

20 November 2014

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

The Parties:

GMB

and

Nuair Limited

Introduction

1. The GMB (the Union) submitted an application to the CAC dated 30 August 2014 that it should be recognised for collective bargaining by Nuair Limited (the Employer) for a bargaining unit comprising “All permanent shop floor direct Employees/Operatives engaged in the production process who are not of managerial status within the shop floor who work flexibly across various areas of work depending their allocated work each day: Assembly Operatives, Sheet Metal operatives, Stores and Service Department Operatives located at the Western Industrial Estate Site in Caerphilly”. The application was received by the CAC on 4 September 2014. The CAC gave both parties notice of receipt of the application on 4 September 2014. The Employer submitted a response to the CAC dated 11 September 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 is chaired by Professor Paul Davies QC FBA, with, as

Members, Ms Bronwyn McKenna and Mr Roger Roberts. The Case Manager appointed to support the Panel was Miss Sharmin Khan.

3. By a decision dated 8 October 2014 the Panel accepted the Union's application. The parties then entered a period of negotiation and reached an agreement on the appropriate bargaining unit. In a letter to the Employer dated 27 October 2014, the Union confirmed that in the interests of good industrial relations, it was willing to accept the Employer's proposal to include Team Leaders and workers based at the Bedwas Site. Following the agreement, the CAC wrote to the parties on 28 October 2014 to confirm that the appropriate bargaining unit was one comprising:

"All permanent shop floor employees engaged in the production process who are not of managerial status, being Assembly Operatives, Sheet Metal Operatives and Distribution Operatives (in all cases including Team Leaders) who work at Western Industrial Estate Caerphilly, and Pant Glas Industrial Estate, Bedwas."

The CAC's letter also stated that the Employer had confirmed to the CAC and the Union that the Union's term "Stores and Service Department Operatives" in the originally proposed bargaining unit had been replaced by the term "Distibution Operatives" in the Employer's description, but that no substantive change in the make-up of the bargaing unit was intended. The parties were asked to contact the CAC immediately if the above description did not reflect accurately the agreed bargaining unit.

Issues

4. As the agreed bargaining unit differed from that proposed by the Union in its application, the Panel is required by paragraph 20 of Schedule A1 to the Act (the Schedule) to decide whether the Union's application is valid or invalid within the terms of paragraphs 43 to 50 of the Schedule.

5. In the CAC's letter of 28 October 2014, both parties were invited to submit their responses to the questions asked by the validity tests set out in the Schedule. They were:

(a) Was there an existing recognition agreement covering any of the workers within the new bargaining unit?

- (b) Was there 10% union membership within the new bargaining unit?
- (c) Were the majority of the workers in the new bargaining unit likely to favour recognition?
- (d) Was there a competing application, from another union, where their proposed bargaining unit covered any workers in the new bargaining unit?
- (e) Had there been a previous application in respect of the new bargaining unit?

6. The Union and Employer responded on 29 and 30 October 2014 respectively. Neither party suggested that tests (a), (d) and (e) above were not satisfied. The Union explicitly claimed that tests (b) and (c) were satisfied. The Employer stated that it did not believe that the majority of the new bargaining unit was likely to favour recognition. The Employer had conducted its own staff poll which indicated that there was less enthusiasm for recognition than asserted by the Union. It was likely that the Union's petition showed a false high due to the pressure certain staff would naturally feel under when asked to sign a circular of this nature. The Employer did not explicitly state that test (b) was not satisfied.

Paragraph 45

7. Paragraph 45 of the Schedule states:

"45. The application in question is invalid unless the CAC decides that-

- (a) members of the union (or unions) constitute at least 10 per cent of the workers constituting the relevant bargaining unit, and
- (b) a majority of the workers constituting the relevant bargaining unit would be likely to favour recognition of the union (or unions) as entitled to conduct collective bargaining on behalf of the bargaining unit."

In this application the relevant bargaining unit is the agreed bargaining unit as described in paragraph 3 above and will continue to be referred to in this decision as the "new bargaining unit".

Membership and support check

8. To assist in the application of the validity tests set out in paragraph 45 of Schedule A1 to the 1992 Act, the Panel proposed independent checks of the level of Union membership in the new bargaining unit. The Union provided a list of Union members in the new bargaining unit and its petition in support of recognition of the Union and the Employer provided a list of workers in the new bargaining unit. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and petition would not be copied to the other party and that agreement was confirmed in the letter from the Case Manager to both parties on 30 October 2014. The Panel was satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

9. The Union provided a list of 36 members and the Employer provided a list of 186 workers within the new bargaining unit. The Case Manager's comparison established that all of the Union's members were within the new bargaining unit; establishing a membership level of 19%.

10. The Union's petition contained 114 names and signatures of which 111 appeared on the Employer's list of workers within the new bargaining unit, establishing that 60% of the new bargaining unit had signed the Union's petition. 77 of these signatures were from non-Union members or 41% of the new bargaining unit.

11. The signatories of the Union's petition signed up to the statement: "We, the undersigned employees of Nuaire Limited, wish to have the GMB Trade Union recognised by Nuaire Limited for all issues related to collective bargaining for all terms and conditions of employment." The earliest signature was dated 18 June 2014 and the most recent signature was dated 14 October 2014.

12. The Case Manager's report of the results of the membership and support check was circulated to the Panel and to the parties for comment on 12 November 2014. Neither party submitted comments in respect of the results established by the Case Manager's membership and support check.

Employer's Poll

13. By e-mail to the CAC dated 12 November 2014, the Employer provided the details as to how its poll was conducted and the results of the poll. The poll was a secret staff poll on 28 August in which 74 employees indicated a preference for recognition. All workers within the agreed bargaining unit were given the opportunity to vote. A briefing was given at the start of each shift and workers were then given a time window within which to place their votes. To avoid duplication, each worker attended a meeting room and each name was crossed off a list. There were three booths within the meeting room to ensure votes were cast in private. There were three options on the voting slip: No change to current arrangements; improve JCC by introducing a manufacturing forum; or GMB recognition. Workers were advised to place an 'X' in the appropriate box and to place their voting papers in the slot in a sealed voting box. The boxes had been sealed independently by two employees that were not involved in the process and confirmed the boxes were sealed before and after the process started/finished. The sealed boxes were locked away until the following day when opened and counted by an independent solicitor from Morgan Denton Jones, accompanied by the Employer's HR Assistant Hannah Jones.

14. The Union expressed its concerns about how the Employer's poll was conducted by an e-mail to the CAC on 30 October 2014. The Union stated that some workers had refused to engage in the ballot and that a collective grievance was raised in opposition to the events but the Employer had refused to hear their complaint under the grievance procedure. The Union attached copies of the correspondence sent out to workers which the Employer expected to be read and understood and returned in an envelope within a 4-5 hour time frame whilst workers were engaged in production activities. The Union also provided a copy of a letter from a worker outlining their grievance in respect of how the poll was conducted. The Union also raised the question of security of the ballot being held over night.

15. The Union refuted the Employer's suggestion that peer pressure was put on workers to sign the Union's petition, pointing out that workers who were custodians of the petition were approached by colleagues wanting to sign to further GMB involvement within the Company, however, the holders of the petition had to undertake the process in their own time between production demands whilst under

scrutiny from management. It was quite possible that many more signatories could have been added to the petition had there been a greater opportunity to speak to the employees of Nuaire. A ballot would reflect this assertion.

16. The Employer's final comment on the matter was that the idea that its poll result was suspicious was disappointing and without foundation. However it did not wish to delay the process any longer as it was not good for industrial relations and staff morale. In its view, under the circumstances, the results of its poll would not change the conclusion of the Panel and therefore asked the Panel to hold a ballot at the earliest convenience.

Considerations

17. 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 the application is not invalid by the existence of a recognition agreement in force covering any of the workers in the relevant bargaining unit (the new bargaining unit), that there is no competing application and that there has been no previous application to the CAC in respect of the new bargaining unit.

18. 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 those workers would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of that bargaining unit, rendering the application not invalid.

Paragraph 45(a)

19. The Case Manager's membership and support check established that there was a membership level of 19% within the new bargaining unit. This was not challenged by the Employer. The Panel is therefore satisfied that the test set out in paragraph 45(a) of the Schedule is met, namely that at least 10% of the workers constituting the new bargaining unit are members of the Union.

Paragraph 45(b)

20. The results of the Case Manager's membership and support check also established that the level of support for recognition of the Union within the new bargaining unit, demonstrated by the Union's petition reached a level of 60%. The Employer brought to the attention of the Panel that there was evidence of some non-support via its own poll. However the Employer ultimately concluded that the results of its poll would not change the Panel's conclusion from the Case Manager's report. We are not clear why that view was taken, but it is certainly the case that the Panel would have needed to be provided with more information about the Employer's poll for it to be useful in gauging the overall level of worker support for recognition. For example, support from 74 workers in the Employer's poll is certainly less than support from 114 on the Union's petition, but the significance of the 74 number turns heavily on how many workers voted in the poll, a fact which was not revealed.

21. Bearing in mind the Employer's de facto withdrawal of the poll results in the interests of proceeding quickly to a ballot, the Panel finds on the basis of the Case Manager's report that, in respect of the new bargaining unit, the test in paragraph 45(b) is met, namely that 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 new bargaining unit.

Decision

22. The decision of the Panel is that the Union's application is not invalid within the terms of paragraphs 43 to 50 of the Schedule and pursuant to paragraph 20(5) of the Schedule, and the CAC will continue to the next stage of the application process.

Panel

Professor Paul Davies QC FBA - CAC Deputy Chairman

Ms Bronwyn McKenna

Mr Roger Roberts

20 November 2014