

**9 January 2014**

**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:**

**The Pharmacists' Defence Association Union  
(PDAU)**

**And**

**Boots Management Services Limited**

**Introduction**

1. The PDA Union (the Union) submitted an application (dated 2 October 2012) to the CAC which was received on 5 October 2012, that it should be recognised for collective bargaining by Boots Management Services Limited (the Employer) in respect of a bargaining unit that was: “To include all pharmacists registered with the General Pharmaceutical Council (excluding those of Area Management status or equivalent and more senior to them) and pre-registration Graduates, who work for Alliance Boots in the UK and are employed by Boots Management Services Ltd.” The workers in the proposed bargaining unit of approximately 5,500 were stated by the Union to be located in the Employer’s retail Stores across England, Scotland, Wales and Northern Ireland and a small number in the Employer’s Head Quarters in Nottingham. The CAC gave both parties notice of receipt of the application on 8 October 2012. The Employer submitted a response to the CAC on 15 October 2012 and this was duly 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 Ms Mary Stacey as Chairman, and, as Members, Mr Roger Roberts and Mr Paul Talbot. The case manager appointed to support the Panel was Miss Sharmin Khan.

### **Issues which the Panel has to determine**

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 of the Schedule; and therefore should be accepted.

### **Summary of the Union's application**

4. The Union stated that it had formally requested recognition by the Employer by its letter dated 19 January 2012. The Employer did not accept the request, and did not propose that ACAS be requested to assist. The Employer met with the Union "to fully understand its request and to see whether any agreement can be reached". The Employer also referred to "an established relationship with a listed trade union, the Boots Pharmacists Association (BPA) and work with them on matters that are specifically related to pharmacists." After an initial meeting, by e-mail from the Employer's Director of Pharmacy dated 22 March 2012 the Union was informed that the Employer already had a formal, productive and effective way of working with the BPA and that the Employer did not accept the proposal for formal recognition of the PDA Union. The Union confirmed that it had copied its application to the CAC and supporting documents to the Employer on 2 October 2012. The Union enclosed copies of all the relevant correspondences with its application to the CAC.

5. The Union stated that it had 2,100 Union members within the proposed bargaining unit of approximately 5,500 workers and that it was demonstrated that the majority of workers in the proposed bargaining unit were likely to support recognition for collective bargaining for the following reasons: it already had 35 – 40% membership within its proposed bargaining unit the vast majority of whom would support its application; the Union had recently conducted a straw poll over a period of ten days and had received 700 affirmations which included many comments

supporting its stance for recognition and in the fortnight following its announcement of its application, its membership had increased by 25% and was continuing to grow.

6. The Union was asked in the CAC's application form if there was any existing recognition agreement which covered any workers in the bargaining unit, of which the Union was aware. The Union replied that it was aware that the BPA had a voluntary consultation arrangement with the Employer but that it did not believe that the agreement between the BPA and the Employer constituted an existing collective agreement as defined in the Act. The Union understood that it had more than twice as many members as the BPA.

#### **Summary of the Employer's response to the Union's application**

7. The Employer's response to the Union's application was submitted to the CAC on 16 October 2012. The Employer confirmed that it had received the Union's written request for recognition under Schedule A1 from the Union on 20 January 2012 and that it did not accept the Union's formal request. The Employer enclosed a copy of its response to the Union dated 3 February 2012 (as referred to in paragraph 4 above) which was as described by the Union. The Employer also confirmed that it had received a copy of the Union's application to the CAC from the Union at its Head Office on 5 October 2012 and by its Director of Human Resources Stores, Mr David Vallance on 8 October 2012. The Employer also enclosed a copy of the relevant correspondences for the Panel.

8. The Employer confirmed that it employed 55,342 workers as at 10 October 2012, but considered the Union had under-estimated the size of the proposed bargaining unit which comprised 6,800 workers. The Employer did not have access to information relating to the Union's membership within the proposed bargaining unit, however it disagreed with the Union that the majority would be likely to support the Union's request for recognition as by its figures, the Union had less than 31% membership in its proposed bargaining unit. There was little information on the Union's straw poll and it did not indicate that a majority was likely to support recognition, as it represented only 10.29% of the proposed bargaining unit. The Employer also

asserted that many of the Union's members, especially pre-registration graduates, pharmacists and newly qualified pharmacists, joined the Union for reasons other than recognition such as professional indemnity insurance. Based on its "internal insights", the Employer believed that its overall engagement with its pharmacists was high and that the working and representation arrangements that were in place worked well.

9. The Employer also stated that in any event there was an existing agreement for recognition in force covering workers in the proposed bargaining unit. It had a written recognition agreement with the BPA which was entered into on 1 March 2012 and it had worked with the BPA on matters specific to the pharmacists for many years. It stated that the BPA was a listed union, but did not have a certificate of independence, and was recognised by the agreement and entitled to conduct collective bargaining. The Employer enclosed a signed copy of the partnership agreement dated 1 March 2012 for the Panel with its response to the application.

### **Decision on paragraph 35**

10. In light of the Employer's response that there was an existing agreement for recognition in force covering workers in the proposed bargaining unit, both parties, on 18 October 2012 submitted to the CAC their comments in respect of paragraph 35 of the Schedule. Paragraph 35 states:

"35. - (1) An application under paragraph 11 or 12 is not admissible if the CAC is satisfied that there is already in force a collective agreement under which a union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of any workers falling within the relevant bargaining unit.

(2) But sub-paragraph (1) does not apply to an application under paragraph 11 or 12 if-

(a) the union (or unions) recognised under the collective agreement and the union (or unions) making the application under paragraph 11 or 12 are the same, and

(b) the matters in respect of which the union is (or unions are) entitled to conduct collective bargaining do not include all of the following: pay, hours and holidays (the core topics). .."

11. To assist with its decision on the admissibility of the Union's application under paragraph 35 of the Schedule, the Panel convened a hearing on 11 December 2012 for which both parties submitted and exchanged further written submissions and evidence. The hearing was confined to the matter of the application of paragraph 35 of the Schedule in the light of the dispute as to both fact and law concerning the agreement between the Employer and the BPA dated 1 March 2012 ("the Agreement").

12. In its decision dated 29 January 2013, the Panel concluded that the application was not rendered inadmissible for the reasons set out in its decision. The Panel noted that the Employer did not contest the validity of the application within the terms of paragraphs 5 to 9 of the Schedule, nor challenge the application by reference to paragraphs 11 or 12. The Panel was satisfied that the Union's formal request to the Employer was valid within the terms of paragraphs 5 to 9 of the Schedule and that the application was made in accordance with paragraph 11. The Panel was also satisfied that the application was not rendered inadmissible by any of the provisions in paragraphs 33 to 34 and paragraphs 37 to 42 of the Schedule.

### **Remaining admissibility criteria**

13. The Panel concluded its decision on 29 January 2013 by directing the Case Manager to conduct an independent membership and support check better to understand the Union's level of support within the proposed bargaining unit in order to assist with its decision on whether the Union had met the admissibility criteria specified in paragraph 36 of the Schedule. Paragraph 36 requires that 10% of the workers in the relevant bargaining unit are members of the Union (paragraph 36(1)(a)) and that a majority of the workers in the relevant bargaining unit are likely to support recognition of the Union as entitled to conduct collective bargaining on behalf of the relevant bargaining unit (paragraph 36(1)(b)).

### **Membership and support check**

14. The Case Manager conducted two checks. A comparison of the names on the Union's list of members in the proposed bargaining unit with the Employer's list of workers in the

proposed bargaining unit and a comparison of the Union's e-mailed pledges of support with the same list of workers. As explained in the Case manager's report of the membership and support check, the pledges of support had been obtained electronically via the Union's website.

15. The Union was required to submit to the CAC a list of the full names, addresses, and, where obtainable, the GPhC codes and dates of birth of the Union's paid up members in the proposed bargaining unit. The Union was also required to submit a copy of the pledges of support for its application. The Employer was required to submit a list of the full names, full addresses, and, where obtainable, GPhC codes and dates of birth of the workers in the proposed bargaining unit. The Employer was also required to submit the workers' current job titles. The job titles of workers included in the proposed bargaining unit were agreed by both parties and confirmed by e-mail to the CAC on 5 February 2013.

16. It was explicitly agreed with both parties, that to preserve confidentiality, the respective lists and the Union's petition would not be copied to the other party. The confidentiality agreement and the arrangements for how the information would be submitted to the CAC were confirmed in a letter from the Case Manager to both parties on 7 February 2013. The CAC received the information from both parties on 5 March 2013.

### **Results of the membership check**

17. The comparison of the Union's list of members with the Employer's list of workers established that there were 6,891 workers within the proposed bargaining unit of whom 2,293 were members of the Union: a union membership level of 30.23%.

18. The comparison of the Union's pledges of support with the Employer's list of workers established that 1,084 (15.73%) of the workers in the proposed bargaining unit were in favour of recognition of the Union of which 846 (12.28%) of the proposed bargaining unit were Union members and 238 (3.45%) of the proposed bargaining unit were non-Union members.

19. Due to the size of the bargaining unit the membership check was inevitably a lengthy process. The Case Manager's report including the above results was issued to the Panel and to

the parties for their comments on 6 May 2013. Both parties submitted their response to the CAC on 31 May 2013, and the Union requested an oral hearing before the Panel. The Employer requested an opportunity to respond to the Union's comments on the membership and support check report and the Panel decided to convene a further hearing. Both parties' request for the date to be fixed to accommodate their choice of busy counsel already briefed and involved in the case was granted given the importance attached to continuity of representation in this case by both sides. The earliest date that could be arranged for a hearing was 25 October 2013. The names of those who attended the hearing are listed at appendix 1 of this decision. At the parties request and somewhat reluctantly in view of the statutory timetable, the Chairman of the panel agreed to extend the acceptance period to facilitate the parties' request and accommodate the date of the hearing. The acceptance period was then further extended to 14 January 2014.

20. Both parties supplemented their initial submissions to the Panel (received by the CAC on 31 May 2013) with a further statement of case and bundle of documents which were received and exchanged between the parties on 14 October 2013 in advance of the hearing. The Panel also had its previous decision on paragraph 35 and the documents and evidence that had previously been relied on by both parties at the earlier hearing and the Case Manager's membership and report check report. The Union also cited extracts of evidence the Employer had placed before the Administrative Court in its judicial review application. At the hearing, as before, the Union was represented by John Hendy QC and the Employer by David Reade QC. Additional information was provided orally at the hearing by John Murphy, General Secretary of the Union and Mark Pitt, Assistant General Secretary (Technical) on behalf of the Union with the Employer's consent. A further document was produced at the hearing by the Union which the Employer consented to be added to the bundle purportedly showing the growth in Union membership and extracts from a comments forum at [www.chemistanddruggist.co.uk](http://www.chemistanddruggist.co.uk) concerning the recognition process so far. The full list of documents relied on by the parties at the hearing can be found at appendix 2 of this decision.

### **The facts**

21. The facts in the case were largely agreed, in contrast to the marked dispute as to the proper conclusions to be drawn from them. Insofar as they were in dispute the Panel has made

findings on the balance of probabilities from the information before us and using our industrial relations expertise to test plausibility where necessary.

22. The Employer is Boots, the well-known national retail chemist with approximately 2,350-2,500 branches with pharmacies throughout the UK. The proposed bargaining unit comprises all registered pharmacists in the UK employed by the Employer. There are on average 3 pharmacists at each branch with some branches having only one pharmacist on duty at any one time whilst other, larger city centre stores have several on duty simultaneously. A large number of pharmacists work in a relief capacity and are not attached to any store. The pharmacy manager may or may not be a pharmacist him or herself and the pharmacy area is distinct from other areas of the store. It is a geographically disparate and isolated workforce.

23. The Union was formed in 2008 and has, over the last 5 years attracted 20,000 pharmacists into membership which represents approximately 30-40% of registered pharmacists in the UK. It has achieved collective bargaining for its members employed in some areas in the hospital sector and has a field infrastructure of workplace union reps, but it does not have a presence on the ground within the Employer. It relies mainly on electronic communication and its website to communicate with its members employed by the Employer and in other community pharmacies. The Union includes professional indemnity insurance as a benefit of membership which is a popular feature of membership, especially with its locum members.

24. Within the proposed bargaining unit of 6,891 workers, 2,293 or 30.23% are members of the Union. Union membership within the proposed bargaining unit has increased exponentially since it announced its intention to seek recognition rights with the Employer growing from 1,258 in January 2011 to 2387 in October 2012 and the Union maintained its membership at between 2,200-2,400 from August 2012 to date. The membership check results remain an accurate reflection of current membership within the proposed bargaining unit. The Union has made its request for collective bargaining rights well-known within its membership and within the wider circles of the pharmaceutical sector and it is prominently featured on the Union website and press presence. The Employer's resistance to the Union's request is also well-known throughout its pharmacist workforce and in the wider pharmacy world. For example the Employer was



quoted in the Chemist and Druggist publication in October 2013 as saying that it did not consider recognition of the Union to be in the “wider interests of staff...at this time.”

25. The Employer has consultative arrangements with a non-independent trade union, the Boots Pharmacists Association (BPA). There is, at times, a difficult relationship between the BPA and the Union and the BPA does not support the Union’s application. The BPA has 1,372 full members and 650 pre-registration members whose membership is automatic. Whilst there is no constitutional prohibition on being a member of both the Union and BPA it is unlikely that many workers in the proposed bargaining unit have dual membership since although the respective organisations’ high level aims, and strategies for achieving their aims, are different, the individual membership services are broadly similar. Membership of BPA is currently £72.00 per annum. The Employer favours the BPA and assists it in the recruitment of its pharmacists to membership. The CEO of the BPA has been provided with a laptop by the Employer which enables him to have access to the Employer’s intranet and, through that, to both members and non- members and the Employer allows the BPA to use its internal mail system. The Employer does not facilitate or encourage its eligible employees to join the Union and the Union does not have access to the Employer’s intranet or the workers of the proposed bargaining unit. The Union enjoys none of the advantages conferred on BPA although the Employer respects the rights of its workers to union membership and to join the Union and be represented at grievance and disciplinary hearings in accordance with s.10 Employment Relations Act 1999.

26. 40.42% of the workers in the proposed bargaining unit are members of neither the Union nor BPA.

27. The Union provided a list showing pharmacists and pre registration graduates who had completed an electronic pledge and who had indicated that they were employed by Boots. The list contained 1,249 entries. For each entry a name, post code, GPhC code, e-mail address, IP Address and a “Time/Date Stamp” of the pledge made through the website. The earliest date stamp was 8 February 2013 and the most recent date stamp was 4 March 2013. Each entry also indicated whether the individual was a Union member or not.

28. The Union had created a web page on 8 February 2013 to enable its members and others to pledge their support for recognition of the Union by the employer. Pledges were gathered over the following 23 days to 4 March 2013 and the results are set out in the Case Manager's report. To submit their pledge of support, individuals had to visit the web page and enter their personal details. The Union provided a screenshot of the "Boots Pledge Page". Individuals were able to affirm their support through a tick box and also had the option of adding their own comments. For the avoidance of doubt, the Panel has disregarded pledges received from those not employed by the Employer as they do not represent the views of the members of the proposed bargaining unit and have not been taken into account in either the case Manager's report or the Panel's considerations. The pledges of support of both Union members and non-Union members are however informative. The Pledge was prominent on the Union's website and emailed to its members and posted on the Employer's website for pharmacists, PharmacyUnscripted. 75% of the workers in the proposed bargaining unit are registered on PharmacyUnscripted, most of whom visit the website at least once in a 23 day period. However it is not known how many of those would have read the thread about the pledge.

29. We were taken to a number of comments on various electronic forums – such as one provided by the Employer PharmacyUnscripted, the Union's website, the Pledge webpage and others in the wider world of pharmacy, which contained trenchantly expressed views in support of recognition and some voicing considerable criticism of the Employer. Whilst we do not question the accuracy of the comments as views of the individual commentators, we do not conclude those comments represent the views of those who have chosen not to contribute and who have remained silent in on-line debates. Furthermore some may not have been workers in the proposed bargaining unit and therefore their views are of no assistance to our task of assessing the views of those in the proposed bargaining unit. But nor do we accept that those who have chosen not to contribute to online fora or participate in the blogosphere can be taken to be opposed to recognition. The only conclusion to be drawn is that the individuals have chosen not to comment or participate in the on-line discussion fora.

30. The Union commissioned an independent market research company, JRA Research to survey a number of workers in the proposed bargaining unit about their attitudes to collective bargaining, partly in order to garner information that would assist whether there was majority

likely support for recognition of the Union, and partly for their own research purposes. However since the Union does not have access to the personal contact details of the workers in the bargaining unit other than their own membership and those who have consented to be contacted by the Union at home or on their mobile telephones, the Panel finds the survey results should be treated with some caution and it is not possible to draw firm conclusions of the views of the workforce from the results. The survey findings are however very informative of the views of those canvassed – both Union members and the non-Union members who provided their details. Telephone interviews of 128 pharmacists within the proposed bargaining unit were conducted between 2nd to 16th September 2013. Of those interviewed 108 were members of the Union and 29 were members of BPA. The findings were of a very high level of awareness of the Union's application for recognition – 98% of all those surveyed. 95% of all respondents were in favour, 5% were not sure and none said they were against recognition. 100% of Union members supported recognition and 93% of the BPA members supported recognition. Unsurprisingly 99% of those who had pledged support for recognition in the exercise conducted by the Union supported recognition of the Union and 85% of those who had not pledged their support in the Union's exercise (of whom there were 34) supported the principle of the Union being recognised by the Employer. None of the respondents was against recognition of the Union and 15% of those who had not pledged support said they did not know or were unsure if they supported it or not.

31. The respondents were asked for their views of what their colleague pharmacists thought of the Union being recognised by the Employer. The results are to be treated with some caution as there are the obvious risks attached to second guessing others' opinions and the risk of providing self-serving answers. But the results nonetheless have some probative value. 95% of non-Union members considered that other workers in the proposed bargaining unit were generally in favour of the Union being formally recognised by the Employer with the remaining 5% being unsure of what their colleagues might think. 69% of BPA members thought that other workers in the proposed bargaining unit were generally in favour of the Union being formally recognised by the Employer. None of the BPA members surveyed thought their colleagues in the proposed bargaining unit were generally against the Union being recognised by the Employer and 31% were unsure or did not know. 59% of those surveyed who had not pledged support in

the Union exercise thought that others in the proposed bargaining unit were generally in favour of recognition of the Union with the remaining 41% being unsure.

32. In summary therefore, as also noted by the researchers in their summary of the key findings:

- overall results indicated a high level of support for recognition of the Union by the Employer
- All PDA members interviewed supported recognition
- An analysis of responses amongst non-Union members showed that virtually all were in favour with none against
- Two thirds of those interviewed felt that others were also in favour of the Union being recognised
- The results indicated that support for recognition of the Union is at a high level amongst those who had not signed the pledge
- The desire to gain professional indemnity insurance was not the primary motivation for joining the Union and fewer than a quarter of members cited professional indemnity insurance and the only reason for joining.

The research was carried out in accordance with ISO20252.

33. The Employer appointed a Head of Colleague Engagement in September 2012 to improve the Employer's communications with all its colleagues, including those employed in the proposed bargaining unit. A listening panel entitled the Pharmacists Partnership Panel has been established and a number of events have been arranged and communication channels improved. The Employer also communicates with the workers in the proposed bargaining unit via the BPA.

### **Summary of the Union's and Employer's submissions**

34. We are grateful to both sides for their full and detailed submissions and accompanying documentation. In summary the Employer did not consider that membership of the Union could be said to equate to support for recognition, and nor was membership of BPA indicative of support; the lack of visible support was indicative of invisible apathy, indifference or opposition

to Union recognition and the processes now in place further weakened support for collective bargaining by the Union.

35. The Union submitted the opposite – on the iceberg principle the visible support demonstrated by the pledge, the more recent research and the fact of Union membership was evidence of the mass of support below the water line. In a situation as here where the Employer has made its opposition to recognition of the Union well-known, silence can be indicative of fear of speaking out, not lack of support for recognition.

### **Considerations and discussion**

36. In deciding whether to accept the application the Panel must now decide whether the admissibility criteria set out in paragraph 36(1) of the Schedule are met.

#### **Paragraph 36(1)(a)**

37. 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 relevant bargaining unit. The result of the check carried out by the Case Manager established that 30.23 % of the workers in the proposed bargaining unit were members of the Union and in the absence of any evidence to the contrary, the Panel is therefore satisfied that this test is met.

#### **Paragraph 36(1)(b)**

38. Paragraph 36(1)(b) of the Schedule provides that, for an application to be admissible, the CAC must be satisfied that a 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. The Panel is tasked with determining likely, not actual, majority support for recognition of the Union.

39. The Schedule anticipates a quick decision on acceptance and this case was exceptional since the Panel allowed there to be considerable delays in order to grant the parties' request for an oral hearing and to be represented by their choice of counsel at the hearing, and the time necessary to conduct a membership and support check given the size of the proposed bargaining

unit. We had also decided to deal with the paragraph 35 arguments separately. The Panel has therefore had the luxury of time and the benefit of more information than might otherwise have been the case. We have therefore seen that the Union has maintained significant levels of support over a sustained period of time of approximately 30% of the proposed bargaining unit. We are in the extraordinary position of approaching the second anniversary of the Union's first formal request for recognition pursuant to the Schedule.

40. The Panel is satisfied, based both on its knowledge and experience of industrial relations for which it was appointed in accordance with s.260(3) of the Act, and the facts in this case, that membership of the Union is indicative of the individual member's support for their Union to represent them in matters of collective bargaining. Both parties were agreed that the Union's campaign for recognition has been high profile and well-advertised and members have chosen to join, and remain in membership paying their membership dues over the period the process is taking - now over 12 months. The JRA research findings also demonstrated that there was very high level awareness and support amongst Union members of the Union's desire for recognition by the Employer and the Employer's concern that individuals in the proposed bargaining unit had joined the Union mainly for professional indemnity insurance was misplaced. The Panel does not accept the Employer's argument that the Union members should also have pledged their support via the Union's webpage to be considered likely to support recognition – the mere fact of membership is sufficient in this case.

41. What conclusions can be drawn from the fact that 29.34% of the proposed bargaining unit were paid up and subscribed members of BPA? We know that BPA is not itself seeking recognition for pay, hours or holidays and that at the most senior levels there is disagreement, perhaps even animosity, between the respective organisations and a difference of opinion as to how pharmacists' interests can best be collectively represented in relation to the Employer. At the very least the BPA members seek a collective voice and wish to have the protection and assistance of a union. The Panel noted the research findings of JRA that appeared to demonstrate that BPA members supported the Union's application. The Panel accepts that those BPA members who are more likely to support recognition by the Union would have been more willing to provide their details and take part in the JRA Research exercise, and so the sample surveyed may not be entirely representative, but even so, the research findings are remarkable in their

consistent support for recognition of the Union by the Employer amongst BPA members – 93% and of the remaining 7% none opposed it, but were merely unsure. Whatever tensions that may exist at high level between the organisations does not appear to be reflected on the ground amongst Union and BPA members. The Panel therefore deduce and conclude that amongst BPA members there is considerable support for recognition of the Union, even if not quite the overwhelming support suggested by the JRA research findings because of the slightly unrepresentative sample surveyed because of the Union’s limited access to employee data. The Panel would put it broadly in the region of two thirds amongst this group who have already demonstrated an appetite for collective representation of some sort by their membership of BPA.

42. The next category of worker to consider is the 40.42% who are neither members of the Union nor BPA: the unknown unknowns. What can be gleaned from their silence? They have chosen not to join either organisation, chosen not to pledge their support, if they knew of the Union’s pledge exercise, and chosen not to take to the blogosphere and share their views. If they had a chance to vote in a secret ballot would they be likely to favour recognition of the Union by the Employer? The Panel notes the somewhat isolated working arrangements of the workers in the proposed bargaining unit and the widespread knowledge of the Employer’s opposition to the Union’s application and that both are likely to be a deterrent to making supportive views known. Of course there may be some who keep their views against recognition to themselves, for fear of upsetting those in support, but on balance the Panel concludes that amongst the non-members of either organisation, those who support recognition would have more reason to keep quiet than those who oppose it. This tentative conclusion is bolstered by the JRA research findings which included an element of non-members of either the Union or BPA and which appeared to show considerable support amongst the unaffiliated, even bearing in mind the slightly unrepresentative pool of the respondents to the research. It is also supported by the thoughts of those surveyed of the views of their colleagues within the proposed bargaining unit.

43. The Panel also found it telling that the Employer has worked vigorously to improve collective engagement. We have not recited the full details in our findings of fact, but we had an abundance of information about the many new measures the Employer has taken to consult and engage with its workforce including the workers in the proposed bargaining unit. The boosting of the current arrangements is acknowledgement of an unmet demand for a collective voice. Whilst

not all of the individual voices may support recognition for collective bargaining by the Union, some are likely to even though they have not demonstrated support by a measurable act, such as membership of the Union or contributing to the online debates. The Panel did not accept the Employer's implicit argument that better non-collective bargaining employee engagement will slake a thirst for collective bargaining – it could also fuel demand and there are examples of the establishing of works councils and other collective mechanisms short of collective bargaining leading to increased desire for collective bargaining. Nor is disharmony in a workplace a prerequisite of support for collective bargaining.

44. Inevitably the exercise involves an element of speculation and guess work, but from the information available to us and doing the best we can, the Panel concludes that a considerable proportion of those who are neither a member of the Union or BPA – perhaps a third or half – would be likely to favour recognition by the Union. The Schedule asks us to consider whether the workers *would be* likely to support recognition – they are not required to have actually shown or demonstrated their support or taken steps to give an indication, although our task is made much easier if they do.

45. We therefore take into account the unique circumstances of this case given the size and nature of the bargaining unit, the level of support sustained over a long period, the rise in membership over the same period and the employer's known resistance. We are also mindful that collective bargaining for healthcare professionals is commonplace in the sector such doctors, dentists, nurses, physiotherapists, radiographers and other professions allied to medicine, which makes it more likely that pharmacists would favour recognition.

46. Taken as a whole therefore, if one adds the 30% Union members, plus the apparent considerable support amongst both BPA membership and those who are members of neither organisation, and the factors listed above, the Panel is therefore satisfied that the majority of 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 proposed bargaining unit and so the requirements of paragraph 36(1)(b) of the Schedule are met.



**Decision**

47. The Panel is satisfied that the application is valid within the terms of paragraphs 5 to 9, is made in accordance with paragraph 11(2) and is admissible within the terms of paragraphs 33 to 42 of the Schedule. The application is therefore accepted by the CAC.

**Panel**

Ms Mary Stacey – Panel Chairman

Mr Roger Roberts

Mr Paul Talbot

## **Appendix 1 - Names of those who attended the hearing**

### **Attendees for the Union**

Mr John Hendy QC -

Ms Orla Sheils - Union Solicitor

Mr Mike Radcliffe - Union Consultant

Mr John Murphy - General Secretary

Mr Mark Kozial - Assistant General Secretary

Mr Mark Pitt - Assistant General Secretary

### **Attendees for the Employer**

Mr David Reade - QC

Mr David Vallance - Director of HR – Health & Beauty International & Brands (formerly Director of HR for Stores)

Ms Ann Baxter – Senior HR Manager, Employee Relations

Ms Victoria Butler - Boots Legal Department

**Appendix 2 -**

**List of Parties' supporting documents for CAC hearing held on 25 October 2013**

1. 31 May 2013 Employer and Union written submissions and bundles of documents
2. 14 October 2013 further written submissions and documents received from both parties
3. membership growth statistics produced 25 October 2013 on behalf of the Union
4. extracts from [www.chemistanddruggist.co.uk](http://www.chemistanddruggist.co.uk) comments forum produced by the Union
5. JRA Research findings on behalf of the Union
6. Respondent's [Employer's] speaking note

**- END -**