

8 June 2015

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:

Independent Workers' Union of Great Britain (IWGB)

and

Cofely Workplace Limited

Introduction

1. The Independent Workers' Union of Great Britain (the Union) submitted an application to the CAC dated 20 May 2015 that it should be recognised for collective bargaining by Cofely Workplace Limited for a bargaining unit comprising "All employees of Cofely Workplace Limited at the University of London site". The CAC gave both parties notice of receipt of the application on 21 May 2015. The Employer submitted a response to the CAC on 27 May 2015, 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 Her Honour Judge Stacey, Deputy Chairman of the CAC, and, as members, Ms Lesley Mercer and Mr Roger Roberts. 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. In the event, the Panel has considered first the question of whether paragraph 35 is applicable and so renders the application inadmissible.

The Union's application

4. In its application form the Union stated that it had made a formal request for recognition on 5 May 2015 but that the Employer did not respond. It then went on to set out its proposed bargaining unit, how many workers were employed in total by the Employer, how many of these were employed at the site in question and how many were members of the Union. It detailed its reasoning for selecting the proposed bargaining unit explaining that this was the level where most important managerial decisions were made. It went on to say that most of its membership was concentrated at the University of London site and, finally, this was the bargaining unit being used for the Cofely-UNISON recognition agreement.

5. Further on, in answer to question 17 which asked "Is there any existing recognition agreement which you are aware of, which covers any workers in the bargaining unit?" the Union responded thus:

"Yes. Cofely voluntarily recognises UNISON –an independent trade union – for the purpose of collective bargaining, at the University of London site. The recognition agreement came into effect in Autumn of 2011. The recognition agreement is attached. Note that the wording of the recognition agreement says Balfour Beatty Workplace rather than Cofely Workplace Limited. However, Balfour Beatty Workplace became Cofely Workplace Limited and the recognition agreement was unaffected by this."

Employer' response to the application

6. In its response to the Union's application dated 27 May 2015 the Employer explained that it had declined the Union's request for recognition dated 5 May 2015 on the basis of an existing recognition agreement with UNISON which covered, but was not limited to, pay, hours and holidays.

7. When asked as to whether there was an existing agreement for recognition in force covering workers in the proposed bargaining unit the Employer answered in the affirmative adding that the agreement started on 23 September 2011 and that it was made between UNISON and Cofely Workplace Ltd in its former guise of Balfour Beatty Workplace.

Paragraph 35

8. In accordance with paragraph 35, an application to the CAC made under paragraph 11 or 12, is not admissible if the CAC is satisfied that there is already in force a collective agreement under which a union is recognised as entitled to conduct collective bargaining on behalf of any workers falling within the bargaining unit proposed by the union. The only exceptions to this rule are found in paragraph 35(2), which allows for the union that is already recognised by an employer for matters other than pay, hours or holidays to make an application for recognition in respect of these matters, and paragraph 35(4) which sets out the circumstances in which the CAC can ignore an agreement that involves a non-independent union. Neither of these exceptions are applicable in this case.

Union's comments on the Employer's response

9. On 1 June 2015 the Panel directed that the Case Manager write to the Union and invite its comments, both in general and specifically on the Employer's answer to question 9 of its response form – as to whether there was an existing agreement for recognition in force covering workers in the proposed bargaining unit. In formulating its comments the Panel asked the Case Manager to draw the Union's attention to paragraph 35, and which was set out in full in the body of the letter.

10. In an email received later on the same date the Union commented thus:

“We are requesting trade union recognition for the IWGB, an independent union in possession of a certificate of independence. We are the most-representative union at the Cofely University of London contract and indeed represent a majority of the workers in this bargaining unit.

We do not dispute that there is already a recognition agreement in place between Cofely and UNISON, which covers the same bargaining unit. We do not dispute that this recognition agreement covers collective bargaining on a range of topics including pay, hours, and holiday.

We do not dispute that UNISON has a certificate of independence”.

Considerations

11. The Union has acknowledged that there is an existing recognition agreement with an independent trade union with a certificate of independence covering part of the proposed bargaining unit and that paragraph 35 is engaged. The Union asserts that it considers itself to be more representative than the union recognised by the Employer. However the Union's observation, even if correct, is not germane to paragraph 35 and the facts in this case. As noted in the judgment of Hodge J in *R (National Union of Journalists) v Central Arbitration Committee* [2004] EWHC 2612 (Admin):

“... there is nothing in Schedule A1 of the 1992 Act that allows the CAC to require the employer to enter into another recognition agreement with a union that does have majority support.”

12. There are no grounds upon which the CAC can interfere in the agreement between the Employer and UNISON and for this reason the Union's application fails.

Decision

13. The Panel is satisfied that, for the purposes of paragraph 35 of the Schedule, there is in force a collective agreement under which a union, in this case UNISON, is recognised as entitled to conduct collective bargaining on behalf of workers falling within the Union's proposed bargaining unit. Accordingly, by virtue of paragraph 35, the Union's application to the CAC is not admissible.

Panel

Her Honour Judge Stacey, Chairman of the Panel

Ms Lesley Mercer

Mr Roger Roberts

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