

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

Citizen Advice Merton & Lambeth

Introduction

1. Unite (the Union) submitted an application to the CAC dated 11 March 2016 that it should be recognised for collective bargaining by Citizen Advice Merton & Lambeth (the Employer) for a bargaining unit comprising “all employees” and the stated offices were Lambeth, Mitcham and Morden. The CAC gave both parties notice of receipt of the application on 11 March 2016. The Employer submitted a response dated 18 March 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 Linda Dickens MBE, as chair of the Panel, and, as Members, Mr Arthur Lodge and Ms Bronwyn McKenna. The Case Manager appointed to support the Panel was Sharmin Khan but for the purpose of the membership check and this decision was Linda Lehan.

3. The CAC Panel extended the acceptance period in this case. The initial period expired on 29 March 2016. The acceptance period was extended to 8 April 2016 in order to enable the CAC to carry out a membership check and provide more time for the Panel to consider all the evidence 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 of the Schedule; and therefore should be accepted.

The Union's application

5. The Union stated that it had sent a formal request letter for recognition to the Employer on 26 February 2016 and received a response dated 7 March 2016 declining to recognise any Union voluntarily. The Union enclosed copies of both letters.

6. The Union stated that a total of 35 workers were employed by the Employer and that there were 35 workers in the proposed bargaining unit of which 23 were members of the Union. When asked to provide evidence that a majority of the workers in the bargaining unit were likely to support recognition for collective bargaining, the Union stated that it had 23 members at CA Merton and Lambeth and that it could provide a petition requesting recognition of Unite signed by CA Merton and Lambeth staff. The Union stated that it could provide membership information and a copy of the petition to the CAC Case Manager on request.

7. Explaining the reasons for selecting the proposed bargaining unit the Union stated that it had traditionally represented Advice workers employed by CABs and Law Centres in London and referred to Clause 3.1 of an attached NACAB Procedural Agreement which defined the bargaining unit as all employees and which the Union stated transferred when the CABs became independent of NACAB.

8. In response to the question is there any existing recognition agreement which they were aware of, which covered, any of the workers in the bargaining unit the Union stated that they originally had recognition at Lambeth CAB as a result of the transfer of Memorandum of Procedural Agreement between The National Association of Citizens Advice Bureaux and ACTS. The Union stated that the Employer maintained that that agreement only applied to staff at Lambeth who transferred into Merton and Lambeth CAB when Lambeth and Merton CABs merged. The Union also stated that Unison had had recognition at Merton CAB.

The Employer's response to the Union's application

9. In its response the Employer stated that it had received the Union's written request for recognition on 26 February 2016 by email and that it declined the request. A copy of their response was attached.

10. The Employer confirmed that it had received a copy of the application form direct from the Union on 11 March 2016.

11. The Employer stated that it did not agree with the proposed bargaining unit as it had 38 employees not 35.

12. The Employer stated that the number of workers employed by them at the March 2016 pay roll was 38. The Employer stated that it did not agree with the number of workers in the bargaining unit as defined in the Union's application and reiterated that they had 38 employees not 35.

13. As to whether it disagreed with the Union's estimate of membership in the proposed bargaining unit the Employer stated that it was only aware of 2 Unite union members.

14. As to whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer stated that it only had reasonable evidence of 2 individuals who were Unite members and were not aware of any other members or level of support for Unite the Union.

15. The Employer submitted that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit.

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 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 (where possible) 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 giving names, addresses and dates of birth (where possible) together with a copy of their petition to enable comparisons to be undertaken. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and petition would not be copied to the other party. These arrangements were confirmed in a letter dated 22 March 2016 from the Case Manager to both parties.

17. The Case Manager carried out the membership and support check using the information that was received by the Union on 24 March 2016 and the Employer on 29 March 2016.

18. The Union provided a list of 21 members and the Employer provided a list of 38 workers.

19. The Union's petition consisting of 22 names/signatories was typed on Merton & Lambeth headed notepaper addressed to the Union and set out as follows:

“RE: For Confidential Petition to be used as evidence by UNITE at Central Arbitration Committee for purpose of statutory recognition.

We the undersigned are all employees of Citizens Advice Merton and Lambeth. We want our employer to recognise UNITE for the purpose of collective bargaining.”

Workers then signed and printed their names.

20. The membership check established that there were 20 members of the Union within the bargaining unit; a membership level of 52.63%. The result of the comparison of the Union’s petition with the Employer’s list of workers revealed that a total of 19 workers had indicated that they wanted the Union to be recognised which corresponded to 50% of the bargaining unit and all 19 workers were union members.

21. A report of the result of the membership and support check was circulated to the Panel and the parties on 30 March 2016 and the parties were invited to comment on the results and to bear in mind the two admissibility tests set out in paragraph 36 (1)(a) and paragraph 36 (1)(b) in so doing. The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

Comments on the Case Manager’s report

22. In an email received from the Union dated 4 April 2016 it submitted that it was pleased that it had met both tests as outlined by Paragraph 36 of the Schedule.

23. No comments were received from the Employer.

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 in reaching its decision.

25. The Panel is satisfied that the Union made a valid request to the Employer within the terms specified in 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. In relation to the provisions of paragraph 35, the Panel notes that the Union indicates that there had been some union recognition in the previously separate CABs. However the Employer has made clear that currently there is no recognition agreement currently in force which covers any workers in the proposed bargaining unit and we are satisfied that this is the case.

26. 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)

27. In accordance with paragraph 36(1)(a) of the Schedule the Panel must determine whether or not members of the Union constitute at least 10% of the workers in the Union's proposed bargaining unit. The check of Union membership in the proposed bargaining unit as conducted by the Case Manager on 30 March 2016 established that Union membership stood at 52.63%. The Panel is therefore satisfied that this test is met.

Paragraph 36(1)(b)

28. 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.

29. Based on those numbers provided by the Case Manager's check of the Union's petition against the list of 38 workers provided by the Employer, this indicated that 19 of the 22 petition signatories were identifiable as workers within the bargaining unit, a support level of 50%. 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

30. The Panel is satisfied that the application is valid within the terms of paragraphs 5 to 9, is made in accordance to with paragraph 11 and is admissible within the terms of paragraphs 33 to 42 of the Schedule. The application is therefore accepted by the CAC.

Panel

Professor Linda Dickens MBE

Mr Arthur Lodge

Ms Bronwyn Mckenna

08 April 2016