

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:

GMB

and

Leaderflush Shapland Limited

Introduction

1. GMB (the Union) submitted an application to the CAC dated 12 May 2014 (received by the CAC on 4 June 2014) that it should be recognised for collective bargaining by Leaderflush Shapland (the Employer) for a bargaining unit comprising “General Operatives, Bench Operatives, Glazier”. The location of the bargaining unit was given as Leaderflush Shapland, Millennium Business Park, Concorde Way, Mansfield, Notts NG19 7JZ. The CAC gave the parties notice of receipt of the application on 4 June 2014. The Employer submitted a response to the application to the CAC on 13 June 2014 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 Gillian Morris, Chairman of the Panel, and, as Members, Mr George Getlevog and Mr Bob Purkiss MBE. The Case Manager appointed to support the Panel was Adam Goldstein.

3. The CAC Panel has extended the acceptance period in this case on two occasions. The initial period expired on 18 June 2014. The acceptance period was extended to 9 July 2014 in

order to enable the CAC to obtain more information from the parties and was further extended, to 15 July 2014, to allow the Panel to prepare its written decision.

Issues which the Panel has to determine

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 should therefore be accepted.

Summary of the Union's application

5. In its application to the CAC the Union stated that it had sent its request for recognition to the Employer on 25 March 2014 and had subsequently sent a further copy by recorded delivery on 10 April 2014. The bargaining unit identified in the request was "General Operatives, Glazing and Bench Operatives permanently employed at Leaderflush Shapland, Millennium Business Park, Concorde Way, Mansfield, Notts NG19 7JZ". In its response of 8 May 2014 the Employer stated that the Union's request for recognition was "ill timed at present" as the Employer endeavoured "to continue to address some of the fundamental issues" within its business. Copies of both the request and the Employer's response were attached to the application.¹ The Union stated in its application that the Employer, following receipt of the request for recognition, did not propose that Acas should be requested to assist.

6. In its application the Union described its proposed bargaining unit as "General Operatives, Bench Operatives, Glazier."

7. The Union stated that there were approximately 210 workers employed by the employer and approximately 180 workers in the proposed bargaining unit. The Union stated that there were 27 members of the Union within the proposed bargaining unit. The Union

¹ The request letter attached to the Union's application was dated 4 June 2014. The Case Manager raised this with the Union and the Union explained that its e-mail system had changed the date on that letter when it was sent with the application to the CAC. A copy of the letter dated 25 March 2014 was supplied to the CAC on 13 June 2014.

attached to its application a petition, containing 98 signatures, as evidence of support for recognition. At the top of the petition was the following statement:

I support recognition of GMB trade union as entitled to conduct collective bargaining on pay, hours and holidays on behalf of all employees in the following roles: Production Operatives..... at Leaderflush Shapland, Millennium Business Park, Concorde Way, Mansfield, Notts NG19 7JZ

The petition had columns for Name, Signature and Job Title. The job title for 95 of the total signatories was given as “General Operative” or an abbreviation of “General Operative” such as “Gen Op”. One signatory was identified as “Glazing” and two signatories were identified as “Bench Op”. The Union stated that the reason for selecting the proposed bargaining unit was that this was a traditional bargaining unit which made industrial common sense and was fully compatible with effective management.

8. The Union stated that the bargaining unit had not been agreed with the Employer and, so far as it was aware, there was no existing recognition agreement in force covering any of the workers in the proposed bargaining unit. The Union confirmed that it held a current certificate of independence.

Summary of the Employer’s response to the Union’s application

9. In its response to the Union’s application the Employer stated that it had received a written request for recognition from the Union under cover of letter dated 25 March 2014, received by registered post under cover of letter dated 10 April 2014. The Employer stated that the relevant Employer was Leaderflush Shapland Limited. The Employer confirmed that it had responded to the Union’s request under cover of letter dated 8 May 2014. The Employer stated that it had received a copy of the application form from the Union at its registered office on 9 June 2014

10. The Employer stated that it had not, before receiving a copy of the application from the Union, agreed the bargaining unit with the Union and that it did not agree it. The Employer stated that the proposed bargaining unit was unclear and had not been properly identified. The Employer contrasted the description of the bargaining unit in the Union’s letter of 25 March 2014 with that in the Union’s application. The Employer also drew

attention to the Union's petition which referred to "Production Operatives" and said that the petition did not appear to have been signed by any "Production Operatives" or any "Bench Operatives" and had been signed by only one "Glazier". The Employer submitted that to the extent that it was necessary to identify a bargaining unit, the appropriate bargaining unit would be all employees employed by it.

11. The Employer stated that, due to uncertainty surrounding the process, it had not proposed that Acas be requested to assist but that it had no objection to the involvement of Acas.

12. The Employer stated that it employed approximately 700 workers across 10 sites in the UK with approximately 210 workers at its Millennium Business Park/Mansfield site. In answer to the question whether it agreed with the number of workers in the bargaining unit as defined in the Union's application the Employer stated that the extent of the proposed bargaining unit was unclear. The Employer confirmed that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit.

13. 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 was unable to confirm the Union's estimate as evidence to support this number had not been provided to it.

14. The Employer stated that it did not accept that the majority of workers in the bargaining unit were likely to support recognition. It referred to the points set out in paragraph 10 above and stated that if, as the Employer proposed, the bargaining unit included all employees employed by it (or all employees employed at the Millennium Business Park/Mansfield Site) then the evidence submitted by the Union would indicate that there was no majority support for recognition of the Union.

Further information sought from the parties

15. At the request of the Panel the Case Manager wrote to the parties on 16 June 2014 asking them to clarify which categories of worker fell within the description "Production Operatives" (the term used in the Union's petition described in paragraph 7 above) at the Millennium Business Park/Mansfield site. In an e-mail dated 17 June 2014 the Union replied

that it had made an error in using the job title “Production Operatives” but drew attention to section 14 of its application which referred to General Operatives, Bench Operatives and Glazier, as recorded and signed by members/employees on the petition submitted. In a letter dated 18 June 2014 the Employer stated that it referred to all factory workers at the Mansfield site as “Production Operatives”. The Employer stated that it did not categorise employees according to the terms used by the Union, ie. “Bench Operatives”, “Glaziers” and “General Operatives” and was unclear as to why the Union had used those terms.

16. In a further attempt to clarify the application of the proposed bargaining unit at the Mansfield site the Case Manager telephoned the Employer’s legal representative. Following that conversation the Employer supplied, in a letter dated 23 June 2014, a list of the categories of employee at the Mansfield Site. The list was divided into three broad categories: Office (a total of 50 employees, divided into 26 sub-categories); General Senior Management (8 employees) and Shop Floor excluding Senior Management (206 employees, divided into 18 sub-categories). The letter reiterated the Employer’s primary position that all employees at the Mansfield site (264 employees) should be included in the proposed bargaining unit. The Employer also submitted that if the proposed bargaining unit was limited to shop floor employees below the level of Senior Management that this totalled 206 employees and the Union had not, therefore, provided evidence of support for recognition from the majority of the proposed bargaining unit. The Employer further submitted that if the Union proposed a bargaining unit made up of sub-categories of shop floor workers, the Union would need to specify which sub-categories it wished to include as this was not clear from the application. To illustrate this submission the Employer stated that there were no “Bench Operatives” or “Glazier” and there were different types of General Operatives (direct, ie involved in production and indirect, ie not involved in production).

17. In a letter dated 23 June 2014 the Case Manager copied the Employer’s letter to the Union and asked it to confirm as soon as possible, using the Employer’s terminology, the job titles that fell within its proposed bargaining unit. In an e-mail dated 24 June 2014 the Union queried the number of workers on the Employer’s list and stated its belief that the Employer was giving figures which did not reflect the actual workforce at the time the petition was signed and the application was submitted and proposing that the Panel should seek to establish exactly how many employees were employed at that time. The Union stated that the petition was honestly signed by employees who gave their job roles as referred to by their

manager but the Union did not address the question posed in the Case Manager's letter of 23 June 2014. Following a telephone conversation with the Case Manager intended to direct the Union to that question, the Union sent a further e-mail on 30 June 2014. This included the following text:

Bargaining Unit

The employer goes so far as to acknowledge all factory workers are referred to as operatives albeit Production operatives in their letter dated 18th June 2014 (extract in italics below), therefore, the petition reflects the GMB's proposed bargaining unit with the exception of the one glazier. The GMB would like to withdraw the one employee who signed as the glazier reducing the petition by one employee in support of trade union recognition.

We are now left arguing over the semantics of job titles which I believe in no way should undermine our application, its [sic] clear the employer refers to factory/shop floor workers as operatives in some form despite listing all shop floor employees contractual job titles which does include 6 operatives roles in their recent letter. Some job titles appear to have been duplicated in office and shop floor numbers.

Considerations

18. In deciding whether to accept the application, the Panel must determine whether the validity and admissibility provisions referred to in paragraph 4 above are satisfied. The Panel has considered carefully the submissions of both parties and all the evidence relating to these provisions in reaching its decision.

19. Paragraph 1 of Schedule A1 states that a trade union seeking recognition to be entitled to conduct collective bargaining on behalf of a group of workers may make a request in accordance with this Part (Part I) of the Schedule. Paragraph 4 of the Schedule states that paragraphs 5 to 9 apply to the request. Paragraph 8 states that a request will not be valid unless it is in writing, identifies the union and the bargaining unit, and states that it is made under the Schedule. Paragraph 2(2) states that references to the bargaining unit are to the group of workers concerned. Paragraph 15(2)(a) requires the CAC to decide whether the request for recognition to which the application relates is valid within the terms of paragraphs 5 to 9. The Panel considers that the request for recognition which the Union made to the Employer complied with paragraphs 5 to 9 and is a valid request.

20. Paragraph 15(2)(b) requires the Panel to decide whether the application is made in accordance with paragraph 11 or 12 of the Schedule. Paragraph 11 applies if, before the end of the period of 10 working days starting with the day after that on which the employer receives the request for recognition (the ‘first period’), the employer fails to respond to the union’s request for recognition or informs the union that it does not accept the request. Paragraph 12 applies if, before the end of the first period, the employer informs the union that it does not accept the request but is willing to negotiate. In the present case the Employer, in its letter to the Union of 8 May 2014, stated that it did not accept the Union’s request for recognition. The Panel has concluded, therefore, that paragraph 12 does not apply to the application and that it is required to consider whether the application is made in accordance with paragraph 11 of the Schedule.

21. Paragraph 11(2) of the Schedule states that a union, where the employer does not accept the request for recognition, may apply to the CAC to decide two questions: whether the proposed bargaining unit is appropriate, and whether the union has the support of a majority of the workers constituting the appropriate bargaining unit. Paragraph 2(2) states that references to the ‘proposed bargaining unit’ are to ‘the bargaining unit proposed in the request for recognition’. Thus, paragraph 11(2) permits a union to apply to the CAC to decide whether the bargaining unit proposed in the request for recognition is appropriate.

22. In the present case the bargaining unit proposed in the request for recognition was ‘General Operatives, Glazing and Bench Operatives permanently employed at Leaderflush Shapland, Millennium Business Park, Concorde Way, Mansfield, Notts NG19 7JZ’. This is the bargaining unit in respect of which paragraph 11 of the Schedule would permit an application to be made to the CAC. The Union’s application to the CAC dated 12 May 2014 identified the proposed bargaining unit as General Operatives, Bench Operatives and Glazier. However the Panel notes that in its e-mail dated 30 June 2014, described in paragraph 17 above, the Union stated that “the petition reflects the GMB’s proposed bargaining unit with the exception of the one glazier. The GMB would like to withdraw the one employee who signed as the glazier”. The Panel considers that this statement means that the Union was changing the bargaining unit from that identified in the request for recognition and was asking the CAC to consider an application for a bargaining unit which excluded the category of glazier. The Panel does not consider that, in this case, the exclusion of a particular

category of worker can be viewed as a clarification of the bargaining unit identified in the request; rather, it renders the bargaining unit identified in its application to the CAC different to that identified in its request for recognition. That being so, the Union has not applied to the CAC to decide whether the bargaining unit proposed in the request for recognition is appropriate in accordance with the terms of paragraph 11(2).

23. The Panel appreciates that this may appear a narrow point on which to decide the application. However the wording of paragraph 11(2) is clear in this respect and other admissibility criteria, such as paragraph 36, relate also to the bargaining unit identified in the request for recognition. The Panel notes that it is not always easy for a union applying for recognition to have a full understanding of an employer's workforce categorisation and considers that there has been genuine confusion in this case. The Panel hopes that the Employer's letter of 23 June 2014 will have clarified the matter in this regard.

Decision

24. For the reasons given in paragraphs 19 to 22 above, the Panel concludes that the application is not made in accordance with paragraphs 11 or 12 of the Schedule and is not accepted by the CAC.

Panel

Professor Gillian Morris, Chairman of the Panel

Mr George Getlevog

Mr Bob Purkiss MBE

14 July 2014