



Employment Relations Act 2004

2004 CHAPTER 24

PART 1

UNION RECOGNITION

13 Unfair practices in relation to derecognition ballots

(1) After paragraph 119 of Schedule A1 to the 1992 Act insert—

“119A (1) Each of the parties informed by the CAC under paragraph 117(11) must refrain from using any unfair practice.

(2) A party uses an unfair practice if, with a view to influencing the result of the ballot, the party—

- (a) offers to pay money or give money’s worth to a worker entitled to vote in the ballot in return for the worker’s agreement to vote in a particular way or to abstain from voting,
- (b) makes an outcome-specific offer to a worker entitled to vote in the ballot,
- (c) coerces or attempts to coerce a worker entitled to vote in the ballot to disclose—
 - (i) whether he intends to vote or to abstain from voting in the ballot, or
 - (ii) how he intends to vote, or how he has voted, in the ballot,
- (d) dismisses or threatens to dismiss a worker,
- (e) takes or threatens to take disciplinary action against a worker,
- (f) subjects or threatens to subject a worker to any other detriment, or
- (g) uses or attempts to use undue influence on a worker entitled to vote in the ballot.

(3) For the purposes of sub-paragraph (2)(b) an “outcome-specific offer” is an offer to pay money or give money’s worth which—

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- (a) is conditional on—
 - (i) the issuing by the CAC of a declaration that the bargaining arrangements are to cease to have effect, or
 - (ii) the refusal by the CAC of an application under paragraph 106, 107 or 112, and
 - (b) is not conditional on anything which is done or occurs as a result of that declaration or, as the case may be, of that refusal.
- (4) The duty imposed by this paragraph does not confer any rights on a worker; but that does not affect any other right which a worker may have.
- (5) Each of the following powers shall be taken to include power to issue Codes of Practice about unfair practices for the purposes of this paragraph—
- (a) the power of ACAS under section 199(1);
 - (b) the power of the Secretary of State under section 203(1)(a).
- 119B (1) A party may complain to the CAC that another party has failed to comply with paragraph 119A.
- (2) A complaint under sub-paragraph (1) must be made on or before the first working day after—
- (a) the date of the ballot, or
 - (b) if votes may be cast in the ballot on more than one day, the last of those days.
- (3) Within the decision period the CAC must decide whether the complaint is well-founded.
- (4) A complaint is well-founded if—
- (a) the CAC finds that the party complained against used an unfair practice, and
 - (b) the CAC is satisfied that the use of that practice changed or was likely to change, in the case of a worker entitled to vote in the ballot—
 - (i) his intention to vote or to abstain from voting,
 - (ii) his intention to vote in a particular way, or
 - (iii) how he voted.
- (5) The decision period is—
- (a) the period of 10 working days starting with the day after that on which the complaint under sub-paragraph (1) was received by the CAC, or
 - (b) such longer period (so starting) as the CAC may specify to the parties by a notice containing reasons for the extension.
- (6) If, at the beginning of the decision period, the ballot has not begun, the CAC may by notice to the parties and the qualified independent person postpone the date on which it is to begin until a date which falls after the end of the decision period.

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- 119C (1) This paragraph applies if the CAC decides that a complaint under paragraph 119B is well-founded.
- (2) The CAC must, as soon as is reasonably practicable, issue a declaration to that effect.
- (3) The CAC may do either or both of the following—
- (a) order the party concerned to take any action specified in the order within such period as may be so specified, or
 - (b) make arrangements for the holding of a secret ballot in which the workers constituting the bargaining unit are asked whether the bargaining arrangements should be ended.
- (4) The CAC may give an order or make arrangements under sub-paragraph (3) either at the same time as it issues the declaration under sub-paragraph (2) or at any other time before it acts under paragraph 121.
- (5) The action specified in an order under sub-paragraph (3)(a) shall be such as the CAC considers reasonable in order to mitigate the effect of the failure of the party complained against to comply with the duty imposed by paragraph 119A.
- (6) The CAC may give more than one order under sub-paragraph (3)(a).
- 119D (1) This paragraph applies if the CAC issues a declaration under paragraph 119C(2) and the declaration states that the unfair practice used consisted of or included—
- (a) the use of violence, or
 - (b) the dismissal of a union official.
- (2) This paragraph also applies if the CAC has made an order under paragraph 119C(3)(a) and—
- (a) it is satisfied that the party subject to the order has failed to comply with it, or
 - (b) it makes another declaration under paragraph 119C(2) in relation to a complaint against that party.
- (3) If the party concerned is the employer, the CAC may refuse the employer's application under paragraph 106 or 107.
- (4) If the party concerned is a union, the CAC may issue a declaration that the bargaining arrangements are to cease to have effect on a date specified by the CAC in the declaration.
- (5) If a declaration is issued under sub-paragraph (4) the bargaining arrangements shall cease to have effect accordingly.
- (6) The powers conferred by this paragraph are in addition to those conferred by paragraph 119C(3).

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- 119E (1) This paragraph applies if the CAC issues a declaration that a complaint under paragraph 119B is well-founded and—
- (a) makes arrangements under paragraph 119C(3)(b),
 - (b) refuses under paragraph 119D(3) or 119H(6) an application under paragraph 106, 107 or 112, or
 - (c) issues a declaration under paragraph 119D(4) or 119H(5).
- (2) If the ballot in connection with which the complaint was made has not been held, the CAC shall take steps to cancel it.
- (3) If that ballot is held, it shall have no effect.
- 119F (1) This paragraph applies if the CAC makes arrangements under paragraph 119C(3)(b).
- (2) Paragraphs 117(4) to (11) and 118 to 121 apply in relation to those arrangements as they apply in relation to arrangements made under paragraph 117(3) but with the modifications specified in sub-paragraphs (3) to (5).
- (3) An employer's duty under paragraph (a) of paragraph 118(4) is limited to—
- (a) giving the CAC the names and home addresses of any workers in the bargaining unit which have not previously been given to it in accordance with that duty;
 - (b) giving the CAC the names and home addresses of those workers who have joined the bargaining unit since he last gave the CAC information in accordance with that duty;
 - (c) informing the CAC of any change to the name or home address of a worker whose name and home address have previously been given to the CAC in accordance with that duty; and
 - (d) informing the CAC of any worker whose name had previously been given to it in accordance with that duty who has ceased to be within the bargaining unit.
- (4) Any order given under paragraph 119(1) or 119C(3)(a) for the purposes of the cancelled or ineffectual ballot shall have effect (to the extent that the CAC specifies in a notice to the parties) as if it were made for the purposes of the ballot for which arrangements are made under paragraph 119C(3)(b).
- (5) The gross costs of the ballot shall be borne by such of the parties and in such proportions as the CAC may determine and, accordingly, sub-paragraphs (2) and (3) of paragraph 120 shall be omitted and the reference in sub-paragraph (4) of that paragraph to the employer and the union (or each of the unions) shall be construed as a reference to the party or parties which bear the costs in accordance with the CAC's determination.
- 119G (1) Paragraphs 119A to 119C, 119E and 119F apply in relation to an application under paragraph 112 as they apply in relation to an application

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under paragraph 106 or 107 but with the modifications specified in this paragraph.

- (2) References in those paragraphs (and, accordingly, in paragraph 119H(3)) to a party shall be read as including references to the applicant worker or workers; but this is subject to sub-paragraph (3).
- (3) The reference in paragraph 119A(1) to a party informed under paragraph 117(11) shall be read as including a reference to the applicant worker or workers.

119H (1) This paragraph applies in relation to an application under paragraph 112 in the cases specified in sub-paragraphs (2) and (3).

- (2) The first case is where the CAC issues a declaration under paragraph 119C(2) and the declaration states that the unfair practice used consisted of or included—
 - (a) the use of violence, or
 - (b) the dismissal of a union official.
- (3) The second case is where the CAC has made an order under paragraph 119C(3)(a) and—
 - (a) it is satisfied that the party subject to the order has failed to comply with it, or
 - (b) it makes another declaration under paragraph 119C(2) in relation to a complaint against that party.
- (4) If the party concerned is the employer, the CAC may order him to refrain from further campaigning in relation to the ballot.
- (5) If the party concerned is a union, the CAC may issue a declaration that the bargaining arrangements are to cease to have effect on a date specified by the CAC in the declaration.
- (6) If the party concerned is the applicant worker (or any of the applicant workers), the CAC may refuse the application under paragraph 112.
- (7) If a declaration is issued under sub-paragraph (5) the bargaining arrangements shall cease to have effect accordingly.
- (8) The powers conferred by this paragraph are in addition to those conferred by paragraph 119C(3).

119I (1) This paragraph applies if—

- (a) a ballot has been arranged in consequence of an application under paragraph 112,
- (b) the CAC has given the employer an order under paragraph 119(1), 119C(3) or 119H(4), and
- (c) the ballot for the purposes of which the order was made (or any other ballot for the purposes of which it has effect) has not been held.

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- (2) The applicant worker (or each of the applicant workers) and the union (or each of the unions) is entitled to enforce obedience to the order.
 - (3) The order may be enforced—
 - (a) in England and Wales, in the same way as an order of the county court;
 - (b) in Scotland, in the same way as an order of the sheriff.”
- (2) In paragraph 121 of that Schedule (duties of the CAC when informed of result of ballot), after sub-paragraph (1) insert—
- “(1A) The duty in sub-paragraph (1) does not apply if the CAC makes arrangements under paragraph 119C(3)(b).”

Commencement Information

II S. 13 in force at 1.10.2005 by S.I. 2005/2419, art. 3(a) (with art. 5)

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