

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

People First

Introduction

1. UNISON (the Union) submitted an application to the CAC on 29 May 2018 that it should be recognised for collective bargaining by People First (the Employer) for a bargaining unit comprising "Healthwatch Lancashire" based at Leyland House, Lancashire Business Park, Centurion Way, Leyland PR26 6TY. The CAC gave both parties notice of receipt of the application on 31 May 2018. The Employer submitted a response to the CAC dated 15 May 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 Mr James Tayler, Chairman of the Panel, and, as Members, Mr Tom Keeney and Mr Paul Gates OBE. The Case Manager appointed to support the Panel was Nigel Cookson.

Issues

3. 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

4. In its application the Union stated that it had written to the Employer with a formal request for recognition on 3 May 2018 to which no response was received from the Employer. A copy of the Union's letter of 3 May 2018 was enclosed with the application.

5. According to the Union, there was a total of 37 workers employed by the Employer with 10 of these falling within the proposed bargaining unit. The Union stated that it had 8 members within the proposed bargaining unit. 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 said that it could provide evidence of its membership and a signed petition in favour of recognition although for confidentiality reasons it had not included the evidence with its application..

6. When asked to give its reasons for selecting the proposed bargaining unit, the Union stated that Healthwatch Lancashire was a specific commissioned service through Lancashire County Council. Staff within this unit had distinctly different terms and conditions to the Employer's other employees and they also covered a distinctly different area and function to other sections. It explained that Healthwatch Lancashire recently TUPE'd to People First but that the function of the service had not changed. The Union confirmed that the bargaining unit had not been agreed with the Employer. Asked whether the Employer agreed with the Union's figure as to the number of workers in the proposed bargaining unit the Union answered "unknown".

7. The Union stated that the Employer had not proposed that Acas be requested to assist the parties following receipt of the request for recognition. Finally, the Union stated that

there had not been a previous application in respect of this or a similar bargaining unit and there was no existing recognition agreement that covered any of the workers in the proposed bargaining unit.

The Employer's response to the Union's application

8. In its response, when asked to give the date that it had received the Union's formal request for recognition, the Employer stated "May 2018". When asked what its response was, the Employer stated "We made no response".

9. When asked to give the date it received a copy of the application form directly from the Union, the Employer stated this was 31 May 2018. The Employer confirmed that it had not agreed the bargaining unit prior to having received a copy of the completed application form and it confirmed that this was still the case adding that a number of changes had taken place with two staff having handed in their notice and another having been made redundant so the Union's numbers were inaccurate.

10. The Employer stated that it employed a total of 64 workers. The Employer did not agree with the Union's figure as to the number of workers in the bargaining unit and, when asked to give reasons for disagreeing with the Union's estimate of its membership in the bargaining unit, it stated that staff numbers had changed and the Employer did not have the names of the proposed bargaining unit so it could not confirm the number. When asked to give reasons if it did not consider that a majority of the workers in the bargaining unit were likely to support recognition, the Employer answered "N/A".

11. The Employer confirmed that there was no recognition agreement in place covering any of the workers in the proposed bargaining unit. When asked whether, following receipt of the Union's request, the Employer had proposed that Acas be requested to assist, the Employer answered "N/A".

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

Membership and Support Check

13. To assist in the application of the admissibility tests, the Panel proposed independent checks of the level of union membership in the proposed bargaining unit and the number of workers in the unit who had signed a petition supporting recognition of the Union. It was agreed with the parties that the Employer would supply to the Case Manager a list of the full names, dates of birth and job titles of workers within the bargaining unit, and that the Union would supply to the Case Manager a list of the full names and dates of birth of the paid up union members within that unit and a copy of its petition. The information from the Union was received by the CAC on 21 June 2018 and from the Employer on 26 June 2018. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and the petition would not be copied to the other party and that agreement was confirmed in a letter from the Case Manager to both parties dated 21 June 2018.

14. The Union provided a spreadsheet bearing the details of nine members. The information provided for each individual was: forename, surname and date of birth and the Union confirmed that all were current members.

15. The Union also provided a petition bearing the names/signatures of eight individuals. The petition carried the following proposition:

Healthwatch Lancashire

We, the undersigned, support recognition of UNISON for collective bargaining on pay, hours and holidays and other terms and conditions of employment.

It was not apparent from the petition as to when it was conducted.

16. According to the Case Manager's report, the number of Union members in the bargaining unit was 6, a membership level of 66.67%. The check of the petition showed that it had been signed by 6 workers in the bargaining unit, a figure which represents 66.67% of the bargaining unit. All of the petition signatories were members of the Union (66.67%).

17. A report of the result of the membership check was circulated to the Panel and the parties on 26 June 2018 and the parties' comments invited.

Parties' comments on the Case Manager's report

18. In an email dated 27 June 2018 the Union stated that it was happy with the contents of the Case Manager's report and it attached a screenshot of an email showing the date the petition was received by the Union from workers in the bargaining unit. The email was dated 8 May 2018.

19. Although invited to do so the Employer did not respond by the deadline set or to date despite the Employer being prompted by the Case Manager.

Considerations

20. In determining whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 3 of this decision are satisfied. The Panel has considered all the evidence submitted by the parties in reaching its decision.

21. 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 and that it was made in accordance with paragraph 11(2) of the Schedule in that before the end of the first period of 10 working-days following the Employer's receipt of the request for recognition, the Employer failed to respond to the request. The remaining issue for the Panel to address is whether the admissibility criteria set out in paragraph 36(1) of the Schedule are met.

Paragraph 36(1)(a)

22. In accordance with paragraph 36(1)(a) of the Schedule the Panel must determine whether members of the Union constitute at least 10% of the workers in the Union's proposed bargaining unit. In this case the Case Manager's check showed that membership in the proposed bargaining unit stands at 66.67%. The Employer has not challenged this finding.

23. It is clear to the Panel that members of the Union constitute at least 10% of the workers in the bargaining unit and this test is accordingly satisfied.

Paragraph 36(1)(b)

24. The test in paragraph 36(1)(b) is whether a majority of the workers constituting the agreed bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit. The Union relied upon its membership density and a petition as evidence that this test was met. The Employer, given the opportunity of challenging the findings of the Case Manager's report, elected not to do so.

25. In view of the results of the Case Manager's comparison and in the absence of any evidence to the contrary, the Panel is of the view that the level of Union membership (66.67%) taken together with the evidence in the form of the petition in support of recognition (66.67%) can be taken as legitimate indicators as to the degree of likely support for recognition of the Union for collective bargaining.

26. The Panel is satisfied that a majority of the workers in the bargaining unit would be likely to support recognition of the Union and the test set out in paragraph 36(1)(b) is therefore met.

Decision

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

Panel

Mr James Tayler, Chairman of the Panel

Mr Tom Keeney

Mr Paul Gates OBE

05 July 2018