

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:

University and College Union (UCU)

and

CU Services Ltd

Introduction

1. The University and College Union (the Union) submitted an application to the CAC dated 27 June 2016 that it should be recognised for collective bargaining by CU Services Ltd (the Employer) for a bargaining unit comprising “all staff involved in the preparation, development and delivery of Pre and In- Sessional English programmes within CU Services Ltd. This would include tutors, course leaders and associate directors”. The location of the proposed bargaining unit was given as Priory Street, Coventry CV1 5FB. The application was received by the CAC on 27 June 2016 and the CAC gave both parties notice of receipt of the application that day. The Employer submitted a response to the CAC dated 1 July 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 Gillian Morris, the Panel Chair, and, as Members, Mr Simon Faiers and Mr Gerry Veart. 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 11 July 2016. The acceptance period was extended to 22 July 2016 in order to allow time for the parties to comment on the results of a membership and support check and for the Panel to consider said 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.

Summary of the Union's application

5. In its application to the CAC the Union stated that on 12 May 2016 a formal letter was sent to the Employer requesting recognition under the Schedule and offering to meet with Acas if required. On 10 June 2016 a letter was received from the Employer (dated 19 May 2016 and postmarked 23 May 2016) which stated that the Employer did not wish to pursue a voluntary agreement with the Union. Both these letters were attached to the application along with a further letter dated 20 June 2016 sent by the Union to the Employer acknowledging receipt of its letter dated 19 May 2016. The Union also enclosed a copy of a letter to the Employer dated 27 June 2016, to which a copy of its application to the CAC was attached, which reiterated the Union's willingness to reach a voluntary agreement.

6. The Union stated that it held a current certificate of independence and that it had not made a previous application under the Schedule for statutory recognition for workers in the proposed bargaining unit or a similar unit. The Union stated that, following receipt of the request for recognition, the Employer had not proposed that Acas should be requested to assist the parties.

7. When asked for the total number of workers employed by the Employer the Union answered “50”. The Union stated that there were 37 workers in the proposed bargaining unit, of whom 14 were Union members. When called upon to provide evidence that the majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining, the Union stated that signed pledges of support for recognition had been received from 29 of the workers in the bargaining unit between 17 May 2016 and 23 June 2016. The Union stated that the names of those workers were to remain confidential from the Employer but that copies of the pledges could be shared with the CAC caseworker.

8. The Union stated that the reason for selecting the proposed bargaining unit was that the Union was the largest trade union and professional association for academics, lecturers, trainers and researchers who worked in further and Higher Education throughout the UK. The Union stated that the Employer contained a Pre-Sessional and In-Sessional English teaching centre, together with some other staff who delivered professional development and support staff. The Union stated that there was a distinctive and coherent academic staff structure in the Pre and In-Sessional English centre which was formerly based in the University of Coventry and which was separate from the support and professional development services provided by other workers at the Employer. The Union stated that the proposed bargaining unit mapped coherently onto the staffing structure at the Employer.

9. The Union did not answer the question on the application form as to whether the bargaining unit had been agreed with the Employer but stated elsewhere in the application that the Employer, in its correspondence of 19 May 2016, had not contested the bargaining unit. The Union said 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.

10. When asked for the date that the Union had copied its application and supporting documents to the Employer the Union answered “TBC”.¹

¹ See, however, the reference to the Union’s letter to the Employer of 27 June 2016 in paragraph 5 above.

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

11. In its response to the Union's application the Employer stated that it had received the Union's written request for recognition on 13 May 2106. When asked to describe its response to the request the Employer referred to its attached letter dated 19 May 2016. This letter confirmed that the Employer was setting up a Staff Consultative Group and that the Employer did not wish to pursue a voluntary recognition agreement.

12. The Employer stated that it had received a copy of the application form from the Union on 27 June 2016.

13. The Employer stated that it had not, before receiving a copy of the application form from the Union, agreed the bargaining unit with the Union but when asked whether it agreed the proposed bargaining unit it answered "Yes".

14. The Employer stated that, following receipt of the Union's request, it had not proposed that Acas should be requested to assist.

15. The Employer stated that it employed a total of 43 workers as at 30 June 2016. Asked whether it agreed with the number of workers in the proposed bargaining unit as defined in the Union's application the Employer answered "No". The Employer stated that there were eight employees in the proposed bargaining unit and that a significant number of employees were due to leave the Employer.

16. When asked if there was an existing agreement for recognition in force covering workers in the proposed bargaining unit the Employer answered "No" but that a Staff Consultative Group had been set up which would include a representative from the proposed bargaining unit. The Employer said that this Group would be consulted on matters relating to significant organisational or contractual changes; changes to HR policies and procedures; company strategy and performance; and changes that may impact the working environment or workplace practices and policies of the company.

17. In answer to the question whether it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer said that there were currently eight permanent employees in the proposed bargaining unit and 24 employees on a fixed term contract who were due to leave the company between 9 and 20 September 2016. 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 there would not be enough employees in the proposed bargaining unit to support recognition.

18. When asked if it was aware of any previous application under the Schedule for statutory recognition by the Union in respect of this or a similar bargaining unit the Employer answered "N/A". When asked whether it had received any other applications under the Schedule in respect of any workers in the proposed bargaining unit, the Employer again answered "N/A".

The membership and support check

19. To assist in 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 are 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 independent checks of the level of union membership in the proposed bargaining unit and the number of workers in that unit who had signed the Union's pledge cards in support of recognition. It was agreed with the parties that the Employer would supply to the Case Manager a list of the full names and dates of birth of the workers within the bargaining unit, and that the Union would supply to the Case Manager a list of the full names and dates of birth of the paid up union members within that unit and a copy of the pledge cards. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and the pledge cards would not be copied to the other party and these arrangements were confirmed in a letter from the Case Manager to both parties dated 6 July 2016. The information from the Union was received by the CAC on 6 July 2016 and the information from the Employer was received by the CAC on 7 July 2016. The Panel is satisfied

that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

20. The list supplied by the Employer showed that there were 39 workers in the proposed bargaining unit. The list of members supplied by the Union contained 15 names. According to the Case Manager's report the number of Union members in the proposed bargaining unit was 13, a membership level of 33.33%.

21. The Union provided 29 individual pledge cards, each taking the form of a single A4 sheet. The pledge cards were dated between 17 May 2016 and 23 June 2016. The text of the pledge cards read as follows:

I support recognition of UCU for collective bargaining on behalf of academic staff at CU Services Ltd.

22. The Case Manager's report showed that the pledge cards had been signed by 26 workers in the proposed bargaining unit, a figure which represents 66.66% of the bargaining unit. Of those 26 signatories 12 were members of the Union (30.77% of the proposed bargaining unit) and 14 were non-members (35.90 % of the proposed bargaining unit).

23. A report of the result of the membership and support check was circulated to the Panel and the parties on 8 July 2016 and the parties were invited to comment on the results by noon on 12 July 2016.

Parties' comments on the result of the membership and support check

24. In an email to the Case Manager dated 8 July 2016 the Union stated that it was pleased to see that its members comprised 33% of the agreed bargaining unit. The Union noted that this was significantly in excess of the required statutory threshold. The Union stated that it was also pleased to see that 67% of the agreed bargaining unit had indicated that they wanted Union recognition. Given this, the Union hoped that it was possible to proceed to a ballot in order to

resolve this issue for the staff in question in the shortest time frame possible. No comments were received from the Employer by the deadline imposed.

Considerations

25. 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.

26. The Panel is satisfied that the Union's letter of 12 May 2016 constituted 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 in that before the end of the "first period"² the Employer informed the Union that it did not accept the request or, in the alternative, failed to respond to the request.³ 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 set out in paragraph 36(1)(a) and paragraph 36(1)(b) are met.

Paragraph 36(1)(a)

27. 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. The membership and support check conducted by the Case Manager (described in 19 – 22 above) showed that 33.33% of the workers in the bargaining unit were members of the Union. As stated in paragraph 19 above, the Panel is satisfied that this check was conducted properly and impartially and in accordance with the arrangements agreed with the parties. The

² The "first period" is defined paragraph 10(6) of the Schedule as "the period of 10 working days starting with the day after that on which the employer receives the request for recognition".

³ The Panel notes the Union's statement, referred to in paragraph 5 above, that it did not receive the Employer's letter rejecting its request until 10 June 2016. The Panel has not found it necessary in this case to invite submissions from the parties as to whether the Employer "inform[ed]" the Union given that paragraph 11 can be satisfied by a failure to respond to a request.

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)

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. The check conducted by the Case Manager showed that 66.66% of the workers in the proposed bargaining unit had signed pledge cards in support of recognition. The Employer has not disputed the validity of the pledge cards in any respect. 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.

Concluding observation

29. The Panel notes the Employer's statement, recorded in paragraphs 15 and 17 above, that a significant number of employees are due to leave the Employer. The Panel reminds the parties that it is required to make its decision on the basis of the number of employees currently employed by the Employer not on the basis of the number who may be employed at some future date.

Decision

30. For the reasons given in paragraphs 26 to 28 above, the Panel's decision is that the application is accepted by the CAC.

Panel

Professor Gillian Morris, Panel Chair

Mr Simon Faiers

Mr Gerry Veart.

18 July 2016