during its first five months on the contract had been very positive. However the Panel also notes that the Employer did not provide any evidence to indicate that those who signed the Union's petition had changed their minds on whether they favoured recognition of the Union. In the absence of any evidence to the contrary the Panel considers that the level of union membership and the fact that 35 non-members had signed the Union's petition in favour of recognition, taken together, constitute

⁵ At the bottom of each page of the petition it stated "JUNE/JULY 2017".

sufficient evidence for the Panel to conclude that, on the balance of probabilities, a majority of the workers in the proposed bargaining unit would be likely to favour recognition.

12. 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 bargaining unit decided by the CAC 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 45(b) of the Schedule.

Decision

13. For the reasons given in paragraphs 8-12 above, the Panel's decision is that the application is not invalid and the CAC is proceeding with the application.

Panel

Professor Gillian Morris, Chairman of the Panel

Mr Simon Faiers

Mr Malcolm Wing

29 December 2017