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Union Recognition

Many voluntary organisations have historic recognition agreements with unions which have fallen into disuse in practice. A recent case considered the basis for union recognition. In **Working Links (Employment) Limited v Public and Commercial Services Union** the union brought a claim alleging that the employer had failed to consult it about collective redundancies as required by law. A union will be the appropriate representative body for collective redundancy consultation purposes where, either it is recognised by the employer, or where the employer provides information and consults with the union in the capacity of appointed or elected representatives of the affected employees. It fell to the Employment Tribunal to establish whether the union was recognised and in order to do so it considered two agreements between the company and the union to establish whether there was either a clear or implied agreement for recognition for collective bargaining purposes. The first agreement dated 2003 was called a recognition agreement and the second dated 2006 was termed a "strategic agreement." There was also a long history of the company consulting with the union over matters including redundancies, disciplinary procedures, the provision of facilities to the union and the machinery for consultation and negotiation.

On this basis the Judge concluded that the union was "recognised." The company appealed the decision and the Employment Appeal Tribunal concluded that the evidence did not support the Judge's findings, as in order to satisfy the definition of collective bargaining there must be negotiations which discussions with a trade union, albeit over a long period, would not necessarily amount to. The EAT considered the Judge had muddled the concept of negotiation, which is about striking a bargain, and consultation and had failed to identify clear evidence of negotiation in relation to the matters that had been consulted on. The EAT remitted the case to a new Employment Tribunal to determine (1) whether the union was recognised and, if not, (2) whether the company had chosen to consult with members of the union as appointed or elected representatives of the affected staff.

One of the issues the case highlights is the crucial difference between consultation and negotiation which staff policies frequently use interchangeably in our experience. Statutory requirements relate only to information and consultation and unless organisations intend to exceed such requirements references to negotiation should be avoided.

Working Links (Employment) Limited v Public and Commercial Services Union EAT 12.3.13 (0305/12)

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