

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:

Equality for Workers Union

and

Hamara

Introduction

1. Equality for Workers Union (the Union) submitted an application to the CAC on 26 January 2018 that it should be recognised for collective bargaining by Hamara (the Employer) for a bargaining unit comprising "of employees who work in health and social care, training, healthcare, youthcare and business development (which includes catering)". The location of the bargaining unit was given as the Hamara Centre, Tempest Road, Leeds LS11 6RD. The CAC gave both parties notice of receipt of the application on 29 January 2018. The Employer submitted a response to the CAC dated 31 January 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 Barry Clarke, Chairman of the Panel, and, as Members, Mr

David Bower and Ms Virginia Branney. 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 said that it had written to the Employer with a formal request for recognition on 7 November 2017 and again on 15 November 2017 by email. The Employer's response was "We are not interested at this time in entering into a voluntary recognition agreement". The Union attached the two emails to its application.

5. According to the Union, there was a total of 33 workers employed by the Employer with all 33 of these falling within the proposed bargaining unit. Although asked, the Union did not state the number of union 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 evidence could be provided on a confidential basis in due course via the CAC case manager if required.

6. When asked to give its reasons for selecting the proposed bargaining unit, the Union stated that a large majority of Hamara employees were seeking union recognition across all departments at the Hamara Centre. The Union confirmed that the bargaining unit had not been agreed with the Employer.

7. Finally, the Union said 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. The Employer stated that it had received the Union's formal request for recognition on 7 November 2017 and it replied on 15 November 2017 by email refusing the request. A copy of the Employer's email and a further email of 23 November 2017 as well as copies of the emails received from the Union were attached to the Employer's 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 on 12 January 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 still did not agree the bargaining unit.

10. The Employer stated that it employed 74 workers at the site as at 31 January 2018. The Employer did not agree with the Union's figure as to the number of workers in the bargaining unit explaining that it had not received any evidence of the number of workers in the bargaining unit. When asked to give reasons for disagreeing with the Union's estimate of its membership in the bargaining unit, the Employer answered that the Union appeared not to have stated the number of union members it proposed to represent. 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 stated that it did have some doubts at this stage as it did not know the number of union members the Union proposed to represent. There were currently 74 workers at Hamara and, at this stage, the Employer was not confident that all volunteered to be members.

11. The Employer confirmed that there was no recognition agreement in place covering any of the workers in the agreed 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 "No".

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".

Clarification of the number of workers in the proposed bargaining unit

13. The Panel, having had sight of the Employer's response asked the Employer to clarify its answer to the question as to whether or not it agreed with the figure given by the Union as to the number of workers in the proposed bargaining unit. Further, the Employer was asked to confirm the total number of workers that fell within the categories of workers as listed in the Union's definition of its proposed bargaining unit and if the figure differed from that given by the Union, to explain if it was aware of any reason for the difference.

14. In a letter dated 5 February 2018 the Employer stated that it did not agree with the number of people in the proposed bargaining unit. Its finance officer had confirmed that there were 74 workers in these roles at Hamara so the Employer's figures and the union's did not match. The Employer did not know how the Union came to its figure of 33. The Employer provided a breakdown of the 74 as follows: 14 Full time employees, 24 Part time, four Contractors, 29 Sessional and three Other/Casual.

15. There followed a series of exchanges with both parties in an effort to establish the number of workers in the proposed bargaining unit and the employment status of the workers. On 19 February 2018 the Employer provided a further breakdown which set out the employment basis for each of the category of workers in its employ adding that the self-employed workers were responsible for their own tax and NI: 14 Full time employees, 24 Part time employees, four self-employed Contractors, 29 self-employed Sessional workers and three self-employed Other/Casual.

Membership and Support Check

16. 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 comprising those full time and part time employees identified in the paragraph above 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 the full and part time employed 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 survey in support of recognition. The information from the Union was received by the CAC on 23 February 2018 and from the Employer on 26 February 2018. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and the survey 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 February 2018.

17. The Union provided a list of its 18 paid up members giving the name and date of birth for each individual. The Union also provided a survey bearing the names and signatures of 19 workers. The survey was two pages in length and carried the following proposition on the first of the two pages:

HAMARA EMPLOYEE SURVEY

DO YOU WANT EQUALITY FOR WORKERS UNION (EFWU) TO BE THE RECOGNISED TRADE UNION AT HAMARA, TEMPEST ROAD, LEEDS, LS11 6RD.

The following members would like EQUALITY FOR WORKERS UNION (EFWU) TO BE THE RECOGNISED UNION AT HAMARA

Beneath the proposition was a table with spaces for individuals to sign and date against their pre-printed names and job titles. The signatures were dated between 15 December 2017 and 2 January 2018.

18. The Employer provided a list with the names, dates of birth and job titles of 36 workers in its employment: there were 13 full-time employees and 23 part-time employees on the list. Against the name of one of the part-time employees was “Last date of employment 22/02/18” and so this individual was excluded from the check on the basis that they were no longer employed by the Employer.

19. According to the Case Manager's report, the number of Union members in the bargaining unit was 18, a membership level of 51.43%. The check of the survey showed that it had been signed by 18 workers in the bargaining unit, a figure which represents 51.43% of the bargaining unit. All of the 18 signatories were members of the Union.

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

Parties' comments on the Case Manager's report

21. In an email dated 1 March 2018 the Union argued that there were only 32 employees in its proposed bargaining unit rather than the 35 that were on the list provided by the Employer arguing that the HR Officer, the CEO and the PA to the CEO have been included in the figures and the Union wanted to contest why this was so.

22. In a letter dated 6 March 2018 the Employer stated that, with regard to paragraph 36, It wished to comment that if there were 18 Union members then this constituted at least 10% of the workforce. As the Employer did not know who the 18 workers were it could not comment further save it wished the Panel to note that three employees were now longer with the company and they may be part of the 18 Union members. Also, the Employer had received information that some of the 18 have been intimidated into joining the Union.

Considerations

23. 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.

24. 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 informed the Union that it did not accept the request without indicating a willingness to negotiate. 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)

25. 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. The check of membership and support conducted by the Case Manager showed that union membership stood at 51.43%. Even based on the figure of 35 workers in the proposed bargaining unit - the Union has argued that it should be three less although it has not been confirmed that the three individuals it referred to in its comments did appear on the Employer's list - the Union clearly has more than a sufficient density of members to satisfy this test. It is clear to the Panel that members of the Union constitute at least 10% of the workers in the bargaining unit.

Paragraph 36(1)(b)

26. 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. Here the Union relies on its membership density and a survey it conducted which both indicate a level of support of 51.43% although, as mentioned above, the Union has stated that it believed three workers had been included in the Employer's list that it provided for the Case Manager's check and whom the Union wished to exclude. It has not been established whether the three individuals were included in the Employer's list but, on the assumption that they were, then the level of support demonstrated by the survey, still remains at over 50% with these workers included.

27. The Employer has put forward an argument that the bargaining unit now has three fewer workers than at the time of the check and that it has received reports that some workers may have felt intimidated into joining the Union. However, as to the first point, the check is a snapshot of a moment in time to enable the Panel to assess whether the tests under paragraph 36 are satisfied. We accept that changes to the composition of the bargaining unit may well be more or less constant as workers join and depart the company and there would be similar changes in the Union's membership figures as members likewise come and go. But the Panel needs to have a baseline in order to consider whether or not the tests are

satisfied so that it can make a decision and the statutory process can continue to the next appropriate stage. It may be that we revisit membership density at a later date, perhaps if the composition of the bargaining unit changes through either agreement or our determination or if we have to decide whether or to call for a secret ballot to take place. If a check needs to be conducted under either scenario, then as here, it will be based on the data at the time we call for the parties to produce their respective lists.

28. The second point raised by the Employer was that it had received reports that workers felt intimidated into joining the Union. However, no evidence was put forward to support this assertion and without evidence the Panel is unable to assess whether or not the reports are genuine and if so, what effect, if any, there would be on the application of the test under this paragraph.

29. In view of the above and in the absence of any evidence to the contrary, the Panel is of the view that the level of Union membership coupled with the fact that all of the members signed the Union's survey in support of recognition provides us with a reasonable indicator as to the degree of likely support for recognition of the Union for collective bargaining.

30. For the reasons given, the Panel is satisfied that, on the balance of probabilities, 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

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

Panel

Mr Barry Clarke, Chairman of the Panel

Mr David Bower

Ms Virginia Branney

12 March 2018