

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DECISION ON FORM OF BALLOT

The Parties:

Unite the Union

and

Skanska

Introduction

1. Unite the Union (the Union) submitted an application to the CAC dated 18 September 2017 that it should be recognised for collective bargaining by Skanska (the Employer) for 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". As the appropriate bargaining unit determined by the Panel was different from that proposed by the Union in its application, the Panel was required by paragraph 20 of Schedule A1 to the Act (the Schedule) to decide whether the Union's application was invalid within the terms of paragraphs 43 to 50 of the Schedule. By its decision dated 29 December 2017 the Panel decided that the application was not invalid and that the CAC would proceed with the application.

4. On 29 December 2017 the Case Manager wrote to the Union to ascertain whether the Union claimed that a majority of the workers in the bargaining unit were members of the Union. In a letter to the CAC dated 8 January 2018 the Union confirmed that it was not claiming majority membership in the bargaining unit.

5. On 10 January 2018 the Panel, not being satisfied that a majority of the workers constituting the bargaining unit were members of the Union, gave notice in accordance with paragraph 23(2) of the Schedule that it intended to arrange for the holding of a secret ballot in which the workers constituting the bargaining unit would be asked whether they wanted the Union to conduct collective bargaining on their behalf. The parties were advised that the Panel would wait until the end of the notification period,¹ as specified in paragraphs 24(2) to (7) of the Schedule, before proceeding with the arrangements for the holding of a ballot. The parties were also asked for their views on the form the ballot should take.

¹ The "notification period", in relation to notification by the union, is the period of 10 working days starting with the day on which the union receives the CAC's notice under paragraph 23(2) or such longer period as the CAC may specify; in relation to notification by the unions and the employer, the period of 10 working days starting with the day on which the last of the parties receives the CAC's notice or such longer period as the CAC may specify: paragraph 24(5),(6).

6. The notification period described in the preceding paragraph elapsed without the Union, or the Union and the Employer jointly, informing the CAC that a ballot was not required.

Issues to be determined

7. The issue to be determined by the Panel is what form the ballot should take. In deciding the form of the ballot (workplace, postal or a combination of the two methods), the CAC must, under paragraph 25(5) of the Schedule, take into account the following matters:

- (a) the likelihood of the ballot being affected by unfairness or malpractice if it were conducted at a workplace or workplaces;
- (b) costs and practicality;
- (c) such other matters as the CAC considers appropriate.

Paragraph 25(6) of the Schedule states that the CAC may not decide that the ballot should be a combination of workplace and postal methods unless there are special factors making such a decision appropriate. Special factors include:

- (a) factors arising from the location of workers or the nature of their employment;
- (b) factors put to the CAC by the employer or the union.

Union's submissions on the form of ballot

8. By a letter to the Case Manager dated 15 January 2018 the Union's Regional Officer stated that he had "met with the Unite reps and a request for a workplace ballot is the preference of Unite." The Union further stated that it noted that "employees who are off sick or on holiday are granted a postal ballot."

Employer's submissions on the form of ballot

9. By a letter to the Case Manager dated 16 January 2018 the Employer stated that it welcomed the ballot as a positive opportunity to ensure that the views of the workforce were understood and fairly represented. The Employer submitted that a postal ballot would offer the best opportunity for all staff to participate. The Employer stated that a postal ballot would mitigate any risk of staff on annual leave or sick leave, or participating in its winter maintenance activity or other duties involving irregular hours, missing the ballot and opportunity to vote. The Employer stated that this was an extremely busy and unpredictable time of year for the Employer, involving winter maintenance and other emergencies on the network, and this in addition to the number of different workplaces involved confirmed its view that a postal ballot would be the best way to ballot staff.

Considerations

10. The Panel has carefully considered the parties' submissions and has decided that, in this case, a postal ballot would be the most appropriate form of ballot on the grounds of costs and practicality. The Panel notes that workers within the bargaining unit are located at one of five different sites.² The Panel considers that arranging a workplace ballot at each of these sites would be disproportionately expensive given the size of the bargaining unit.³ The Panel also notes the itinerant and unpredictable nature of the work carried out by the workers in the bargaining unit, particularly during the winter period. The Panel considers that this element, too, makes a postal ballot more appropriate on grounds of practicability. The Panel notes that neither party submitted that the ballot should take that form of a combination ballot and the Panel does not consider that the conditions for a combination ballot specified in paragraph 25(6) of the Schedule are met.

² See the decision on the determination of the bargaining unit of 19 December 2017.

³ The list supplied by the Employer on 3 October 2017 for the purposes of a membership check at the acceptance stage of the application indicated that there were 133 workers in the Union's proposed bargaining unit. For reasons set out in paragraphs 8-9 of the validity decision of 29 December 2017 the Panel is content to rely on this figure as representing the approximate size of the appropriate bargaining unit determined by the Panel.

11. The Panel notes the Union's submission that, where a ballot is conducted at a workplace, workers who are off sick or on holiday may be granted a postal ballot. For the reasons set out in paragraph 10 above the Panel considers that a postal ballot for all workers is the most appropriate form of ballot in this case. However the Panel thought it may be helpful to the parties to point out that paragraph 25(6A) of the Schedule states that workers who are unable, for reasons relating to them as individuals, to cast their votes in a ballot at the workplace may be given the opportunity to vote by post only if they request it far enough in advance of the ballot for this to be practicable. This means that workers who fall sick only a short time before the conduct of a workplace ballot may not, in the event, be given the opportunity to vote by post.

Decision

12. The decision of the Panel is that the ballot be a postal ballot.

13. The name of the Qualified Independent Person appointed to conduct the ballot will be notified to the parties shortly as will the period within which the ballot is to be held.

Panel

Professor Gillian Morris, Panel Chair

Mr Simon Faiers

Mr Malcolm Wing

24 January 2018