

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:

Prospect

and

Babcock Mission Critical Services - Offshore Ltd.

Introduction

1. Prospect (the Union) submitted an application to the CAC dated 1 March 2018 that it should be recognised for collective bargaining by Babcock Missions Critical Services – Offshore Ltd (the Employer) for a bargaining unit comprising “For all staff working for Babcock Missions Services – Offshore at all operational locations and undertaking the role of Pilot at any grade or Search and Rescue flight crew at any grade”. The application was received by the CAC on 6 March 2018 and the CAC gave both parties notice of receipt of the application on the same day. The Employer submitted a response to the CAC on 16 March 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 Chair established a Panel to deal with the case. The Panel consisted of Mr Rohan Pirani, Chair of the Panel, and, as Members, Mr Alistair Paton and Mr Paul Gates OBE. 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 20 March 2018. The acceptance period was extended to 13 April 2018 in order to allow time for a membership check to take place, for the parties to comment on the subsequent report and 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's application was sent to the CAC under cover of an email dated 6 March 2018 which was shown to be copied to the Employer. The Union attached to their application a copy of their request letter sent to the Employer dated 4 January 2018 together with a copy of the Employer's response dated 4 January 2018 which stated that they would await formal notification from the CAC and would work in accordance with the appropriate process.

6. The Union confirmed that they had not made a previous application under Schedule A1 for statutory recognition for workers in their proposed bargaining unit or a similar bargaining unit but advised that they had successfully made an application for licensed engineers within the same employment area last year. The Union stated that their bargaining unit was for a separate group of workers although with the same Employer and for the same locations as in their previous application.

7. According to the Union, there are 475 workers employed by the Employer, of whom 166 are in the proposed bargaining unit. The Union stated that the figure of 166 was the figure taken from the 2017 published accounts. Out of the 166 workers in the proposed bargaining unit the Union stated that 104 were members of the Union and as evidence attached part of a spreadsheet giving job title, section description, Employer description and workplace name of the members stating that full details would be available for the

CAC. 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 it ran a survey of pilots in late 2017 and the response to the main question and results about recognition was:

Whether you are a trade union member or not, would you like Prospect to secure collective bargaining rights with Babcock Mission Critical Services so that we could directly negotiate on your pay, working hours and holidays?

Base		91	
Whether you are a trade union member or not would you li.....	Yes, I would like Prospect to be recognised for collective bargaining purposes	89	97.80%
	No, I don't want prospect to be recognised for collective bargaining purposes	2	2.20%

The Union stated that the full survey was available for the CAC case handler but had not been included as it included comments which could be identified to individuals.

8. The location of the bargaining unit was said to be Aberdeen, Sumburg, Blackpool and Norwich. The reason for selecting the proposed bargaining unit, according to the Union, was because they believed that the proposed bargaining unit was compatible with effective management, in that the pilots and the S&R crew were a distinct group of workers with common terms and conditions.

9. The Union stated that the bargaining unit had not been agreed with the Employer and the company had never previously recognised unions. The Union confirmed that it held a current certificate of independence.

The Employer's response to the Union's application

10. The Employer confirmed that it had received the Union's written request letter, by email, on 4 January 2018 and had responded by indicating that they would await formal

notification from the Central Arbitration Committee and would work in accordance with the appropriate process. The Employer sent a copy of their email dated 4 January 2018 to the CAC a few days after submitting their response form.

11. The Employer stated that it had received a copy of the application form from the CAC by email on 6 March 2018.

12. The Employer did not agree with the proposed bargaining unit because it was said to be incompatible with effective management. The Employer stated that their existing mechanism, the Employee Consultation Forum (ECF), was an effective mechanism for dealing with collective consultation and they had brought in significant changes within the business by using that approach. The Employer stated that the ECF was made up of representatives which were split into functional areas. According to the Employer, the representatives from the Pilot function consulted on behalf of all of the 143 employees identified in the Union's proposed bargaining unit.

13. The Employer stated that they employed 454 workers and that it disagreed with the number of workers in the Union's proposed bargaining unit as it contained 143 not 166 as stated by the Union.

14. It was also clarified that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit.

15. 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 disagreed with the Union's estimate of 104 members as the Union had not provided a copy of the survey or a list of members within the bargaining unit who were contacted as part of the Union's survey. The Employer said that they could not confirm whether those contacted as part of the Union's survey fell within the Union's proposed bargaining unit category and therefore could not verify the survey results.

16. As to whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer stated that they did not consider that the majority of workers in the bargaining unit were likely to support recognition referring to

their comments in paragraph 15 above and stating that as the Union had not provided a copy of the survey or a list of members within the bargaining unit who were contacted as part of the Union's survey they were unable to confirm the reliability of the survey.

The Membership Check

17. 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) and a copy of their survey including the names of individual workers who took part in the survey. 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 20 March 2018 from the Case Manager to both parties. The information from the Union was received by the CAC on 23 March 2018 and from the Employer on 21 March 2018. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

18. A copy of the result of the survey carried out by the Union was sent to the CAC Case Manager but more information was required in order to be able to verify the results of the survey. The Union advised the CAC Case Manager that to provide the information required would involve a lot of work and time and therefore as they believed they had a high membership level were happy to rely purely on their membership in order to pass the admissibility tests.

19. The list supplied by the Employer indicated that there were 142 workers in the proposed bargaining unit. The list of members supplied by the Union contained 100 names. According to the Case Manager's report, the number of Union members in the

proposed bargaining unit was 97, a membership level of 68.13%.

20. A report of the result of the membership check was circulated to the Panel and the parties on 27 March 2018 and the parties were invited to comment on the result.

The parties' comments on the result of the membership check

21. No comments were received from the Union.

22. A letter was received from the Employer dated 3 April 2018 in which the Employer stated that they accepted that as at 27 February 2018 it would appear that members of the union constituted at least 10% of the workers in the relevant bargaining unit and assumed that those employees who were members at that date continued to be members.

23. In respect of whether the workers constituting the relevant bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining, the Employer stated that, in their view, employees may well want to take up the benefits of individual membership but believed that the majority were content with the existing forum which was in place for collective consultation purposes.

24. The Employer said that they believed individuals may take union membership for free legal advice, support in disciplinary matters and other factors, but the primary reason was not that they wanted the union to bargain collectively on their behalf. The Employer stated that as set out in their response dated 16 March 2018 the company has an existing and effective mechanism for dealing with collective consultation, the Employee Consultation Forum (ECF). The Employer stated that in their view the majority of workers within the bargaining unit regarded the ECF as an appropriate and effective forum for consultation on matters in respect of which Prospect was seeking recognition. The Employer believed the reason for this was because the ECF had a greater range of influence in terms of representation and represented staff over a wider range of topics than those that would be subject to collective bargaining under a statutory recognition agreement. The Employer stated that they had brought in significant change within the business by using that approach. The Employer said that as set out in their response dated 16 March 2018 the ECF was made up of representatives who were split into functional

areas and the Representatives for the Pilot function consulted on behalf of all the 143 employees identified in the proposed bargaining unit.

Considerations

25. 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.

26. 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)

27. 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.

28. The membership check conducted by the Case Manager showed that 68.13% of the workers in the proposed bargaining unit were members of the Union which the Employer accepted in their letter of 3 April 2018. As stated in paragraph 17 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)

29. 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.

30. As noted above the level of union membership derived from the membership check is 68.13%. The Panel notes that the Union ran a survey of pilots in late 2017 which asked whether the workers would like Prospect to secure collective bargaining rights with Babcock Mission Critical Services so that they could directly negotiate on their pay, working hours and holidays and the results showed that out of 91 workers 89 voted 'yes' and 2 voted 'no'. As stated above more information was required by the CAC Case Manager to be able to verify the exact results of the survey. The Panel also notes the Employer's assertion, in their letter dated 3rd April 2018, that the relevant workers would be more likely to regard the ECF as an appropriate and effective forum for consultation on matters in respect of which Prospect were seeking recognition support recognition but no specific evidence was provided by the Employer. The Panel considers that, in the absence of evidence to the contrary, union membership provides a legitimate and cogent indicator of the likely views of the workers in the proposed bargaining unit as to whether they would be likely to favour recognition of the Union. 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

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

Panel

Mr Rohan Pirani, Chair of the Panel

Mr Alistair Paton

Mr Paul Gates OBE

11 April 2018