

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:

RMT

and

Profile Security Services Limited

Introduction

1. RMT (the Union) submitted an application to the CAC dated 30 August 2017 and received by the CAC on 1 September 2017 that it should be recognised for collective bargaining by Profile Security Services Limited (the Employer) for a bargaining unit comprising “Security Officers employed by Profile Security Services Ltd, which include mobile supervisors, box officers and gate officers” and the location for which was “Harwich International Port”. The CAC gave both parties notice of receipt of the application on 1 September 2017. The Employer submitted a response dated 8 September 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, Miss Mary Canavan and Mr Keith Sonnet. The Case Manager appointed to support the Panel was Miss Sharmin Khan.

3. The CAC Panel extended the acceptance period in this case. The initial period expired on 15 September 2017. The acceptance period was extended on four occasions until 29 September 2017 and then 16 October 2017 in order to enable the CAC to carry out a membership check, for the parties to comment on that check and to 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 its request letter to the Employer for recognition was dated 9 August 2017. A copy of this and a copy of the Employer's letter of reply dated 22 August 2017 was enclosed with the application. In its reply to the Union, the Employer declined the Union's request for trade union recognition. The Union confirmed that the date on which the application and the supporting documents were copied to the Employer was 30 August 2017.

6. The Union stated approximately 1500 workers were employed by the Employer and that there were 41 workers in the proposed bargaining unit of which 21 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 signatures in support of RMT recognition from 10 workers in the bargaining unit who are not RMT members, and that this information could be provided confidentially to the CAC panel when requested.

7. When explaining the reasons for selecting the proposed bargaining unit, the Union stated that it was for a group of workers who all carried out security duties on a specific contract at a single location.

8. Finally the Union confirmed it had a certificate of independence, that it had not made a previous application under Schedule A1 for statutory recognition of the bargaining unit or a similar unit, and that it was not aware of any existing recognition agreement for which covered any worker in the bargaining unit.

The Employer's response to the Union's application

9. The Employer completed and returned to the CAC the "Employer's Response Questionnaire form" dated 8 September 2017. The Employer confirmed that it had received the Union's formal letter of request on 14 August 2017 and a copy of the Union's application to the CAC on 1 September 2017.

10. The Employer stated that no discussions regarding the bargaining unit or recognition had been held with the Union before the Union made its application to the CAC, and that it had not made a request for Acas assistance following receipt of the Union's request.

11. The Employer stated that it employed 1,736 employees of which 52 were currently employed at the Harwich Port site. The Employer did not agree with the number of workers in the bargaining unit, stating that there were 52 workers in the proposed bargaining unit.

12. The Employer did not accept the Union's estimate of membership in the proposed bargaining unit and stated that it could not comment as the information was not known to it. The Employer also stated that it did not have the information to be able to comment on whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, however it did not believe that a majority of the workers in the proposed bargaining unit were likely to favour recognition.

13. The Employer said it was not aware of any previous application covering any worker in the proposed bargaining unit or similar unit and that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit.

Membership and Support Check

14. 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 and the level of workers within the proposed bargaining unit who had signed the Union's petition in support of recognition.

15. 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) and a copy of its petition. 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 20 September 2017 from the Case Manager to both parties. The Employer submitted its information to the CAC on 20 September 2017 and the Union submitted its information on 21 September 2017.

16. The Union also submitted with its list a scanned copy of a petition on which workers had signed up to the following statement. The signatures were dated between 5 August 2017 and 13 August 2017:

"I support the RMT claim for recognition for collective bargaining for Security Officers employed by Profile Security at Harwich International Port. Recognition for collective bargaining will give the RMT Union rights to negotiate with Profile Security on (at a minimum) wages, hours and holidays on behalf of workers in these grades."

17. The Union also provided a separate list of names of workers and grades that it believed were not in the agreed bargaining unit which included 1 Manager, 1 Admin person, and 7 Customer Service Grades employees. The list was copied to the Employer. By exchange of e-mails between the parties and the Case Manager dated 26

to 28 September, the Employer confirmed that the bargaining unit was not agreed and provided an updated list of the workers in the Union's proposed bargaining on 28 September 2017.

18. The membership check established that there were 42 workers in the proposed bargaining unit of which 20 were members of the Union; a membership level of 47.62%. The result of the comparison of the Union's petition with the Employer's list of workers revealed that a total of 10 workers in the proposed bargaining unit had indicated that they wanted the Union to be recognised which corresponded to 23.81% of the bargaining unit. 1 of the workers was a Union member, 9 non-members. The proportion of workers in the proposed bargaining unit who signed the petition and are non-members is 21.43%.

19. A report of the results of the membership and support check was circulated to the Panel and to the parties for comments on 5 October 2017. The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

Employer's comments on the membership and support check report

20. By email to the CAC dated 10 October 2017, the Employer confirmed that it did not agree with the proposed bargaining unit. However it did agree that the Union satisfied the tests set out in paragraph 36 of the Schedule in relation to that proposed bargaining unit. The Employer did not believe these tests would be met if applied to what it considered to be the 'correct bargaining unit'.

21. The Union commented by letter to the CAC dated 10 October 2017 that the check showed clearly that the Union had satisfied the tests. It said its members, who constituted 47.62 of the bargaining unit, have joined specifically to gain collective bargaining rights and that, in addition, it has support from 9 workers in its proposed bargaining unit who are not RMT members, giving an overall support level of 69%. The Union noted that the Check found that two of its members were not included in the Employer's list and requested information to help clarify the position.

Considerations

22. 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.

23. 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.

24. 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)

25. 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 5 October 2017 established that Union membership stood at 47.62%. The Panel is therefore satisfied that this test is met.

Paragraph 36(1)(b)

26. 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.

27. As noted 47.62% of the workers in the proposed bargaining unit are members of the Union. No evidence has been provided to lead us to doubt the Union's statement

that its members are supportive of recognition for collective bargaining. Further, the Case Manager's check of the Union's petition indicated that 21.43% of non-members in the proposed bargaining unit support recognition of the Union. The Employer has accepted that the para 36 tests are met on the basis of the bargaining unit proposed by the Union (which is not agreed). On the basis of the evidence before it the Panel has decided that 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

28. 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

Miss Mary Canavan

Mr Keith Sonnet

17 October 2017