

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:

United Voices of the World

and

City Central Cleaning & Support Services Limited

Introduction

1. United Voices of the World (UVW) (the Union) submitted an application to the CAC dated 10 January 2018 that it should be recognised for collective bargaining by City Central Cleaning & Support Services Limited (CCCSSL) (the Employer) for a bargaining unit comprising “The cleaners employed by CCCSSL on the contract at LHH (Lee Hecht Harrison), 55 Gracechurch Street, EC3V 0EE”. The application was received by the CAC on 11 January 2018. The CAC gave both parties notice of receipt of the application on 15 January 2018. The Employer submitted a response to the CAC dated 17 January 2018 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 Regional Employment Judge Barry Clarke, Chairman of the Panel, and, as Members, Mr Roger Roberts and Ms Judy McKnight CBE. 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 25 January 2018. The acceptance period was extended to 2 February 2018 in order to allow time for the parties to comment on the result 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 13 December 2016 [*sic*]. A copy of that request, which was dated 13 December 2017, was attached to the application. The Union stated that there had been no response from the Employer.

6. The Union stated that the exact number of workers employed by CCCSSL was unknown, however, due to the number of its clients it could claim with confidence that CCCSSL employed more than 21 workers. The Union stated that there were 5 workers in the proposed bargaining unit and all 5 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 100% of the workers in the bargaining unit were members of UVW. The Union stated that if CCCSSL challenged the number of UVW members in the proposed bargaining unit and an agreement was reached between the parties and the CAC then it would welcome the CAC to undertake a statistical check in which UVW would willingly provide evidence to a CAC Case Manager.

7. The Union stated that the reason for selecting the proposed bargaining unit was because the workers in the bargaining unit were all cleaners and had the same pay and terms and conditions of employment as each other.

8. The Union stated that the bargaining unit had not been agreed with the Employer and 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 10 January 2018.

The Employer's response to the Union's application

9. The Employer confirmed that it had received the Union's written request letter on 13 December 2017 and that it had not responded.

10. The Employer stated that it had received a copy of the application form from the Union on 10 January 2018.

11. The Employer stated that it did not agree the proposed bargaining unit. The Employer said that they acted for their client "as contractors as contract cleaners" and had "absolutely no control over setting the pay rate" and that the financial department of their client had that responsibility. The Employer explained that all of the staff were "transferred under TUPE with the same T & C's" and that issue was with the client and as such they could not implement any changes.

12. The Employer stated that they employed 255 workers and that it agreed with the number of workers in the Union's proposed bargaining unit.

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

14. In answer to all other questions the Employer stated "N/A".

The Membership 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). It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists would not be copied to the other party. These arrangements were confirmed in a letter dated 23 January 2018 from the Case Manager to both parties. The information from the Union and Employer was received by the CAC on 23 January 2018. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

16. The list supplied by the Employer indicated that there were 6 workers in the proposed bargaining unit. The list of members supplied by the Union contained 5 names. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was 5, a membership level of 83.33%.

17. A report of the result of the membership check was circulated to the Panel and the parties on 24 January 2018 and the parties were invited to comment on the result.

The parties' comments on the result of the membership check

18. No comments were received from the Union.

19. A letter was received from the Employer dated 25 January 2018 and the relevant points in relation to this decision were that they were "unable to state that the majority of workers in the bargaining unit were unlikely to favour recognition, nor that less than 10% of the workers constituted a relevant bargaining unit".

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 (described in paragraphs 16 and 17 above) showed that 88.33% of the workers in the proposed bargaining unit were members of the Union which was not challenged by the Employer. As stated in paragraph 15 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. For the reasons given in the previous paragraph the level of union membership is 88.33%. The Union did not provide any additional evidence of support for recognition, such as a petition, but the Panel considers

that, in the absence of evidence to the contrary, 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. The Employer did not challenge this point and no evidence to the contrary was provided in this case. 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

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

Panel

Regional Employment Judge Barry Clarke, Chairman of the Panel

Mr Roger Roberts

Ms Judy McKnight CBE

31 January 2018