

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:

URTU

and

Poundstretcher Limited

Introduction

1. URTU (the Union) submitted an application to the CAC dated 24 April 2018 that it should be recognised for collective bargaining by Poundstretcher Limited (the Employer) in respect of a bargaining unit comprising “The employees at the above named address contracted as ‘HGV Drivers’.” The stated location of the proposed bargaining unit was “Trident Business Park, Neptune Way, Leeds Road, Huddersfield, HD2 1UD. The application was received by the CAC on 25 April 2018. The CAC gave both parties notice of receipt of the application on 25 April 2018. On 2 May 2018 the Employer submitted a response to the CAC, 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 Kenneth Miller, Chairman of the Panel, and, as Members, Ms Fiona Wilson and Mr David Crowe. The Case Manager appointed to support the Panel was Kate Norgate.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 10 May 2018. It was extended to 24 May 2018 in order to allow time for a membership and support check to be carried out by the Case Manager, for the parties to comment on the subsequent report, 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 14 March 2018. A copy of that letter was attached to the application. The Union stated that it received no response from the Employer.

6. The Union stated that there were approximately 6000 workers employed by the Employer, of whom 36 were in the proposed bargaining unit. Of the 36 workers in the proposed bargaining unit the Union stated that 19 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 referred to a "Redacted branch listing" a copy of which it had attached to its application. The Union also attached to its application a copy of a petition, which was headed "Declaration of support for URTU Recognition at: Poundstretcher, Trident Business Park, Neptune Way, Leeds Road, Huddersfield, HD2 1UA."

7. The Union stated that the reason for selecting the proposed bargaining unit was because "it is a specialist trade union, which organises solely in the road transport / logistics industry and the vast majority of its members are HGV/LGV Drivers."

8. The Union stated that the bargaining unit had not been agreed with the Employer. It further stated that 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 24 April 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 15 March 2018. The Employer stated that it did not respond to the Union's request.

10. The Employer confirmed that it had received a copy of the application form from the Union on 26 April 2018.

11. The Employer stated that it had not, before receiving a copy of the application form from the Union, agreed the bargaining unit with the Union, but it did now agree with the proposed bargaining unit.

12. The Employer stated that it employed 6000 workers. It further stated that it agreed with the number of workers in the bargaining unit as set out in the Union's application.

13. When asked to give reasons for disagreeing with the Union's estimate of its membership in the proposed bargaining unit, the Employer stated "No, petition supplied by the Union states 28."

14. The Employer was asked to give reasons if it did not consider that a majority of the workers in the bargaining unit were likely to support recognition, to this it responded "N/A".

15. The Employer stated that it was not aware of any existing recognition agreement in place covering any of the workers in the proposed bargaining unit. The Employer also stated that, following receipt of the Union's request, it had not proposed that Acas be requested to assist.

16. Finally, when asked whether it was aware of any previous application under the Schedule by the Union in respect of this or a similar bargaining unit, the Employer responded "N/A".

Further Comments from the Employer

17. On 4 May 2018 the CAC copied the Employer's response to the application to the Union.

18. By letter dated 4 May 2018 the Panel also asked the Employer to clarify its answer to question 10 of the response form, on whether it disagreed with the Union's estimate of membership in the proposed bargaining unit.

19. The Employer responded by e-mail dated 8 May 2018 in which it stated that did not have sight of the figures and therefore asked that the Panel check the level of union membership and inform the Employer.

The membership and support check

20. 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 names and dates of birth) and a copy of its petition. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and petition would not be copied to the other party. These arrangements were confirmed in a letter dated 9 May 2018 from the Case Manager to both parties. The information from the Union was received by the CAC on 9 May 2018 and from the Employer on 15 May 2018.

21. The Union provided a list of 28 members and the Employer provided a list of 38 workers.

22. The Union's petition consisting of 38 names/signatories was set out as follows:

"Declaration of support for URTU Recognition at:

**Poundstretcher,
Trident Business Park,**

Neptune Way, Leeds Road, Huddersfield, HD2 1UA.

In signing this schedule, I confirm that:

- a) I am employed by Poundstretcher at the address above as a HGV Driver,
and;

- b) I am declaring my support for the United Road Transport Union's request
for union recognition at Poundstretcher, Huddersfield depot."

<u>Name</u>	<u>Position</u> (e.g. 'HGV Driver')	<u>Date</u>	<u>Signature</u>

23. The dates on the petition ranged from 3 – 19 May 2018.

24. The membership check established that there were 21 members of the Union within the bargaining unit which constituted a membership level of 55.3%. The result of the comparison of the Union's petition with the Employer's list of workers revealed that a total of 27 workers had indicated that they wanted the Union to be recognised which corresponded to 71% of the bargaining unit. 20 of the 27 were union members (52.6%) and 7 were non-members (18.4%). The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

25. A report of the result of the membership and support check was circulated to the Panel and the parties on 16 May 2018 and the parties were invited to comment on the results by close of business on 18 May 2018.

The parties' comments on the result of the membership and support check

26. By e-mail dated 16 May 2018 the Union stated that it had no comments to make on the report.

27. No comments were received from the Employer.

Considerations

28. 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 the evidence referred to above in reaching its decision.

29. 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 therefore whether the admissibility criteria contained in paragraph 36(1)(a) and paragraph 36(1)(b) are met.

Paragraph 36(1)(a)

30. 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.

31. The Panel is satisfied that the check conducted by the Case Manager (described in paragraphs 20 - 24 above), which showed that 55.3% of the workers in the proposed bargaining unit were members of the Union and which the Employer did not contest, 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)

32. 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.

33. As well as establishing that 55.3% of the workers in the proposed bargaining unit were union members, the Case Manager's check of the Union's petition against the list of workers provided by the Employer indicated that 27 of the 28 petition signatories were identifiable as workers within the bargaining unit, a support level of 71%. Of those there were 20 union members (52.6%) and 7 non-members in the bargaining unit (18.4%). The Employer has not challenged the validity of the petition. Given the level of union membership and support demonstrated by the petition, and in full consideration of the evidence made available, the Panel finds that the majority of the workers would be likely to favour recognition of the Union for the purposes of collective bargaining. The Panel is therefore satisfied that the test required by paragraph 36(1)(b) of the Schedule has been met.

Decision

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

Panel

Professor Kenneth Miller, Chairman of the Panel

Ms Fiona Wilson

Mr David Crowe

23 May 2018