

28 April 2017

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:

Community
and

John Smedley Limited

Introduction

1. Community (the Union) submitted an application to the CAC on 27 March 2017 that it should be recognised for collective bargaining by John Smedley Limited (the Employer) for a bargaining unit comprising "Hourly paid employees at the Armthorpe site, based at John Smedley Limited, Rand Lane Armthorpe, Doncaster, DN3 3DY". The CAC gave both parties notice of receipt of the application on 28 March 2017. The Employer submitted to the CAC a response to the application on 30 March 2017 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 Bill Lockie and Mr Gerry Veart. The Case Manager appointed to support the Panel was Miss Sharmin Khan.

Issues

3. 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

4. In its application the Union stated that a letter was sent to the Employer on 25 January 2017 in which it made its request for recognition under the Schedule for "Hourly paid employees at the Armthorpe site, based at John Smedley Limited, Rand Lane Armthorpe, Doncaster, DN3 3DY" (a copy of the letter was enclosed with the application). The Union explained that there then followed discussions on voluntary recognition which resulted in the Employer stating that it did not wish to recognise the Union for matters such as hours of work, pay and holidays. On 17 March 2017 the Employer stated to the Union "We are happy to proceed with a recognition agreement for Armthorpe shop workers as the bargaining unit with regard to disciplinary/grievance/redundancy/TUPE". The Union was not satisfied and therefore proceeded with its formal application to the CAC. The Union confirmed the date on which it copied the application and supporting documents to the Employer was 27 March 2017.

5. The Union stated that there were 50 workers in its proposed bargaining unit of which 39 were members of the Union. It was unknown to the Union whether or not the Employer agreed there were 50 workers in the proposed bargaining unit. 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 answered that it already had a majority membership level within its proposed bargaining unit and it was made clear by the Union's officers during its recruitment campaign that employees were being encouraged to join with a view to achieving trade union recognition.

6. The Union stated that the reason for selecting its proposed bargaining unit was because it was a self-contained location managed locally. Everyone in its bargaining unit worked at this site. The Union stated its bargaining unit was not agreed by the Employer.

7. Finally, when asked if there had been a previous application in respect of this or a similar bargaining unit and whether there was an existing recognition agreement that covered any of the workers in the proposed bargaining unit, the Union answered “No”.

The Employer's response to the Union's application

8. The Employer completed and submitted the CAC’s Employer’s Response Questionnaire. The Employer answered that it had received the Union’s written request under Schedule A1 for recognition on 25 January 2017 to which it responded by e-mail on 31 January 2017. The full content of that e-mail was pasted into the completed questionnaire. That e-mail confirmed receipt of the written request by e-mail and post and acknowledged that the Union’s request was made under Schedule A1 in respect of its hourly paid employees at its Armthorpe site. The e-mail also stated that the Employer intended to comply with the timescales set out by the Schedule and that its HR representative had spoken with the Union and that it was acknowledged that both parties intended to agree recognition on a voluntary basis and the Employer proposed a meeting on 14 February 2017 to commence discussions.

9. The Employer stated that it had received a copy of the Union’s letter to the CAC dated 27 March by e-mail and confirmed that, following receipt of the Union's request, the Employer had not proposed that Acas be requested to assist

10. When asked if it and the Union had agreed the Union’s bargaining unit before receiving a copy of the Union’s application, the Employer answered that it had proposed a limited recognition agreement in relation to the requested bargaining unit of the Armthorpe site which the Union had rejected. The Employer stated that it did not agree with the Union’s proposed bargaining unit. The Employer enclosed a separate letter to the CAC (dated 30 March 2017) setting out its case in relation ‘to the matters that the CAC needs to consider when determining the bargaining unit’ and provided supporting documents. It stated that it thought the bargaining unit should also include shop floor workers at another site. By letter dated 10 April 2017, the CAC informed the parties that the matter of whether the Union’s proposed bargaining unit is appropriate was a matter to be considered at the next stage of the statutory process should the application be accepted. The arguments therefore are not reported here.

11. When asked for the number of workers it employed, the Employer stated 348 and that the total number of shop floor workers was 215. When asked at question 8, if it agreed with the number of workers in the bargaining unit as declared by the Union in its application, the Employer answered “No” stating that “The actual number of workers at Armthorpe is 63.” In its covering e-mail, submitting the Response Questionnaire to the CAC, the Employer stated that “For the avoidance of doubt, we are objecting to the application on the grounds that we do not agree with the number of workers in the bargaining unit as defined in the Union’s application (see Q8 on the Employer’s Response document).”

12. The Employer stated that it agreed with the Union’s estimate of membership in the Union’s proposed bargaining unit. When asked ‘if you do not consider that a majority of the workers in the proposed bargaining unit are likely to support recognition, please indicate your reasons for taking this view, with any available evidence’ the Employer replied “We do not accept that a majority of shop floor workers across both sites would agree to support recognition”.

13. The Employer stated there was no existing recognition agreement in force covering workers in the proposed bargaining unit. The Employer responded ‘N/A’ when asked whether it was aware of any previous application under the Schedule by the Union in respect of this or a similar bargaining unit and stated ‘No’ when asked if it was aware of any other applications under Schedule A1 for statutory recognition in respect of any workers in the proposed bargaining unit.

Further Comments from the parties

14. On 10 April 2017 the CAC copied the Employer’s response to the application to the Union and invited its comments. The Panel specifically invited the Union to comment on the Employer’s declaration that there were 63 workers in the bargaining unit rather than 50 as stated by the Union in its application.

15. On 12 April 2017 the CAC Case Manager was copied into an e-mail exchange between the parties in which the Employer listed for the Union the job functions of the Armthorpe employees and the number of workers in each job function. The total figure declared was 72.

The Employer explained in the e-mail to the Union that it had reported a different figure (63) in its response to the CAC because of a reporting error. The job functions listed by the Employer were:

14pt Linking – 12, 18pt Linking – 7, Indirects – 5, Buttonhole – 2, Button Sew – 1, Cutting – 4, Examiners – 12, Hand Sew – 7, Lockstitch – 12, Mending – 4, Splitting – 1, Union Special – 1, Unroving – 2, Outworkers – 2. Total number of employees: 72.

16. In e-mails to the CAC dated 12 and 13 April 2017 the Union confirmed that it accepted the Employer's figure of 63 as the number of workers in its proposed bargaining unit. It did not recognise the Indirects, Out workers and Roving job functions. By e-mail on 21 April 2017 the CAC indicated to the parties that according to the list provided by the Employer and the subsequent response from the Union, the CAC's understanding was that the proposed bargaining unit consisted of 63 workers. On the same date the CAC wrote to inform the parties that the Panel considered it now had sufficient information for it to decide whether the admissibility tests were met but should either party wish to provide any further comment, it should do so by the close of business on 24 April 2017.

17. No further comments were received by that time but an e-mail to the CAC was received from the Employer on 25 April 2017 (copying in the Union) in which the Employer maintained that the roving employees and outworkers were part of the Armthorpe Shop Floor Workers and should be included in the bargaining unit, saying it was asked for employee numbers at Armthorpe hence it provided the full employee figures.

Considerations

18. In deciding whether to accept the application the Panel must determine whether the admissibility and validity provisions referred to in paragraph 3 of this decision are satisfied. The Panel has considered carefully all the evidence submitted by the parties in reaching its decision.

19. 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 and that it was made in accordance with paragraph 12(2) of the Schedule. The remaining issue for the Panel to address is whether the admissibility criteria set out in paragraph 36(1) of the Schedule are met.

Paragraph 36(1)(a)

20. Paragraph 36(1)(a) of the Schedule requires the Panel to determine whether members of the Union constitute at least 10% of the workers in the Union's proposed bargaining unit. The Employer did not dispute the Union's declaration of its level of membership as 39. The Union identified its proposed bargaining unit as the 63 of the 72 workers stated by the Employer in its list of job functions at the Armthorpe site. It is accepted that the Union has 39 members at the site. Using the Union's accepted figure of 63 workers in its proposed bargaining unit establishes a membership level of 62%; using the Employer's figure of 72 workers would produce a membership level of 54% of the bargaining unit.

21. On the evidence the Panel is satisfied that the 10% threshold has been met.

Paragraph 36(1)(b)

22. 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.

23. In its application the Union stated that it had a majority of the workers in membership. At that time it thought the number of workers in its proposed bargaining unit was 50 of whom 39 were union members, which would constitute 78% membership. On the basis of information about the job functions of those working at the Armthorpe site provided subsequently by the Employer, the Union accepted that there were 63 workers in its proposed bargaining unit (the number first stated by the Employer in its Response). The 39 members therefore would constitute 62% of the proposed bargaining unit. We note that even if we were to use the figure of 72 workers, which the Employer later stated is the relevant number, union members would still constitute a majority (54%).

24. Although the Employer did not dispute the number of Union members, it did not accept 'that a majority of workers across both sites would agree to support recognition'. No supporting evidence was provided for this view. The reference to 'both sites' in the response

is a reference to the Employer's preferred bargaining unit. However at this stage we are concerned with the position relating to the bargaining unit proposed by the Union, which concerns only the Armthorpe site. No argument or evidence was provided by the Employer that the majority of the workers in the proposed bargaining unit would not support recognition of the Union.

25 There is a difference of view as to the exact number of workers falling within the definition of the proposed bargaining unit but, as noted above, calculations show that the Union has majority membership on whichever number is used. The Employer has not disputed the Union's claim that it has the majority of workers in the proposed bargaining unit in membership and the Panel accepts the membership information provided by the Union at this stage for the purposes of paragraph 36(1)(b). We note the Union's statement that in its recruitment campaign employees in the proposed bargaining unit were encouraged to join the Union with a view to achieving trade union recognition. In the absence of any evidence to the contrary, our view is that in this case union membership may be taken as indicative of likely support for recognition for the purposes of collective bargaining.

26 For the reasons given above the Panel is satisfied on the evidence before it that, on the balance of probabilities, a majority of the workers in the proposed bargaining unit would be likely to support recognition of the Union and the test set out in paragraph 36(1)(b) is therefore met.

Decision

27. For the reasons given above, the Panel's decision is that the application is accepted by the CAC.

Panel

Professor Linda Dickens MBE - Chair of the Panel

Mr Bill Lockie

Mr Gerry Veart

28 April 2017