

**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:**

Workers of England Trade Union

and

Galamast Ltd

**Introduction**

1. Workers of England Trade Union (the Union) submitted an application to the CAC dated 27 April 2018 that it should be recognised for collective bargaining by Galamast Ltd (the Employer) for a bargaining unit described as “Shop Fitters”. The proposed bargaining unit was stated as being located at Park House, Cowper Road, Bromley, Kent, BR2 9RT. The application was received by the CAC on 30 April 2018 and the CAC gave both parties notice of receipt of the application on the same day. The Employer submitted a response to the CAC dated 4 May 2018 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 Mr James Tayler, Chair of the Panel, and, as Members, Mr Nicholas Caton and Mr Michael Leahy OBE. The Case Manager appointed to support the Panel was Linda Lehan.

3. The CAC Panel extended the acceptance period in this case. The initial period expired on 15 May 2018 and was extended to 30 May 2018 in order 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; and therefore should be accepted.

## **The Union's application**

5. The Union stated that it had sent its formal request for recognition to the Employer on 27 March 2018 and no response had been received. A copy of the request letter was attached to the application.

6. The Union stated that there were 130 workers employed by the Employer and in the proposed bargaining unit there were 55 workers, of whom 23 were members of the Union. 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 stated that it currently had 23 members in the designated work group and knowing that they had a recognition agreement for collective bargaining would certainly increase their membership by 5 thus making the majority of employees members of the Workers of England Union. The Union attached to the application an Appendix which showed a list of membership numbers stating that they were the membership numbers of their members who were employed in the 'Shop Fitting' work group.

7. The Union stated that the reason for selecting the proposed bargaining unit was because the employees in that bargaining unit wished to have their Union recognised for collective bargaining purposes.

8. The Union stated that the bargaining unit had not been agreed with the Employer and that it was not aware of any other existing recognition agreement which covered any of the workers in the bargaining unit. The Union confirmed that it held a current certificate of independence. The Union stated that it had copied the application made to the CAC, and supporting documents, to the Employer on 25 April 2018.

### **The Employer's response to the Union's application.**

9. The Employer's response was received by the CAC on 4 May 2018. In a covering letter the Employer highlighted that they had no knowledge of the application until 30 April 2018 and still had no knowledge of any of their workforce requesting the Union's representation or indeed even being members of the Union. The Employer stated that the Union were requesting to represent a very small proportion of their workers and currently claimed to have 23 members out of a workforce of 240 and did not see that it was warranted or, indeed, was in the best interest of their employees.

10. The Employer in its response form stated that it had received the Union's written request letter on 30 April 2018 and attached a copy of their response which stated that that they had no knowledge of the Union's previous letter until they saw a copy of the Unions application and were therefore unable to respond. The Employer said that they had never been spoken to by any of their employees regarding the Union and consequently totally refuted the Union's figures and declined their request for voluntary recognition. The Employer confirmed that it had received a copy of the application form from the Union on 30 April 2018. The Employer did not agree with the proposed bargaining unit stating that it was not supported by the majority of workers; incorrect figures had been supplied by the Union and it would be very disruptive to bigger workforce. The Employer stated that it employed 240 workers and that it did not agree with the number of workers in the proposed bargaining unit as defined in the Union's application and stated that they had 72 employees in the proposed bargaining unit. The Employer also stated that the Union had chosen to ignore circa 20 men who were ground workers/labourers who also worked on the projects.

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

12. When asked "if you do not consider that a majority of the workers in the bargaining unit are likely to support recognition indicting reasons for taking that view" the Employer stated that it was not aware of any union members in the unit.

### **Further comment from the parties**

13. In response to a letter, sent by the CAC to the Union, asking for its comments on the Employer's response and for proof of postage and receipt of their request letter dated 27 March 2018, the Union attached to a letter dated 4 May 2018 a copy of the Royal Mail track and trace electronic proof of delivery which showed that a letter was delivered and signed for by Galamast on 28 March 2018. We accept that the request letter was received by the Employer.

14. The Union also stated in the letter that it noted from the Employer's response that the workforce was 240 however this was not broken down into the designated work group for whom they were seeking recognition.

15. In an email from the Employer dated 4 May 2018 the Employer stated that with regard to work groups they did not split their labour into different groups, they treated all employees the same and they adhered to the same rules and procedures. The Employer stated that it would be divisive for them to differentiate between different groups. The Employer also stated that, if the Union wished to differentiate between construction and refurbishment, they had 78 employees working on the refurbishment projects not 55.

### **The Membership 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 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 (including their full name and address). 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 11 May 2018 from the Case Manager to both parties. The information from the Union was received by the CAC on 9 May 2018 and the information from the Employer was received by the CAC on 16 May 2018. The Panel is satisfied that the check was conducted properly and impartially and in

accordance with the agreement reached with the parties.

17. The list supplied by the Employer indicated that there were 76 workers in the proposed bargaining unit. The list of members supplied by the Union contained 24 names. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was 22, a membership level of 28.95%.

18. A report of the result of the membership check was circulated to the Panel and the parties on 16 May 2018 and the parties were invited to comment on the result.

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

19. The Union in a letter dated 18 May 2018 stated that with regard to the membership check they had concerns regarding the number of 'Site Managers' that Galamast Ltd had listed and whether they were actually part of the designated work group for whom they sought recognition. The Union gave two membership numbers which they stated belonged to employees who had joined the Union on 16 May 2018. The Union stated that with regard to paragraph 36 of the Schedule, they now had 26 members listed as working at Galamast Ltd in the relevant bargaining unit and that their membership was increasing. The Union stated that with the two new members 34% of the employees listed by the Employer as being within the bargaining unit were members. The Union also stated that given the Union already had 34% of the current workforce, a percentage that was increasing, without them entering the premises to actively recruit, they believed the majority of the workers constituting the relevant bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit.

20. The Employer in an email dated 21 May 2018 stated that, only 28.95% of the proposed bargaining unit were members of the Union and since recruitment was carried out behind their backs they must assume that all employees had been approached and given the opportunity of joining. Considering this and the fact that only 29% took up the offer they strongly suggested that the Union would not reach a majority and there was no reason to grant recognition as the Union had requested.

### **Considerations**

21. 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.

22. The Panel is satisfied that the Union made 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. 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 contained in paragraph 36(1)(a) and paragraph 36(1)(b) are met.

*Paragraph 36(1)(a)*

23. 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.

24. The membership check conducted by the Case Manager showed that 28.95% of the workers in the proposed bargaining unit were members of the Union. As stated in paragraph 16 above, the Panel is satisfied that this check was conducted properly and impartially and in accordance with the arrangements agreed with the parties. The 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)*

25. 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. That does not require a majority of union members at the time the admissibility decision is taken, but requires the Panel to assess the likely support at the stage that a ballot might be undertaken. The level of union membership identified by the membership check was 28.95%. The Union did not provide any further evidence of likely support for recognition, such as a petition. The Panel noted that two workers had recently joined the Union so that current membership is 34.21%. However, the Panel is not satisfied

that this rate of growth of membership, even taking account of the “bandwagon effect”, which means that more employees would be likely to join the union during the statutory recognition procedure, is such that it is likely that the majority would support recognition, given the low starting percentage of membership and lack of any other evidence of support for recognition. While the union raised concerns regarding the number of ‘Site Managers’ and whether they were actually part of bargaining unit they did not suggest that they should be excluded from the statistical consideration as not being within the proposed bargaining unit and based their statistical analysis on the total figure provided by the Employer.

26. After the time set for comments on the membership report, the Union sent by email a letter dated 23 May 2018 in which they denied the suggestions made by the Employer that they must have approached all employees and given them the opportunity of joining and that they had obtained access to the entire employee list. These contentions by the Employer were not matters that we considered relevant to our decision. We took into account the fact that during the statutory process it was likely that more employees would join the Union before concluding that, even so, we did not consider it was likely that 50% would support recognition for collective bargaining. Accordingly, the comments made by the union did not alter our decision and so the letter was not copied to the employer for comment prior to this decision being issued. The Panel has concluded that the evidence before it is not sufficient to support a decision 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 proposed bargaining unit as required by paragraph 36(1)(b).

### **Decision**

27. For the reasons given above, the Panel’s decision is that the application cannot be accepted by the CAC.

### **Panel**

Mr James Tayler, Chair of the Panel

Mr Nicholas Caton

Mr Michael Leahy OBE

30 May 2018