

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:

UCATT

and

Laing O'Rourke Services Ltd

Introduction

1. Union of Construction Allied Trades & Technicians (UCATT) (the Union) submitted an application to the CAC dated 28 October 2015 that it should be recognised for collective bargaining by Laing O'Rourke Services Ltd (the Employer) for a bargaining unit comprising "All tower crane drivers working under the direction of the Tower Crane Driver Resource Controller, within the Select Plant Hire Unit, including:-

- UK-based Tower Crane Drivers (CPCS Blue card)
- UK-based Appointed persons (lifting operations)
- UK-based Crane Supervisors (lifting operations)"

The CAC gave both parties notice of receipt of the application on 28 October 2015. The Employer submitted a response to the CAC dated 6 November 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 Professor Lynette Harris, Chairman of the Panel, and, as Members, Mr. Simon Faiers and Mr David Coats. The Case Manager appointed to support the Panel was Linda Lehan.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 11 November 2015 and was extended to 27 November 2015 in order to allow time for a membership check to take place and for the parties to comment on the subsequent report. It was further extended until 21 December 2015 to allow time for the Panel to consider all the evidence and to draft and finalise its decision.

Issues

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 therefore should be accepted.

Summary of the Union's application

5. In its application the Union stated that it had sent its formal request for recognition to the Employer on 2 September 2015 and received a response stating that Laing O'Rourke did not accept the request made and, therefore, their decision was to reject the request for formal recognition. The Union attached a copy of its request letter which was dated 2 October 2015 not 2 September 2015 as stated in their application. 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. The Union stated that there were 162 workers employed by the Employer of whom approximately 162 were in the proposed bargaining unit. The Union stated that there were 90 members of the Union within the proposed bargaining unit. When asked to provide evidence that the majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining, the Union's response was that it would be happy to provide evidence, on a confidential basis, if requested.

7. The Union stated that the reason for selecting the proposed bargaining unit was because the selected bargaining unit consisted of employees that had responsibility for operating and coordinating tower crane operations on construction sites throughout the UK. The Union stated that the bargaining unit had not been agreed with the Employer and that it was unaware of any existing recognition agreement which covered any workers in the bargaining unit. The Union stated that it had made a previous application for recognition under the Schedule for workers in this bargaining unit on 27 January 2015 which it had withdrawn.

8. The Union confirmed that it held a current certificate of independence. The Union stated that it had copied the application made to the CAC, and supporting documents, to the Employer on 28 October 2015.

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 the Union's written request for recognition on 5 October 2015 and enclosed a copy of its response dated 15 October 2015 rejecting the request. The Employer stated that it had received a copy of the application form from the Union on 29 October 2015.

10. The Employer pointed out 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 submitted a lengthy and detailed argument on why it believed that the Union's proposed bargaining unit was unsuitable which could, if necessary, be considered by the Panel at a later stage of the process. The Employer summarised its argument in the following terms 'the proposed bargaining unit seeks to exclude individuals with comparable terms and conditions, who are subject to comparable regulations, training and controls whilst at the same time including individuals who have different interests, terms and conditions, management lines, grades and functions'.

11. The Employer stated that it did not agree with the number of workers in the proposed bargaining unit as defined in the Union's application and that 988 individuals were employed by Laing O'Rourke Services Limited in the Select Plant Hire business unit and in the Select Plant Hire business there were 241 Drivers – Tower Cranes (including lifting Technicians),

Appointed Person and Crane Supervisors concerned with lifting operations.

12. 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 said that the Union had not provided any evidence but had indicated that they were happy to provide this on a confidential basis and requested that the information be provided. The Employer stated that in the event the Union could provide evidence of 90 individuals being members that did not constitute 50% of the proposed bargaining unit as if 90 of the 988 individuals employed by Laing O'Rourke Services Limited and working within the Select Plant Hire business unit were members that amounted to 9%. The Employer also pointed out that if 90 of the 241 Tower Crane Drivers (including Lifting Technicians) Appointed Persons and Crane Supervisors were Union members that equated to 37%.

14. In answer to the question whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer stated that as already indicated only a moderate proportion of the proposed bargaining unit appeared to be members of the Union which suggested that the majority of workers within the proposed bargaining unit did not support recognition of the Union. The Employer stated that it understood the number of individuals who had joined the Union had increased from mid-2014 onwards and believed the increase was as a result of a desire by individuals to obtain support in respect of issues surrounding retrospective holiday pay rather than any specific interest in collective bargaining. Based on information previously supplied the Employer understood around 50% of Union members had joined after the middle of 2014 and was not aware of individuals actively supporting recognition.

15. Finally the Employer enclosed a chronology in respect of applications received from the Union which had all been withdrawn.

The Membership and Support Check

16. To assist the determination of two of the admissibility criteria specified in the Schedule,

namely, whether 10% of the workers in the proposed bargaining unit are members of the union (paragraph 36(1)(a)) and whether a majority of the workers in the proposed bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit (paragraph 36(1)(b)), the Panel proposed an independent check of the level of union membership and support within the proposed bargaining unit. It was agreed with the parties that the Employer would supply to the Case Manager a list of the names, addresses, job titles, and dates of birth of the workers within the proposed bargaining unit, and that the Union would supply to the Case Manager a list of the names, addresses and dates of birth of its paid up members within that unit. It was explicitly agreed with both parties that, to preserve confidentiality, the respective documents would not be copied to the other party. These arrangements were confirmed in a letter dated 11 November 2015 from the Case Manager to both parties. The information from the Union and Employer was received by the CAC on 16 November 2015. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

17. The list supplied by the Employer indicated that there were 237 workers in the proposed bargaining unit. The job titles listed were:

- Business Stream Leader
- Depot Manager
- Senior Health Safety and Environment Manager
- Health Safety and Environment Manager
- Mechanical & Electrical Technician Engineer
- Operations Manager (4)
- Operations Leader
- Product Leader (2)
- Project Engineer (2)
- Project Manager
- Resource Manager
- Section Engineer (2)
- Senior Product Manager (2)
- Slinger Signaller (3)
- Trade Supervisor (12)
- Workshop Manager
- Appointed Person/Crane Supervisor (20)
- Driver - Tower Crane (Blue Card) (145)
- Driver – Tower Crane (Red Card Holders) (21)
- Driver – Tower Crane (Lifting Technicians yet to work on Site) (15)

The categories of workers included by the Trade Union in its definition of the proposed bargaining unit were:

All tower crane drivers working under the direction of the Tower Crane Driver Resource Controller, within the Select Plant Hire Unit, including:-
UK-based Tower Crane Operators (CPCS blue Card)
UK-based Appointed Person (lifting operations)
UK-based Crane Supervisors (lifting operations)

The categories in common between the two lists were Appointed Person/Crane Supervisors (20) and Driver – Tower Crane (Blue Card) (145) and it was from those categories that the number of workers in the Union’s proposed bargaining unit was calculated.

18. The list of members supplied by the Union contained 90 names. According to the Case Manager’s report, the number of Union members in the proposed bargaining unit was 85, a membership level of 51.52%.

19. The Case Manager’s report of the results of the membership and support check was circulated to the Panel and the parties on 19 November 2015 and the parties were invited to comment on the results by a specified date.

Employer’s comments on the membership and support check

20. In a lengthy document dated 4 December 2015 the Employer detailed its submissions on whether the application could be accepted by the CAC which were summarised as follows;

“Laing O’Rourke does not accept the content of the Report and contends that the numbers contained within it do not include all individuals within the proposed bargaining unit.

It is submitted that it is not for the Case Manager (or the CAC) to refine the proposed bargaining unit at the acceptance stage, and in a manner inconsistent with the trade union’s Request Letter and Application in considering whether the requirements of paragraph 36 are met.

There is insufficient evidence on the basis of which the CAC Panel can conclude that the majority of individuals within the proposed bargaining unit are likely to favour recognition of UCATT. No evidence whatsoever has been provided of the views of more than 62% of

individuals within the proposed bargaining unit, or indeed the views of any UCATT members making up the remaining 38%.”

Union’s comments on the membership and support check

21. In a letter to the CAC dated 3 December 2015 the Union gave its comments on the Employer’s Response. In relation to the report the Union stated that the bargaining unit proposed by UCATT contained, in their analysis, 145 employees, The Union said that the report extended to 165, presumably on the basis of including the Appointed Persons and Crane Supervisors and that they disputed the inclusion of those extra 20 employees.

22. The Union stated that it believed that the extra 20 employees had been added to the bargaining unit and were not under the control of the Tower Crane Resource Manager as stated in its description of the bargaining unit.

23. The Union stated that in relation to paragraph 36(1)(a) whilst they welcomed the findings of the report they continued to maintain that the bargaining unit consisted of 145 employees.

Considerations

24. In determining whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 4 above are satisfied. The Panel has considered carefully the submissions of both parties and all the evidence provided in reaching its decision.

25. The Panel is satisfied that the Union made a valid request to the Employer within the terms of paragraphs 5 to 9 of the Schedule and that its application was made in accordance with paragraph 11. Furthermore, the Panel is satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 35 and paragraphs 37 to 42 of the Schedule. The remaining issues for the Panel to decide are whether the admissibility criteria contained in paragraph 36(1)(a) and paragraph 36(1)(b) are met.

26. The Union provided comments on the membership check in their letter of 3 December

2015 pointing out that it considers only blue card holders to be part of the bargaining unit and disputing the inclusion of the ‘20 Appointed Persons and Crane Supervisors’, a category of work identified in the Appendix to the Membership Check report as Appointed Person/ Crane Supervisor. The Panel notes that the Union in their application dated 28 October 2015 defined the proposed bargaining unit (see paragraph 1 above) to include Appointed Persons and Crane Supervisors. As the Union are now disputing the inclusion of this category of workers the Panel finds itself unable to establish with certainty who is actually in the Union’s proposed bargaining unit and is, therefore, unable properly to apply the tests as set out in paragraph 36(1)(a) and paragraph 36(1)(b).

Decision

27. For the reasons given above, the Panel’s decision is that the application is not accepted by the CAC.

Panel

Professor Lynette Harris, Chairman of the Panel

Mr. Simon Faiers

Mr. David Coats

11 December 2015