

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

The Parties:

BFAWU

and

Wealmoor Ltd

Introduction

1. BFAWU (the Union) submitted an application to the CAC dated 7 September 2017 that it should be recognised for collective bargaining by Wealmoor Ltd (the Employer) for a bargaining unit comprising: “All hourly paid employees who are retained on non-seasonal full-time or part-time contracts. We do not seek recognition in respect of seasonal workers; workers on contracts of less than 6 months duration; line leaders; supervisors or managers”. The bargaining unit was stated to be at the company’s site at the Industrial Estate, Atherstone on Stour, Stratford-upon-Avon, Warwickshire CV37 8BJ. The application was received by the CAC on 11 September 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 14 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 Mr James Tayler, Chairman of the Panel, and, as Members, Mr Rod Hastie and Mr Paul Gates OBE. The Case Manager appointed to support the Panel was Linda Lehan.

3. By a decision dated 17 October 2017 the Panel accepted the Union's application. The parties then entered a period of negotiation in an attempt to reach agreement on the appropriate bargaining unit. As no agreement was reached the parties were invited to supply the Panel with, and to exchange, written submissions relating to the question of the determination of the appropriate bargaining unit and for which a hearing was held on 3 January 2018. By a decision dated 12 January 2018 the Panel determined that the appropriate bargaining unit should consist of "all hourly paid employees who are retained on non-seasonal full-time or part-time contracts excluding seasonal workers; workers on contracts of less than 6 months duration; line and team leaders; supervisors or managers at the Industrial Estate, Atherstone on Stour, Stratford-upon-Avon, Warwickshire CV37 8BJ".

4. As the determined bargaining unit differed from that proposed by the Union, the Panel was required by paragraph 20 of the Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992 (the Schedule) to determine whether the Union's application was valid or invalid within the terms of paragraphs 43 to 50 of the Schedule. Having carefully considered the parties' submissions the Panel reached its decision promulgated on 26 January 2017, that the application was not invalid for the purposes of paragraph 20 of the Schedule and that the CAC would therefore proceed with the application.

Issues

5. According to the Case Manager's report dated 17 January 2018, the number of workers in the determined bargaining unit was 377 and the number of Union members in the bargaining unit was 68, a membership level of 18.04%. On 26 January 2018 the Panel, not being satisfied that a majority of the workers constituting the agreed bargaining unit were members of the Union, gave notice in accordance with paragraph 23(2) of Schedule A1 to the Act (the "Schedule"), that it intended to arrange for the holding of a secret ballot and the parties were asked for their views on the form the ballot should take. The Panel also advised the parties that it would wait until the end of the notification period of ten working days, as specified in paragraph 24(5) and 24(6), before arranging a secret ballot.

6. The notification period under paragraph 24(5) and 24(6) of the Schedule ended on 9 February 2018. The CAC was not notified by the Union or by both parties jointly that they did not want the ballot to be held, as per paragraph 24(2).

Union's submissions on the form of ballot

7. In a letter dated 2 February 2018 the Union stated that its preferred option would be a postal ballot as, in its view, the site operating 24/7 would complicate running a workplace ballot. The Union stated that a postal ballot was invariably less expensive and was also a convenient way of minimising any risk of intimidation (perceived or actual). The Union said that the Atherstone site was not a neutral environment for a vote to take place and enclosed a notice which the employer had displayed. The Union claimed that the notice contained inflammatory and inaccurate statements designed to reduce the Union's credibility. The Union stated that the strong language and intemperate content of the notice was simply a reflection of the environment which the Employer had sought to create in its defence of their application and for that reason felt that the risk of unfairness arising from a workplace ballot was clear and present.

Employer's submissions on the form of ballot

8. In an email dated 5 February 2018 the Employer stated that their preference would be a workplace ballot.

Considerations

9. When determining the form of the ballot (workplace, postal or a combination of the two methods), the CAC must take into account the following considerations specified in paragraphs 25(5) and (6) of the Schedule:

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

10. The parties have put forward two different types of ballot for the Panel to consider. The Union has argued for a postal ballot as it believes running a workplace ballot where a site operates 24/7 would be complicated whereas the Employer has submitted that the ballot should be a workplace ballot although no reasons were given for their preference.

11. The Panel, having carefully considered the parties' submissions, has decided that, on the grounds of cost, because a postal ballot is likely to be considerably cheaper than a workplace ballot, and practicality, because the 24/7 operation would make a fair workplace ballot very difficult to organise, the appropriate form of ballot in this matter would be a postal ballot. In addition, we consider that the intensity of the dispute between the parties shown in the evidence provided by the Union suggests that the Atherstone site may not be a neutral environment for a vote to take place, which could result in unfairness should a workplace ballot take place.

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

Mr James Tayler, Chairman of the Panel

Mr Rod Hastie

Mr Paul Gates OBE

14 February 2018