

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:

UNISON

and

Belle Vue (Manchester) Limited

Introduction

1. UNISON (the Union) submitted an application dated 27 February 2017 to the CAC that it should be recognised for collective bargaining purposes by Belle Vue (Manchester) Ltd (the Employer) for a bargaining unit comprising “School Bus/Coach Drivers and Cleaners”. The location of the bargaining unit was given as The Travel Centre, Discovery Park, Crossley Road, Stockport SK4 5DZ. The application was received by the CAC on 1 March 2017 and the CAC gave both parties notice of receipt of the application on 2 March 2017. The Employer submitted a response to the CAC dated 7 March 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 David Crowe and Mr Gerry Veart. 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 15 March 2017. The acceptance period was extended to 25 March 2017 in order to provide more time for the Panel to consider all the evidence and write up 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.

Summary of the Union's application

5. In its application to the CAC the Union stated that it had sent its formal request letter to the Employer on 13 February 2017. The Union stated that the Employer had responded by a letter dated 16 February 2017, received on 20 February 2017, rejecting the request. A copy of the Union's request and the Employer's letter was attached to the Union's application.

6. When asked whether the Union had made a previous application under the Schedule for statutory recognition for workers in the proposed bargaining unit or a similar unit the Union answered "no". The Union stated that, following receipt of the request for recognition, the Employer had not proposed that Acas should be requested to assist the parties.

7. The Union stated that the total number of workers employed by the Employer was 77. The Union stated that there were 52 workers in the proposed bargaining unit, of whom 39 were union members. When asked to provide evidence that the majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining, the Union stated that it had 39 members within the bargaining unit of 52, which constituted 75% membership of the entire bargaining unit. The Union stated that having 39 members within the bargaining unit would assure that the majority of the proposed bargaining unit would be likely to favour recognition. The Union stated that a petition had been initiated to demonstrate support for recognition amongst the relevant bargaining group and 36 of the 39 members had signed the petition which constituted 92% of the membership. A copy of the petition and of the Union's membership list was attached to the application.

8. The Union stated that the reason for selecting the proposed bargaining unit was that the unit was clearly identifiable and compatible with effective management. The Union stated that the company, its workforce and management structure were all located within one workplace site and the bargaining unit consisted of unambiguous, clear and specific job roles. The Union said that the bargaining unit had not been agreed with the Employer and that, as far as it was aware, there was no existing recognition agreement in force covering any of the workers in the proposed bargaining unit.

9. The Union confirmed that it held a current certificate of independence. The Union stated that it had copied its application and supporting documents to the Employer on 27 February 2017.

Summary of the Employer's response to the Union's application.

10. In its response to the Union's application the Employer stated that it had received the Union's written request for recognition on 14 February 2017 and that it had rejected that request by letter dated 16 February 2017. The Employer attached an unsigned copy of its letter declining that request which was dated 15 February 2017.

11. The Employer stated that it had received a copy of the application form from the Union on 28 February 2017.

12. The Employer stated that it agreed the proposed bargaining unit in as much as the description of the staff within it as School Bus/Coach Drivers was correct. The Employer stated that it was the principle of recognition that was in dispute. The Employer stated that, following receipt of the Union's request, it had not proposed that Acas should be requested to assist.

13. The Employer stated that it employed a total of 82 workers, based on payroll records as at 8 March 2017. The Employer stated that there were 57 drivers and 2 cleaners overall and that the total number of staff in the bargaining unit based on payroll records as at 8 March 2017 was therefore 59. The Employer stated that this figure varied due to the nature of the staff employed. The Employer confirmed that there was no existing agreement for

recognition in force covering workers in the proposed bargaining unit.

14. In answer to the question whether it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer stated that it had no way of knowing the membership levels, other than the information given by the Union. When invited to give its reasons if it did not consider that a majority of workers in the bargaining unit would be likely to support recognition, the Employer stated that, based on the total numbers in the bargaining unit being 59, if the membership numbers were correct as being 39, it would appear as though the Union had a total membership of 66% of the bargaining unit. The Employer stated that, even if the membership numbers were correct, however, it could not be assumed that because a person joined a union that he or she automatically wished their employer to formally recognise that union.

15. The Employer stated that there had been numerous reports of intimidation and bullying of staff members by a small minority of Union members working within the bargaining unit, some of whom had a nominated status from the Union through training. The Employer said that the victims of such bullying had asked that such incidents were not taken further due to fear of recriminations but the Employer attached a document (appendix 2) setting out eight sets of complaints, five of which were anonymous. The Employer also said that it had additional cast iron evidence which it could produce at a hearing but that disclosing it now would add to more bullying tactics in the workplace which it was not prepared to tolerate. The Employer said that the Union's petition appeared to show that 36 of its members were in favour of recognition which equated to 61% of the bargaining unit. The Employer said that it must seriously question why these aggressive tactics had been adopted if membership and support levels were as suggested. The Employer stated that it was extremely concerning to note that some of the complaints of bullying and intimidation had been given by individuals whose names appeared on the Union's list. The Employer said that this led it to submit that there was not the level of support for recognition suggested by the Union's petition; that support for recognition had not been freely given; and that a number of those listed on the petition were not in fact fully in favour of recognition.

16. The Employer explained that all of its directors had built the company from the ground upwards, starting as drivers, and still helped out on the front line as and when required, working alongside their colleagues in the driving team or cleaning department. The

Employer said that it had a long track record of close employee relationships, demonstrated through an unparalleled degree of openness throughout the business. The Employer said that an open-door policy direct to supervisors, directors and HR had always been, and remained, in place and for the last 20 years it had enjoyed an excellent working relationship with all its workers. The Employer said that it was not perfect but that it did try to address any issues, and had prospered during recession times unlike many businesses in its neighbourhood from its industry. The Employer said that it had continually increased pay and improved conditions which were amongst the best in the industry.

17. In a further email received from the Employer dated 8 March 2017 the Employer enclosed 15 printed forms signed by individual staff who the Employer said had requested to be withdrawn from anything to do with the Union. Each form was on the Employer's headed paper and read as follows:

WITHOUT PREJUDICE

I the undersigned do not agree/support the proposed bargaining unit or recognition of Unison the Union at my workplace Belle Vue (Manchester) Limited.

I previously signed a support petition in support of this matter without fully understanding the concept behind the proposal and wish my signature to be removed from this document forthwith.

Signed

Name (Print)

Date

Witnessed by:

Signed:

Summary of the Union's comments on the Employer's response

18. In a letter to the CAC dated 10 March 2017 the Union said that it was concerned that the increased number of workers in the bargaining unit which the Employer quoted included other grades with driving duties who were not within the School Bus / Coach Drivers and Cleaners grades and workers employed on an ad hoc basis. The Union stated that two further employees had joined the Union since the application to the CAC was submitted, bringing its total membership in the bargaining unit to 41, and that evidence of this could be provided to the CAC. The Union said that this gave a membership density of 69% of the bargaining unit even based on the disputed figure of 59 workers in the bargaining unit used by the Employer. The Union also stated that an additional four employees within the bargaining unit had signed its petition, bringing the total number of signatories to 40.

19. The Union denied that coercion or intimidation had taken place in obtaining signatures for its petitions and said that since its formal application had been submitted to the CAC its members had been singled out and subjected to coercion and duress by senior managers within the Employer. The Union said that this had included the use of ad hoc disciplinary procedures directed towards union members; coercion of members to sign a counter-petition with implied threats and duress; physical threats towards union members referred to in Appendix 2 of the Employer's response (see paragraph 15 above) ; defamatory information concerning a Union steward which had been posted publically; and direct intimidation towards a steward.

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. The Union attached to its application a copy of its membership list which contained the names and addresses of 39 members and the Employer did not dispute that these members were currently within the proposed bargaining unit. The Employer stated that the proposed bargaining unit contained a total of 59 workers as of 8 March 2017. The Panel notes that the Union has queried whether this figure includes workers who are outside its proposed bargaining unit but the Panel has not found it necessary for the purposes of applying the statutory tests at this stage of the procedure to establish whether the Union's concerns are justified and is prepared to rely on the figure of 59 for these purposes. The Panel also notes that the Union has stated that a further two workers have joined the Union since its application was submitted, although their names were not disclosed. The Panel has not sought to verify whether these workers are members of the proposed bargaining unit as it was not necessary to do so in the context of this decision. On the basis that there are 39 Union members within a bargaining unit of 59 workers the level of union membership is 66.10%. 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)

23. 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. As stated in paragraph 22 above the Panel accepts for the purposes of this decision that the level of union membership is 66.10%. 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. In this case 12 of the 15 workers who signed the forms opposing recognition submitted by the Employer (see paragraph 17 above) appear on

the list of members provided by the Union. This leaves 27 members out of a bargaining unit of 59 workers – 45.76% of the bargaining unit – who are not among those whose names appear on the forms opposing recognition. The Panel considers that these 27 workers would be likely to favour recognition on the basis of their Union membership alone. The Panel notes that these workers signed the Union’s petition in favour of recognition. The Panel also notes the Employer’s concerns, set out in paragraph 15 above, about the circumstances in which the signatures to this petition were obtained. The Panel has not relied on this petition in reaching its conclusion and makes no findings as to whether the Employer’s concerns are justified.

24. There are 20 workers in the proposed bargaining unit who do not appear on the list of members attached to the Union’s application to the CAC. Three of these 20 workers signed the forms opposing recognition submitted by the Employer. It is the Panel’s experience that among the 17 remaining workers who did not appear on the Union’s list there will be workers who would be likely to favour recognition of the Union even if they are not currently Union members.

25. 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.

26. The Panel notes the Union’s concerns, set out in paragraph 19 above, that its members had been coerced into signing the Employer’s counter-petition by senior managers. In the light of its findings set out in paragraphs 23 and 24 above the Panel has not been required to investigate the circumstances in which these signatures were obtained. The Panel also notes that the Union has alleged other acts of coercion and duress by the Employer against its members and the Employer has alleged that there have been acts of bullying and intimidation by the Union. The Panel has made no findings in relation to any of these allegations and they have played no part in its decision.

Decision

27. For the reasons given in paragraphs 21-25 above, the Panel’s decision is that the

application is accepted by the CAC.

Panel

Professor Gillian Morris, Chairman of the Panel

Mr David Crowe

Mr Gerry Veart

21 March 2017