

**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:**

Unite the Union

and

Primopost

**Introduction**

1. Unite the Union (the Union) submitted an application which was received by the CAC on 27 March 2014 that it should be recognised for collective bargaining by Primopost (the Employer) for a bargaining unit comprising “Print, PMR, Finishing, Warehouse, Lamination and Maintenance, Apprentices and Temporary Workers therein”. The CAC gave the parties notice of receipt of the application on 28 March 2014. The Employer submitted a response to the application on 3 April 2014 which 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 Professor Lynette Harris, Chairman of the Panel, and, as Members, Mr David Bower and Mr. Paul Gates OBE. The Case Manager appointed to support the Panel was Linda Lehan.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 10 April 2014. The acceptance period was extended to 2 May 2014 and then further to 9 May 2014 in order to allow time for the Panel to consider all the evidence before arriving at a decision.

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

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 attached to its application a copy of the request letter sent to the Employer dated 10 July 2013 which was requesting recognition for a bargaining unit described as "Printers, PMR, Finishing, Warehouse, Lamination and Maintenance based at your premises 1 Staden Park, Staden Lane, Buxton, Derbyshire SK17 9RZ". The Union also attached a copy of a letter sent to the Employer dated 20 March 2014 stating that it would be submitting an application to the CAC.

6. The Union stated that following receipt of their request for recognition the Employer proposed that ACAS be requested to assist.

7. The Union also attached a copy of a letter addressed to the Employer dated 26 March 2014 which clarified that the Apprentices and Temporary Workers had been included in the bargaining unit.

8. The Union stated the number of workers employed by the Employer was approximately 100 of which 65 workers were in the bargaining unit. When asked why the agreed bargaining unit had been selected the Union stated it represented the entire Production Non-Management Staff.

9. The Union stated that the bargaining unit had been agreed with the Employer and that it held a current certificate of independence.

### **Employer's response to the application**

10. In its response to the Union's application dated 3 April 2014, the Employer stated that it had received the Union's written request for recognition on 11 July 2013. The Employer submitted its letter of response to the request dated 17 July 2013 which stated that the Employer had asked for ACAS to provide conciliation.

11. The Employer confirmed that it had received a copy of the original application form direct from the Union on 24 March 2014 and an amended version on 27 March 2014.

12. The Employer confirmed that the parties had agreed the bargaining unit before it received a copy of the application. In answer to the specific question as to whether it agreed the proposed bargaining unit, the Employer replied "No" indicating its objections being it excluded some Operations employees.

13. The Employer advised the numbers of workers it employed as approximately 115 and that it disagreed with the Union's estimate as to the number of workers in the bargaining unit, stating that there were 78 and the reason for the difference was due to an increased headcount.

14. The Employer stated that it disputed the validity of the Union's membership figure believing several employees had cancelled their membership as they were satisfied that the employee forum dealt with issues raised.

15. As to whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer reported that it had canvassed the employees and 73% had not supported union recognition. The Employer believed that the Unions membership was almost entirely concentrated within the print area and therefore not representative of the Operations employee team.

16. Finally, the Employer confirmed that there was no existing collective agreement covering any of the workers in the proposed bargaining unit.

### **Seeking further information from the parties**

17. Following a review by the Panel Chair of the application, the case manager wrote to both parties on 15 April 2014 requesting additional information. The Union were asked to clarify what PMR stood for in the description of the bargaining unit and to answer the following questions on the application form:

- Does the Employer agree on the number of workers in the proposed bargaining unit:
- Please state the number of union members in the proposed bargaining unit, and provide evidence to support this figure:
- Please provide evidence that the majority of the workers in the bargaining unit are likely to support recognition for collective bargaining:

The Employer was asked to clarify who the operations employees were that had been excluded from the bargaining unit and explain in more detail how the canvassing took place.

### **The parties' replies**

18. The Union responded on the 16 April 2014 stating that it had assumed the Employer had agreed the bargaining unit and it now appeared that the company had changed the position. The Union stated that it believed the company had recruited several, possibly temporary or agency staff in the last few weeks and it was likely that the company had also included several staff in the total who had previously been excluded by mutual agreement.

19. The Union stated that they had 33 members of the 65 employees in the original

bargaining group which had been verified previously by ACAS. The Union advised that it also had a mandate signed by a majority of employees in the bargaining unit. The Union stated that it was not able to provide further details of their membership or the mandate at this stage as their members did not feel confident that if the company had access to the information they would be free from victimisation and bullying.

20. Finally the Union confirmed that PMR stood for “Pre Make Ready”.

21. The Employer in a letter dated 16 April 2014 explained that the operations department employees not included in the bargaining unit description was the despatch drivers, production administrators and factory cleaners who were all direct employees.

22. The Employer stated that the decision to canvas the employees was taken following the quarterly business briefings to all employees held on 6/7 March 2014. At the briefings the employees were updated on the Union’s request for recognition and given clarification of the current situation as some employees had been misguided that Union recognition was already in place.

23. The Employer stated that in order to determine the employees’ response to the Union’s recognition request they were asked if that was something they supported and that a number of employees stated either at the meeting or immediately afterwards that it was not something that they either wanted or supported. The Employer stated that a decision was then taken to write to all operations employees individually and ask them to respond to the question “Would you like a formally recognised union at Primopost”.

24. On 17 April 2014 the CAC received a letter from the Employer stating that having read the response provided by the Union (letter dated 15 April 2014) the company unequivocally refuted any suggestion of victimisation or bullying of employees and requested the Union to produce specified evidence to back up their allegations or withdraw the comments.

25. Further correspondence about each others behaviour was entered into between

the parties and submitted to the CAC. The Panel were sent copies of the letters but are not something they need to take into account when making their decision.

### **The check of membership and support**

26. To assist the determination of two of the admissibility criteria specified in the Schedule, namely, whether 10% of the workers in the agreed bargaining unit are members of the Union (paragraph 36(1)(a)) and whether a majority of the workers in the agreed bargaining unit are likely to support recognition of the Union as entitled to conduct collective bargaining on behalf of the agreed bargaining unit (paragraph 36(1)(b)), the Panel proposed independent checks of the level of union membership in the agreed bargaining unit and the number of workers in the unit who had signed the workers' petition in support of the Union being recognised. It was agreed with the parties that the Employer would supply to the Case Manager a list of the names and job titles of workers within the agreed bargaining unit as in the Union's application, and that the Union would supply to the Case Manager a list of its members within that unit to enable comparisons to be undertaken. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists would not be copied to the other party. It was also agreed that the Case Manager would compare the names and signatures on the Union's petition with the Employer's list of workers and the Union's list of members. These arrangements were confirmed in a letter dated 16 April 2014 from the Case Manager to both parties. The information from both the Union and Employer was received on 22 April 2014. The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

27. The Union provided a list of 35 members and a copy of its petition and the Employer provided a list of 70 workers. The Union's petition dated between 10 June 2013 and 22 June 2013 consisted of 62 names and signatures and was set out as follows:

#### **WORKERS MANDATE**

We the undersigned WORKERS EMPLOYED BY Primopost at Buxton call upon our Employer to recognize for the purposes of collective bargaining the Union of our

choice, which is UNITE the Union.

Name	Signature	Department	Date

28. The membership check established that there were 35 members of the Union within the agreed bargaining unit; a membership level of 50%. The result of the comparison of the Union's petition with the Employer's list of workers revealed that a total of 51 workers had indicated that they wanted the Union to represent them, which corresponds to 72.85% of the agreed bargaining unit. 32 of the 51 were union members (45.71%) and 19 were non-members (27.14%). The job titles of the workers on the list provided by the Employer were listed as Factory Operative, Ink Technician, Maintenance, Maintenance Apprentice, PMR Assistance, PMR Operative, Print Apprentice, Printer No. 1 and Printer No.2.

**Comments on the result of the membership check**

29. On the 25 April 2014 the CAC received a letter from the Union stating that it was clear that it had at least 50% of the employees in the bargaining unit. The Union stated that the petition signed by 72.85% of the employees in the proposed bargaining unit clearly demonstrated the desire of a majority of the workforce to have them conduct collective bargaining on their behalf. The Union stated that this did not include members who had joined since 22 June 2013 (a further increase of 8 members) which would increase the level of support .

30. Finally the Union stated that the company had not provided any evidence to back up their claim that 73% had not voted in support of Union recognition or that their membership was not representative of Operations employee team.

31. The Employer in a letter dated 28 April 2014 pointed out that the petition was 10 months old and in addition to that there had been several changes in the workforce which called into question the validity of the petition.

32. With regards to the current union membership levels the Employer stated that it

would like clarified whether those employees who had indicated to them that they had cancelled their subscription directly with their own bank had also been accurately captured as it had been reported to them that members were not able to complete leaver information directly with the Union.

### **Considerations**

33. 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.

34. The Panel concludes from the evidence that the Union made a valid request on 10 July 2013 to the Employer for a proposed bargaining unit described as “Printers, PMR, Finishing, Warehouse, Lamination and Maintenance based at your premises 1 Staden Park, Staden Lane, Buxton, Derbyshire SK17 9RZ”. The Employer indicated a willingness to negotiate within 10 working days of receiving the Union’s request which triggered the second period. As the Union states in its application and the Employer clarified in its response the bargaining unit was then agreed by the parties described as “Print, PMR, Finishing, Warehouse, Lamination and Maintenance, Apprentices and Temporary Workers therein”. In situations where the bargaining unit is agreed but it has not been agreed that the Union be recognised, as happened in this case, the union may apply to the CAC to decide the question of whether the union has the support of a majority of the workers constituting the bargaining unit. This is what the Union has done in this case and so the Panel has a responsibility to decide upon the admissibility of the Union’s application.

35. 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 this application was made in accordance with Paragraph 12. Furthermore, the Panel is satisfied that this application is not rendered inadmissible by any of the provisions in paragraphs 33 to 35 and paragraphs 37 to 42 of the Schedule.

36. The remaining issue for the Panel to address is 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 Union's agreed bargaining unit. The Panel notes that the Employer confirmed, prior to the Union submitting its application, the bargaining unit had been agreed but then made reference to the proposed bargaining unit in its response form. As stated in the case manager's letter of 16 April 2014, the membership and support check was conducted against the agreed bargaining unit as described in the Union's application and the Employer supplied a list of the posts which it believed fell within the agreed bargaining unit which was not disputed by the Union. The Panel is therefore basing its decision purely on the information supplied by the Employer for the membership and support check.

38. The check of Union membership in the agreed bargaining unit, as conducted by the Case Manager on 24 April 2014, showed that membership stood at 50%. The Panel noted the Employer's claim that employees had indicated to them that they had cancelled their union membership subscriptions direct with their bank but no evidence of this was provided. The Panel is therefore satisfied that this test is met.

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

39. The test in paragraph 36(1)(b) is whether a majority of the workers constituting the agreed bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit. The Case Manager's check of the Union's petition against the list of 70 workers provided by the Employer indicated that 51 of the petition signatories were workers from within the agreed bargaining unit, a support level of 72.85%. The Panel noted the Employer's comment that the petition was conducted some 10 months ago and that there had been significant changes within the workforce since that date. The Panel also noted the Union's claim that since 22 June 2013, when the petition was conducted, they had a further increase of 8 members who would not have signed the petition.

40. Therefore, given the level of Union membership and support demonstrated by

the petition the Panel is satisfied that, in accordance with paragraph 36(1)(b) of the Schedule, a majority of the workers in the proposed bargaining unit would be likely to favour recognition of the Union.

### **Decision**

41. The Panel is satisfied that the application is valid within the terms of paragraphs 5 to 9, is made in accordance to with paragraph 12 and is admissible within the terms of paragraphs 33 to 42 of the Schedule. The application is therefore accepted by the CAC.

### **Panel**

Professor Lynette Harris, Chairman of the Panel

Mr David Bower

Mr. Paul Gates OBE

6 May 2014