

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DECLARATION OF RECOGNITION WITHOUT A BALLOT

The Parties:

Community

and

Ironspray Limited

Introduction

1. Community (the Union) submitted an application to the CAC on 28 October 2015 that it should be recognised for collective bargaining by Ironspray Limited (the Employer) for a bargaining unit comprising "(a)ll hourly paid workers at the Plas Ty Coch site" which refers to the Employer's premises located in Cwmbran, Gwent. The CAC gave both parties notice of receipt of the application on 2 November 2015. The Employer submitted a response to the CAC which was received on 10 November 2015 and 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, Chairman of the Panel, and, as Members, Ms Gail Cartmail and Mr Paul Wyatt. The Case Manager appointed to support the Panel was Nigel Cookson.

3. By a decision dated 13 November 2015 the Panel accepted the Union's application. The Parties then entered a period of negotiation in an attempt to reach agreement on the appropriate bargaining unit. On 16 November 2015 the Employer emailed the CAC the information specified in paragraph 18A of Schedule A1 to the Act (the Schedule). In the same email the Employer confirmed that it did not object to the proposed bargaining unit of "all hourly paid workers".

Issues for the Panel

4. Paragraph 22(2) of the Schedule requires the CAC to issue a declaration that a union is recognised as entitled to conduct collective bargaining on behalf of a group of workers constituting the agreed bargaining unit if it is satisfied that a majority of the workers constituting the bargaining unit are members of the applicant union, unless any of the three qualifying conditions set out in Paragraph 22(4) are fulfilled. If any of these conditions are met, or the CAC is not satisfied that a majority of workers in the bargaining unit are members of the applicant union, the CAC must give notice to the parties that it intends to arrange for a secret ballot to be held. The qualifying conditions in paragraph 22(4) are as follows:

- a) the CAC is satisfied there should be a ballot in the interests of good industrial relations;**
- b) that the CAC has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union (or unions) to conduct collective bargaining on their behalf;**
- c) membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of union members within the bargaining unit want the union to conduct collective bargaining on their behalf.**

The Union's claim to majority membership

5. In an email to the Case Manager dated 16 November 2015 the Union informed the CAC that it had obtained an up to date list of members from its Membership Data Manager and that it had 12 of those listed in current membership. The Union therefore believed that it had a majority in the bargaining unit.

6. The Union's email was copied to the Employer and the Employer was invited to comment on the Union's claim to majority membership and the qualifying conditions as set out above.

The Employer's comments on the Union's claim to majority membership and the qualifying conditions

7. In an email dated 16 November 2015 the Employer said that it did not have information from the workers regarding membership but, in the interests of making sure that every worker was given a say in order that this was as fair a process as possible, it felt that it would be beneficial to have a ballot on which they then can provide actual evidence that this is what the majority want and that this is how they want to be represented.

Membership Check

8. To assist in deciding whether to arrange for a secret ballot the Panel proposed independent checks of the level of union membership in the bargaining unit. The information from the Union was received by the CAC on 18 November 2015 and from the Employer on 10 November 2015 – it having confirmed that the list of workers attached to its response to the application could be used for the purposes of this check there having been no changes in personnel since the list was generated on 5 November 2015. The Union's membership list was provided on the basis that, to preserve confidentiality, it would not be copied to the Employer and the arrangements for the check were confirmed in a letter from the Case Manager to both parties dated 18 November 2015.

9. The Union provided a list with the details of 14 members. However, in its covering email the Union explained that there was an individual whose name appeared twice in the list and both entries should be disregarded as he was the Union's Regional Organiser as well as the nominal Branch Secretary pending the election of the branch committee. Removing the two entries for this person reduced the Union's list to 12.

10. The Employer's list contained 20 names with one annotated as "new starter 3 month

probation period". This person was included as they were a worker in the agreed bargaining unit on the day the check was undertaken.

11. The Case Manager's check established that there were 20 workers in the bargaining unit of whom 12 (60%) were members of the Union.

12. The Case Manager's report was issued to the parties on 18 November 2015 and the Employer asked whether it had any further submissions it wished to make on the qualifying conditions in light of the results of the Case Manager's comparison. However, no further submissions were received from the Employer by the 24 November 2015 deadline for receipt.

Considerations

13. The Schedule requires the Panel to consider whether it is satisfied that the majority of the workers in the bargaining unit are members of the Union and if the Panel is satisfied that the majority of the workers in the bargaining unit are members of the Union, it must declare the Union recognised by the Employer, unless it decides that any of the three conditions in paragraph 22(4) are fulfilled. If the Panel considers any of the conditions are fulfilled it must give notice to the parties that it intends to arrange for the holding of a secret ballot.

14. The level of union membership in the bargaining unit has been established by way of a membership check conducted by the Case Manager as representing 60% of the agreed bargaining unit. Accordingly, the Panel accepts that the majority of workers in the bargaining unit are members of the Union.

15. The Panel must now consider whether any of the three qualifying conditions stated in paragraph 22(4), and described in paragraph 4 above, applies in this case.

Paragraph 22(4)(a)

16. The first condition is that the Panel is satisfied that a ballot should be held in the interests of good industrial relations. The Panel has not received any evidence that a ballot should be held in the interests of good industrial relations and is not satisfied that this condition is fulfilled. The Panel is therefore satisfied that this condition does not apply. Whilst the Employer considered that a ballot would be beneficial, it was not apparent why this would be so. The level of membership is, in this case, a clear indication of support for recognition and the Union has a clear majority. It is difficult therefore to see what benefit would be gained by a ballot, in the absence of any evidence of particular, relevant industrial relations factors. Absent any one or more of the three conditions in paragraph 22(4) applying, where a majority of the workers in the bargaining unit are members of the Union, recognition is granted without a ballot. The reason behind the provisions is that a ballot would simply confirm what has been demonstrated by the level of Union membership where none of the three conditions applies.

Paragraph 22(4)(b)

17. The second condition is that the CAC has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union to conduct collective bargaining on their behalf. No such evidence has been received and the Panel is therefore satisfied that this condition does not apply.

Paragraph 22(4)(c)

18. The third condition is that membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the union to conduct collective bargaining on their behalf. No such evidence has been produced and the Panel is therefore satisfied that this condition does not apply.

Decision

19. The Panel is therefore satisfied in accordance with paragraph 22(1)(b) of the Schedule that the majority of the workers constituting the bargaining unit are members of the Union. The Panel is satisfied that none of the conditions in paragraph 22(4) of the Schedule is fulfilled. Pursuant to paragraph 22(2) of the Schedule the CAC must issue a declaration that the Union is recognised as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit. The CAC accordingly declares that the Union is recognised by the Employer as entitled to conduct collective bargaining on behalf of the bargaining unit comprising all hourly paid workers at the Plas Ty Coch site in Cwmbran, Gwent.

Panel

Her Honour Judge Stacey, Deputy Chairman of the CAC

Ms Gail Cartmail

Mr Paul Wyatt.

30 November 2015