

**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

Besana UK Ltd

**Introduction**

1. Unite the Union (the Union) submitted an application to the CAC dated 20 January 2016 that it should be recognised for collective bargaining by Besana UK Ltd (the Employer) for a bargaining unit comprising "Warehouse operatives" at the Employer's site in Bluestem Road, Ransomes Europark, Ipswich. The CAC gave the parties notice of receipt of the application on 21 January 2016. The Employer submitted a response to the application on 25 January 2016.

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, Mrs Jackie Patel and Mr Keith Sonnet. The case manager appointed to support the Panel was Nigel Cookson.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 3 February 2016. The acceptance period was extended to 17 February 2016 in

order to allow time to conduct a membership check, to allow the parties to comment on the results of the check and for the Panel to consider said comments before arriving at a decision.

### **Issues which the Panel has to determine**

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 should therefore be accepted.

### **Summary of the Union's application**

5. In its application the Union stated that it had initially written to the Employer on 8 October following which the parties met with a view to discussing a voluntary recognition agreement. However, following a meeting on 18 November the Employer confirmed its decision not to enter into a voluntary agreement with the Union. On 6 January 2016 the Union wrote again to the Employer making clear that it was requesting recognition under the Schedule. The Employer responded on 15 January 2016 formally rejecting the request. Copies of correspondence referred to by the Union were enclosed with its application.

6. The Union stated that the Employer, following receipt of the request for recognition, did not propose that Acas should be requested to assist.

7. According to the Union there were approximately 30 workers employed by the Employer, 19 of whom were in the proposed bargaining unit. Asked whether the Employer agreed on the number of workers in the proposed bargaining unit the Union answered "not discussed". The Union stated that there were 10 members of the Union within the proposed bargaining unit and, when asked to provide evidence that the majority of the workers in the bargaining were likely to support recognition for collective bargaining, the Union stated that the majority of workers employed in the proposed bargaining unit joined the Union once they had been made aware that they had a statutory right to apply for trade union recognition. It added that on the basis of several meetings outside of work time, the Union was assured that the majority were likely to favour recognition.

8. The Union had selected the proposed bargaining unit because of majority union membership with the members having collectively approached the Union with the stated intention of establishing recognition. The bargaining unit had not been agreed with the Employer.

9. Finally the Union stated that, as far as it was aware, there was no existing recognition agreement in force covering any of the workers in the proposed bargaining unit and it confirmed that it held a current certificate of independence.

### **Summary of the Employer's response to the Union's application**

10. The Employer stated in its response that it had received the Union's written request for recognition on 7 January 2016 and it responded to the request by letter dated 15 January 2016, a copy of which was enclosed.

11. The Employer stated that it had received a copy of the application form and supporting documents from the Union on 21 January 2016. It confirmed that it had not, before receiving a copy of the application from the Union, agreed the bargaining unit with the Union and that this remained the position explaining that it believed the proposed bargaining unit was unnecessary as it was a small business with a limited number of employees. The Employer always treated its employees fairly and with consideration. Several of those applying for membership were, so the Employer believed, being influenced by an "intimidatory" family element within their group.

12. The Employer confirmed that following receipt of the Union's request it had not proposed that Acas be requested to assist.

13. The Employer stated that it employed a total of 30 workers and that 18 of these were in the bargaining unit proposed by the Union adding that one employee had recently departed the company.

14. Asked if it disagreed with the Union's estimate of membership in the proposed bargaining unit the Employer stated "We believe this number (10) is unlikely, but have no evidence to suggest otherwise".

15. When asked whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer stated "see above" which referred to its answer given in paragraph 14 above.

16. Finally, the Employer confirmed that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit and that it was not aware of any previous application under the Schedule in respect of this bargaining unit or a similar bargaining unit.

### **The membership check**

17. 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 the workers within the proposed bargaining unit, and that the Union would supply the Case Manager with a list of its paid up members within that unit including full names and dates of birth. It was explicitly agreed with both parties that in order to preserve confidentiality the respective lists would not be copied to the other party. These arrangements were confirmed in a letter dated 3 February 2016 from the Case Manager to both parties. The Panel is satisfied that this check was conducted properly and impartially and in accordance with the agreement reached with the parties.

18. The information from both the Union and the Employer was received by the CAC on 3 February 2016. The Union provided a spreadsheet with the details of 9 individuals. The information provided for each individual included first name and surname, date of birth, job description and "arrears weeks". All of the individuals were recorded as having "0" arrears weeks. In its covering email the Union explained that "The "weeks in arrears" column verifies that they are all up to date with their subscriptions."

19. The Employer provided a list of the names, dates of birth and job titles for 19 workers. The job titles given were: Logistics Manager, Sacma (Stock picking), Forklift Driver – Goods In/Out, Cleaner, Production Operative, Forklift Driver, Mechanic, Production Manager, Team Leader/Trainee Mechanic and QC.

20. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was 9, a membership level of 47.37%. A report of the result of the membership check was circulated to the Panel and the parties on 3 February 2016 and the parties were invited to comment thereon by the close of business on 8 February 2016.

### **Summary of the parties' comments on the result of the membership check**

21. In a letter dated 4 February 2016 the Employer said that it noted the results of the check and that, in terms of paragraph 36 of the Schedule, paragraph 36(1)(b) specifically; the check did not appear to show that the majority of the workers in the proposed bargaining unit would be in favour of Union recognition for collective bargaining purposes.

22. In an email dated 5 February 2016 the Union stated that it had so specific comments at this stage save that it wished to point out an anomaly in the figures provided by the Employer. In its response to the application it had identified 18 workers in the bargaining unit however for the purposes of the membership check it had provided a list of 19 workers.

23. The parties comments were cross-copied and on 9 February 2016 the Employer wrote to re-confirm that its workforce in the Warehouse bargaining unit at the time of writing was 19 (Nineteen) persons.

### **Considerations**

24. In deciding whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 4 of this decision are satisfied. The Panel has considered the evidence submitted by the parties 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 to recognise it for collective bargaining

in respect of the proposed bargaining unit as described in paragraph 1 of this decision. The request was made in writing and identified the Union, the proposed bargaining unit and that the request was made under the Schedule.

26. Next, the Panel has to determine whether the Union's application to the CAC was made in accordance with the statutory timescale which is set out in paragraph 10(6) of the Schedule which states that:

**The first period is the period of 10 working days starting with the day after that on which the employer receives the request for recognition.**

Paragraph 11 then reads:

- (1) **This paragraph applies if-**
  - (a) before the end of the first period the employer fails to respond to the request, or
  - (b) before the end of the first period the employer informs the union (or unions) that the employer does not accept the request (without indicating a willingness to negotiate).
- (2) **The union (or unions) may apply to the CAC to decide both these questions-**
  - (a) whether the proposed bargaining unit is appropriate;
  - (b) whether the union has (or unions have) the support of a majority of the workers constituting the appropriate bargaining unit.

In this case the Union's formal letter requesting recognition, and upon which it relied, was dated 6 January 2016 and, according to the Employer's response, it was received by the Employer the following day on 7 January 2016. The Employer then responded in writing on 15 January 2016 refusing the request without indicating a willingness to negotiate. The first period of 10 days would therefore have commenced on 8 January 2016 and ended 10 working days later on 21 January 2016. The Union's application was dated 20 January 2016 and received by the CAC on the same date.

27. In our view the fact that the Union's application to the CAC was made earlier than 10 days from the Employer's receipt of the Union's request was immaterial because the Employer had already responded to the request within the first period and had refused the Union's request without indicating a willingness to negotiate. The Employer's letter therefore brought the first period to a premature end in accordance with paragraph 11(1)(b), thus enabling the Union to make its application pursuant to paragraph 11(2). Accordingly, the

Panel therefore decides that the application was made in accordance with paragraph 11 of the Schedule in that before the end of the first period the Employer refused the request.

28. The Panel is also satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 35 and 37 to 42. The remaining issues for the Panel to address are whether the admissibility criterion set out in paragraph 36 of the Schedule are met.

### ***Paragraph 36***

29. In accordance with paragraph 36(1)(a) of the Schedule the Panel must determine whether 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 3 February 2016 showed that Union membership stood at 47.37% which clearly satisfies the requirements of this test. The Employer, in its comments on the Case Manager's report, did not seek to challenge this finding. The test set out in paragraph 36(1)(a) is therefore satisfied.

30. The test in paragraph 36(1)(b) is whether 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. To support its position the Union relied on its level of membership, which, the Case Manager's report established a being 47.37%.

31. Commenting on the results of the check the Union questioned whether the Employer had provided an accurate figure for the number of workers in the proposed bargaining unit. In its application the Union had stated that the proposed bargaining unit was 19 strong but the Employer, in its response dated 25 January 2016 had said that the true figure was 18 on the grounds that one employee had departed the company. However, this had risen again to 19 by the time it provided its information to enable the Case Manager to undertake his comparison on 3 February 2016. The Employer did subsequently confirm that the true figure was 19 without explanation as to the increase.

32. Commenting on the Case Manager's report the Employer argued that it had not demonstrated that the Union had the support of the majority of the workers in the proposed bargaining unit having only 9 out of a total 19 workers in membership. The Union queried the slight difference in figures as it would have had at least half of the proposed bargaining unit in membership based on the figure of 18 workers given by the Employer in its response. However, in applying this test the Panel would remind the parties that the question is whether it is *likely* that a majority of the workers would support recognition of the Union rather than a strict empirical test of demonstrable support. The CAC is being asked to make an educated guess or draw an inference from all the surrounding circumstances and information known in a short space of time in accordance with the statutory timetable of two weeks, if possible. It inevitably involves an element of speculation.

33. The question the Panel asks itself is whether, on the balance of probabilities, the Union would be supported by its members in its endeavours to gain recognition and we believe that it is highly likely that this would be the case. Our knowledge and understanding of industrial relations for which we have been appointed to the CAC leads us to conclude that workers usually join a union for collective bargaining purposes and that an important feature of trade union membership is collective recognition on pay, hours and holidays. We next considered whether, on the balance of probabilities, any non-members would also support recognition of the Union. We bear in mind that it would only take two non-members to support recognition of the Union for this test of likely support to be satisfied. Our experience also leads us to conclude that some people who support a union prefer not to join and incur membership fees, and others who will wait to see if recognition is granted before committing to membership. Non membership, especially where recognition is not in place, does not necessarily equate to lack of support of a union.

34. Having considered the matter we take the view that it is more likely than not that the majority of 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. Accordingly, the test set out in paragraph 36(1)(b) is satisfied.

## **Decision**

35. 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**

Her Honour Judge Stacey, Chairman of the Panel

Mrs Jackie Patel

Mr Keith Sonnet.

12 February 2016