

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:

Unite the Union

and

United Health Group

Introduction

1. Unite the Union (the Union) submitted an application to the CAC dated 18 December 2015 that it should be recognised for collective bargaining by United Health Group (the Employer) for a bargaining unit comprising “Medics working for United Health Group on the Shell Contract in the UKCS” based at Shell oil rigs in the United Kingdom Continental Shelf. The application was received by the CAC on 23 December 2015. The CAC gave both parties notice of receipt of the application on 23 December 2015. The Employer submitted a response to the CAC dated 11 January 2016 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 Kenny Miller, Chairman of the Panel, and, as Members, Mrs Maureen Shaw and Mr Sandy Boyle. 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 January 2016. The acceptance period was extended to 25 January 2016 and subsequently to 8 February 2016 in order to allow time for a membership check to take place, for the parties to comment on the subsequent report, and for the Panel to consider these comments before arriving at a 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.

The Union's application

5. The Union stated that it had sent its formal request for recognition to the Employer on 25 November 2015 and a copy of that letter was attached to the application. The Union stated that to date there had been no response from the Employer.

6. The Union stated that there were 32/33 workers in the proposed bargaining unit of whom 25 were members of the Union. When asked to provide evidence that a majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining, the Union stated that its membership had increased from 13 to 25 during 2015 with a view to seeking recognition.

7. The Union stated that the reason for selecting the proposed bargaining unit was because their membership was in the role of Medic on Shell assets offshore.

8. The Union stated that the bargaining unit had not been agreed with the Employer. The Union stated that it had copied the application made to the CAC, and supporting documents, to the Employer on 18 December 2015.

The Employer's response to the Union's application.

9. The Employer confirmed that it had received the Union's written request letter of 25

November on or around 1 December 2015. The Employer stated that it did not consider the Union's letter to be a formal application for union recognition under Schedule A1 but instead an invitation to discuss a voluntary recognition arrangement with Unite. The Employer said that the letter stated (with their emphasis):

90% of your employees within this group are members of Unite the Union and therefore as a union we **can** apply under the Employment Relations Act to the Central Arbitration Committee (CAC) for the legal right to be recognised by the employer for Collective Bargaining, Schedule 1 TULRCA 1992 (the 1992 Act).

However, we believe it is in everyone's interest to try and achieve the agreement through a voluntary process hence this letter to you requesting a meeting with the company to discuss this issue in more detail.

10. The Employer enclosed a copy of their response dated 21 December 2015 in which they stated that they did not understand the letter to be a formal request, and explained that even if the majority of that group were union members (which they were not able to assess) it did not make sense for the company to recognise such a small group of employees as a separate bargaining unit.

11. The Employer stated that it had received a copy of the application form from the Union over the Christmas period between 21st and 31st December 2015.

12. The Employer stated that it did not agree with the proposed bargaining unit and believed it consisted of only 29 employees. The Employer stated given the number of employees employed by them in the UK, and the way that the business was structured and the employees managed, it was not effective to recognise a union in respect of the unit proposed.

13. The Employer stated that the number of workers employed by them was 111 by the same legal entity and more employees were employed by the business in the UK.

14. The Employer stated that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit and it was not aware of any previous application in respect of the proposed bargaining unit.

15. In answer to the question whether it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer said that it had no means to assess the accuracy of the number suggested.

16. As to whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer stated that they had no evidence either way as to how many members of the bargaining unit were members of the Union or what their motivation was for joining the Union.

Union's comments on the Employer's response

17. In a letter to the CAC from the Union dated 12 January 2016 the Union stated that it did not accept that their letter of 25 November 2015 was not a formal request. The Union stated that their reference to a voluntary process was an alternative option to which the company declined by email on 21st December 2015. In response to the Employer stating that it did not make sense to recognise such a small group as a separate unit the Union stated that the bargaining unit identified by them was the total workforce offshore on the contract although this was supplemented by onshore support staff, where it did not seek recognition for those workers.

18. The Union stated that the application was posted to the Employer on 18 December 2015, the same time that it was posted to the CAC, but could not comment on when it was received by the Employer.

19. The Union stated that the bargaining unit consisted of 33 workers if you included the 3 adhoc employees and 1 Medic employed by another company and if you take them out then 29 would be correct. The Union stated that it was not unusual offshore for small groups to be in recognised agreements, but onshore support and others not in the bargaining unit.

20. The Union stated that the bargaining unit had either 29 or 32 if you included the adhoc employees, which they would see being included. The Union confirmed it could provide evidence that it had 25 members currently (not 90% as originally stated).

The Membership Check

21. 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 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, dates of birth and job titles of workers within the proposed bargaining unit, and that the Union would supply to the Case Manager a list of its paid up members within that unit (including their full name and date of birth). It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists would not be copied to the other party. These arrangements were confirmed in a letter dated 21 January 2016 from the Case Manager to both parties. The information from the Union was received by the CAC on 21 January 2016 and from the Employer on 22 January 2016. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

22. The list supplied by the Employer indicated that there were 29 workers in the proposed bargaining unit. The list of members supplied by the Union contained 25 names. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was 22, a membership level of 75.86%.

23. A report of the result of the membership check was circulated to the Panel and the parties on 25 January 2016 and the parties were invited to comment on the result.

The parties' comments on the result of the membership check

24. The Union in an email dated 26 January 2016 stated that it believed it satisfied the test under Paragraph 36 of the Schedule and accepted the numbers in the report check list as correct.

25. The Employer in an email dated 27 January 2016 stated that it had no comment on the outcome of the membership check. In relation to the question as to whether a majority of the

proposed bargaining unit support recognition, the Employer stated that it had no hard evidence either way as to how many of the current union members would, in fact, support recognition. The Employer stated that it was currently going through a restructuring process which impacted this particular group, and that it had been a focus of Unite's approach to employees in the bargaining unit in seeking to increase membership. Finally the Employer stated that it understood not all employees would support recognition.

Considerations

26. 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 in reaching its decision.

27. The Panel notes the Employer's comments in paragraph 9 above and whilst the Union's letter of 25 November 2015 could have been more explicit the Panel is satisfied that the union's intention was that this was the necessary precursor to a formal application to the CAC. The letter referred to the Schedule and requested the Employer to respond within 10 working days. The Panel is therefore 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.

Paragraph 36(1)(a)

28. Under paragraph 36(1)(a) of the Schedule an application is not admissible unless the Panel decides that members of the union constitute at least 10% of the workers in the proposed bargaining unit.

29. The membership check conducted by the Case Manager showed that 75.86% of the workers in the proposed bargaining unit were members of the Union. As stated in paragraph

21 above, the Panel is satisfied that this check was conducted properly and impartially and in accordance with the arrangements agreed with the parties. The Panel has therefore decided that members of the union constitute at least 10% of the workers in the proposed bargaining unit as required by paragraph 36(1)(a) of the Schedule.

Paragraph 36(1)(b)

30. Under paragraph 36(1)(b) of the Schedule, an application is not admissible unless the Panel decides that a majority of the workers constituting 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. For the reasons given in the previous paragraph the level of union membership is 75.86%. The Panel considers that, in the absence of evidence to the contrary, union membership provides a legitimate indicator of the views of the workers in the proposed bargaining unit as to whether they would be likely to favour recognition of the Union. The Panel notes the Employer's comment in paragraph 25 above that it understood not all employees would support recognition but no evidence to support this was provided. On the basis of the evidence before it, the Panel has decided that, on the balance of probabilities, 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, as required by paragraph 36(1)(b) of the Schedule.

Decision

31. For the reasons given in paragraphs 27 to 30 above, the Panel's decision is that the application is accepted by the CAC.

Panel

Professor Kenny Miller, Chairman of the Panel

Mrs Maureen Shaw

Mr Sandy Boyle

3 February 2016