

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DECISION ON WHETHER THE APPLICATION IS VALID FOLLOWING
AGREEMENT ON THE BARGAINING UNIT

The Parties:

NUJ

and

Springer Nature Limited (Formerly Macmillan Publishers Limited)

Introduction

1. NUJ (the Union) submitted an application to the CAC dated 12 March 2018 that it should be recognised for collective bargaining by Macmillan Publishers Ltd (part of the Springer Nature Group) (the Employer) in respect of a bargaining unit comprising “Editorial and Production staff in content creation roles (as opposed to those working in purely administrative roles) employed in Nature Research Group at the London Campus”. The application was received by the CAC on 12 March 2018. The CAC gave both parties notice of receipt of the application on 13 March 2018. The Employer submitted a response to the CAC dated 19 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 Chairman established a Panel to deal with the case. The Panel consisted of Mr Charles Wynn-Evans, Chairman of the Panel, and, as Members, Miss Mary Canavan and Ms Judy McKnight. The Case Manager appointed to support the Panel was Kate Norgate.

3. By a decision dated 24 April 2018 the Panel accepted the Union's application. Following this decision the parties then reached agreement on the appropriate bargaining unit. The agreed bargaining unit was described as "NRG Editorial; Art Editing group; Copyediting and proofreading groups; Nature Weekly production roles [Simon Gribbins + team of 2]; To be red circled - Production Editors [Derna Brown and Emma Carter's teams]".

Issues

4. Paragraph 20 of Schedule A1 of the Act ("the Schedule") provides that, where an application has, as in the present case, been accepted under paragraph 12 of the Schedule and the parties have agreed an appropriate bargaining unit that differs from the proposed bargaining unit, then the CAC must, within the decision period, decide whether the application is invalid within the terms of paragraphs 43 to 50 of the Schedule. The tests that the Panel must consider under these paragraphs are:-

- is there an existing recognition agreement covering any of the workers within the new bargaining unit? (*paragraph 44*)
- is there 10% union membership within the new bargaining unit? (*paragraph 45(a)*)
- are the majority of the workers in the new bargaining unit likely to favour recognition? (*paragraph 45(b)*)
- is there a competing application, from another union, where their proposed bargaining unit covers any workers in the new bargaining unit? (*paragraph 46*)
- has there been a previous application in respect of the new bargaining unit? (*paragraphs 47 to 49*)

Summary of the parties' comments

5. In a letter to the Case Manager dated 29 June 2018 the Employer informed the Panel that from 1 July 2018, Macmillan Publishers Limited would be renamed Springer Nature Limited. The Employer also made the following comments on the validity tests:

- a) Is there an existing recognition agreement covering any of the workers within the new bargaining unit. "No".

- b) Is there 10% union membership within the new bargaining unit? “On the basis of the membership check undertaken in respect of the original bargaining unit proposed by the NUJ, it seems likely that the first requirement under paragraph 36 of Schedule A1 of 10% membership within the new bargaining unit will be satisfied. However, MPL remains of the view that independent verification of the levels of NUJ membership within the new bargaining unit is essential”.
- c) Are the majority of the workers in the new bargaining unit likely to favour recognition? “MPL has seen no evidence that the second requirement under paragraph 36 of Schedule of having a majority of workers in the new bargaining unit in support of recognition has been satisfied. Whilst MPL has not seen the membership figures in respect of the new bargaining unit, it is submitted that membership of the NUJ represents the high water mark of support for recognition within the bargaining unit. As I have commented on previously, the NUJ have embarked on a lengthy campaign within MPL over the last 18 months or more, during which recognition has been the central plank. Despite repeated requests, the NUJ have produced no evidence that support for recognition extends beyond their members or, indeed, that all of their members support recognition. It remains MPL’s position that independent verification of the level of support for recognition within the new bargaining unit by way of an independent ballot is essential”.
- d) Is there a competing application, from another union, where their proposed bargaining unit covers any workers in the new bargaining unit”? “No”.
- e) Has there been a previous application in respect of the new bargaining unit? “No”.

6. In a letter to the Case Manager dated 3 July 2018 the Union gave the following comments on the validity tests:

- a) Is there an existing recognition agreement covering any of the workers within the new bargaining unit? “There is no existing agreement covering any of the workers in the bargaining unit”.
- b) Is there 10% union membership within the new bargaining unit? “Yes there is 10% membership in the new bargaining unit. Membership information can be provided on a confidential basis to show this”.
- c) Are the majority of the workers in the new bargaining unit likely to favour recognition? “Yes they are. The Union contends that a majority of the employees

in the new bargaining unit are members of the NUJ and union membership provides a legitimate indicator of the views of the workers in the proposed bargaining unit as to whether they would be likely to favour union recognition as the panel noted in its decision dated 24 April 2018 concerning the previous bargaining unit. The NUJ confirms that membership information relating to its members in the new bargaining unit can be submitted to the panel on a confidential basis”.

- d) Is there a competing application, from another union, where their proposed bargaining unit covers any workers in the new bargaining unit”? “No”.
- e) Has there been a previous application in respect of the new bargaining unit? “No”.

The membership check

7. To assist the determination of the two admissibility tests under paragraph 45 (a) and 45 (b) of Schedule A1, namely whether 10% of the workers in the new bargaining unit are members of the Union and whether a majority of the workers in this bargaining unit are likely to favour recognition of the Union, the Panel instructed that the Case Manager carry out a check on the level of union membership within the agreed bargaining unit and the number of workers who had indicated support for recognition of the Union for the purposes of collective bargaining.

8. The parties agreed that the Employer would supply, to the Case Manager, a list of the names of workers within the agreed bargaining unit and that the Union would supply, to the Case Manager, a list of its union members within that unit to enable a comparison to be undertaken. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists would not be copied to the other party and that agreement was confirmed in a letter from the Case Manager to both parties dated 6 July 2018. The information requested from the Union was received by the CAC on 11 July 2018. The information requested from the Employer was received by the CAC on 12 July 2018.

9. The Union provided a list of 197 union members in the agreed bargaining unit and the Employer provided a list of 375 workers.

10. The result of the membership and support check showed that 193 workers in the bargaining unit were members of the Union, giving a membership level of 51.5%. The Panel is satisfied that the check was undertaken appropriately.

11. The report of the result from the membership and support check was circulated to the Panel and the parties on 17 July 2018. Both parties were then invited to comment on the check.

The Union's comments on the result of the membership check

12. By an e-mail dated 20 July 2018 the Union stated that it had no substantive comments to make on the membership report but it simply wished to re-iterate the fact that it provided a legitimate indicator of the views of the workers in the bargaining unit as being likely to favour union recognition.

13. It further stated that it was aware that four of its members were not on the Employer's list, the Union stating that it was unclear of the reason for this. The Union believed the Employer may provide some clarity when commenting on the membership report.

The Employer's comments on the result of the membership check

14. By letter dated 23 July 2018 the Employer stated that its comments on the report were consistent with its previous position. Firstly, that it could not comment on the Union's list of members but remained of the view that independent verification of the Union's membership figures was necessary.

15. Secondly, it was the Employer's view that despite repeated requests the Union had produced no evidence to demonstrate support for recognition. The Employer considered it "absolutely essential" that the level of support within the bargaining unit was independently verified.

Considerations

16. The Panel is satisfied on the evidence available that the application is valid in terms of the tests laid down in paragraphs 44 and 46 to 49 of the Schedule, namely that there is no

existing recognition agreement in force, that there is no competing application and that there has been no previous CAC application in respect of the new bargaining unit. The remaining tests before the Panel are whether, in accordance with paragraphs 45(a) and (b) of the Schedule, 10% of the workers constituting the new bargaining unit are members of the union and whether a majority of the workers constituting the new bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit.

Paragraph 45(a)

17. The membership check conducted by the Case Manager (described in paragraphs 7 - 11 above) showed that 51.5% of the workers in the agreed bargaining unit are members of the Union. As stated in paragraph 10 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 notes the Employer's comments concerning the verification of the Union's membership figures. However, as stated in the Panel's decision dated 24 April 2018, the system of membership and support checks employed to determine whether the admissibility tests are satisfied relies on the good faith and honesty of both parties in supplying information and the Panel has not received any evidence from the parties which casts doubt on the information provided. The Panel has therefore decided that members of the union constitute at least 10% of the workers in the agreed bargaining unit as required by paragraph 45(a) of the Schedule and that it has been established that 51.5% of the workers in the agreed bargaining unit are members of the Union.

Paragraph 45(b)

18. Under paragraph 45(b) of the Schedule, an application is invalid unless the Panel decides that 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.

19. As described in paragraph 17 above, the Panel is satisfied on the basis of the membership check that the union membership density level is 51.5%. The Panel considers that, in the absence of evidence to the contrary, union membership provides a legitimate indicator

of the views of workers in the agreed bargaining unit as to whether they would be likely to favour recognition of the Union. No such evidence to the contrary was submitted by the Employer in this case. 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 agreed 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 45(b) of the Schedule.

Decision

20. The decision of the Panel is that the application is valid for the purposes of paragraph 20 of the Schedule and the CAC will therefore proceed with the application.

Panel

Mr Charles Wynn-Evans, Chairman of the Panel

Miss Mary Canavan

Ms Judy McKnight

31 July 2018