

**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:**

GMB

and

Washington Metal Works

**Introduction**

1. GMB (the Union) submitted an application to the CAC dated 20 January 2015 that it should be recognised for collective bargaining by Washington Metal Works (the Employer) for a bargaining unit comprising “Hourly paid Shop Floor production workers including apprentices but excluding any management/staff positions”. The location of the bargaining unit was given as Bath Road, Felling Industrial Estate, Gateshead NE10 0LH. The CAC gave the parties notice of receipt of the application on 23 January 2015. The Employer submitted a response to the application on 28 January 2015.

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 Chris Chapman, Chairman of the Panel, and, as Members, Mr Mike Regan and Ms Virginia Branney. The case manager appointed to support the Panel was Adam Goldstein and then Nigel Cookson.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 5 February 2015. The acceptance period was extended to 18 February 2015 because of the Employer's request for more time to answer questions and was subsequently extended to 23 March 2015 in order to allow time to conduct the membership check, to allow the parties to comment on the results of the check and for the Panel to consider said comments 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; and should therefore be accepted.

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

5. In its application the Union stated that it had sent its request for recognition to the Employer on 11 December 2014. The Union enclosed a copy of the relevant letter. This identified the Union and stated that the request was being made under the Schedule. In its letter the Union stated that the bargaining unit it sought to represent was "shop floor production workers including apprentices but excluding any management positions".

6. The Union stated that the Employer, following receipt of the request for recognition, did not propose that Acas should be requested to assist. Asked to provide details, the Union stated the parties had been involved in discussions with Acas for over one year but the Employer refused to agree to the request for recognition.

7. The Union estimated that there were 151 workers employed by the Employer, of whom an estimated 110 were in the proposed bargaining unit. The Employer did not agree on the number of workers in the proposed bargaining unit. The Union stated that there were 56 members of the Union within the proposed bargaining unit. When asked to provide evidence that the majority of the workers in the bargaining were likely to support recognition for collective bargaining the Union stated that Acas had carried out an audit of membership levels in March 2014 indicating that there were 34 Union members. This represented 22.5%

membership within the 151 names provided by the Employer at that time. The Union's membership now stood at 56 equalling 37% and 90 workers had signed a petition supporting recognition. The Union asked that the figure of 151 be clarified as it was not sure it did not include such categories as managers or staff which were not intended to be in the proposed bargaining unit.

8. The Union had selected the proposed bargaining unit because of strong membership and support within the relevant group. The bargaining unit had not been agreed with the Employer.

9. The Union stated that, as far as it was aware, there was no existing recognition agreement in force covering any of the workers in the proposed bargaining unit. The Union confirmed that it held a current certificate of independence.

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

10. The Employer stated in its response that it had received the Union's written request for recognition on 21 January 2015 and where asked what its response was to the request the Employer stated "No response".

11. The Employer stated that it had received a copy of the application form and supporting documents from the Union for the current application on 21 January 2015. It confirmed that it had not, before receiving a copy of the application from the Union, agreed the bargaining unit with the Union and that it did not agree it. The Employer proposed an alternative bargaining unit of hourly paid workers excluding young apprentices of less than 18 years old. The Employer also confirmed that Acas had been involved since early 2014 and were very helpful.

12. There were approximately 200 workers employed by the Employer not including management/staff or directors. The Employer's estimate of the number of workers in the Union's proposed bargaining unit was not clear from its response.

13. Asked if it disagreed with the Union's estimate of membership in the proposed bargaining unit the Employer stated, "Out of date, additional workers added to the workforce, including young apprentices".

14. When asked whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer stated that Acas had conducted an audit in March 2014 indicating that there was not support for recognition and nothing had changed since then. The feedback from the shop floor was that workers did not want the Union to represent them but preferred a shop committee. The Union had tried to "impose themselves" on the workforce on a number of occasions since 2001 but without success. The Employer stated that "The pay rates, holiday and over-time rates are all above the norm, and never had short time working that has given the workforce growth and job security for 30 years so there is a reluctance to have people representing them that could bring disputes and distractions that divert the management from growing the business".

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

#### **Questions to the parties following the Employer's response**

16. The Employer's response was copied to the Union under cover of a letter from the Case Manager dated 2 February 2015. This pointed out the differing figures given by the parties as to the numbers employed by the Employer - 200 excluding management/staff or directors according to the Employer and 151 according to the Union. The Panel asked the Union to comment on the reason for this, if known. In a letter of the same date to the Employer the Case Manager sought confirmation as to whether it had received the Union's request letter dated 11 December 2014 and, further, to state the number of workers it believed to be in the Union's proposed bargaining unit.

17. The Union responded by email dated 3 February 2015 stating that it had based its estimate of the number of workers on the information provided by Acas in 2014 and after the Union had spoken to the members on site. Addressing the Employer's point about feedback suggesting opposition to recognition, the Union had spoken to the members and had been informed that they had never been asked this question.

18. The Employer replied to the questions in the CAC's letter by way of an email dated 13 February 2015. It confirmed that it had received a copy of the request letter on 21 January 2015. The Employer further stated that the workforce currently totalled 198 not including any management or directors. This figure did, however, include apprentices who were off-site at the Training Association. The Employer stated that it not believe that apprentices below 18 years old should be included as it believed that some had been pressured into joining the Union.

#### **Further questions on postage and receipt of the Union's request letter**

19. The parties were notified by letter dated 16 February 2015 that the next step in the process was likely to be a membership and support check. The letter to the Union noted the discrepancy between the date of the Union's request letter (11 December 2014) and the date upon which the Employer stated it had received the letter (21 January 2015) and the Union was asked to provide any proof of postage of its letter dated 11 December.

20. In an email dated 17 February 2015 the Union responded. It included a previous email it had sent to the Employer on 11 December 2014 which stated, in part, "Please find attached a copy of a letter I am sending you today in the post". Attached was a copy of the 11 December 2014 formal request which the Union stated had been sent by normal post that same day. The Union suggested that the Employer may have confused the request letter with the Union's application dated 20 January 2015. The Union went on to question whether there were 198 permanent shop floor workers and requested clarification as to whether or not temps or agency workers had been included in the Employer's figures. The Union denied that any apprentices had been put under pressure to join the Union and stated that it would welcome any evidence the Employer had on this. On the contrary, it was the Employer that was putting pressure on the workers. The Union had contacted the Employer as it had been informed that workers had been told that if the Union was recognised, they would lose holidays. The Union enclosed a notice which it stated had been displayed by the Employer and which stated, in part, that people were putting "outside pressure" on the Employer to stop the practice of employees being able to "sell back" holidays. The Union stated that it had never mentioned this issue to the Employer and enclosed an email dated 4 December 2014 to the Employer stating as much. The Union further questioned in its 17 February 2015 email

whether it was appropriate for the CAC to remind the Employer of its obligations regarding unfair practices.

21. On 18 February 2015 the Employer was asked, in the light of the Union's comments about its emailing and posting of the request letter, whether it had received the following documents from the Union and, if so, the date upon which they had been received. The documents in question were:

1. The request letter dated 11 December 2014
2. The Union's application dated 20 January 2015.

The Employer replied by way of an email dated 23 February 2015 stating that it had received a copy of the letter dated 11 December 2014 on 21 January 2015 and that it had received the Union's application on 21 January 2015. The Employer had no record of receiving the documents before that date.

### **The membership check**

22. 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 the workers within the proposed bargaining unit, and that the Union would supply to the Case Manager a list of its members within that unit including full name, date of birth, date of joining, date paid up to and confirmation of membership status; and a petition signed by workers in favour of recognition. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and the petition would not be copied to the other party. These arrangements were confirmed in a letter dated 2 March 2015 from the Case Manager to both parties. The Panel is satisfied that this check was conducted properly and impartially and in accordance with the agreement reached with the parties.

23. The information from the Union was received by the CAC on 3 March 2015 and the information from the Employer was received on 6 March 2015. The Union provided a spreadsheet with the details of 52 members and a petition with 91 names/signatures spread over 14 pages. The petition, on GMB headed paper, carried the following proposition:

**GMB**  
**NORTHERN REGION**  
**Washington metal works**

**“Yes, I support the GMB claim through recognition to conduct collective bargaining on my behalf and would welcome the opportunity to register my opinion in a secret ballot”.**

**Please note this section can be completed by members and non-members**

A date had been stamped, or in one case written in hand, on the front sheet of each petition bar one. These dates ranged between 8 December 2014 and 2 February 2015.

24. The Employer provided a list with 187 names although one name with the same date of birth appeared twice which brought the total to 186.

25. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was 50, a membership level of 26.88%. The check of the Union's petition established that 87 workers within the proposed bargaining unit had signed the petition. Forty-five of the signatories were members of the Union representing 24.19% of the workers in the proposed bargaining unit and 42, representing 22.58% of the workers in the proposed bargaining unit, were non-union members. A report of the result of the membership check was circulated to the Panel and the parties on 11 March 2015 and the parties were invited to comment thereon by the close of business on 17 March 2015.

**Summary of the parties' comments on the result of the membership check**

26. In an email dated 16 March 2015 the Union submitted that it had spoken with its members and it was still not convinced that there were 186 workers in the bargaining unit. In an audit conducted by Acas last year the Employer had stated that there were 151 workers

and, according to its members, they were not aware of 35 new permanent workers having starting since then.

27. Notwithstanding the above point, based on the figure of 186 workers in the bargaining unit as per the Case Manager's report, the Union currently represented 26.88% of this figure and had signed petitions from 46.77% not including the 4 names on the petition that were unreadable/duplicates and the five Union members that had not yet signed the petition. Although this was just short of 50% the Union believed that by showing the level of membership and also the level of support from non-members, it clearly suggested there would be sufficient support to progress this issue. Having looked at the CAC website the Union had seen that applications had been accepted with a figure lower than 46.77% and would therefore ask that this issue was allowed to proceed to the next stage.

28. No comments on the Case Manager's report were received from the Employer by the expiry of the deadline set.

### **Considerations**

29. In deciding whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 4 of this decision are satisfied. The Panel has considered all the evidence submitted by the parties in reaching its decision.

30. As set out above, the Union stated that it had sent its request for recognition to the Employer on 11 December 2015 whereas according to the Employer, in its response to the application, it did not receive a formal request for recognition until 21 January 2015, to which it failed to respond. Later, when asked for confirmation as to the date it received the request, the Employer once again stated that it had received a copy of the request letter on 21 January 2015.

31. According to Paragraph 11 of the Schedule, which applies in circumstances where an employer rejects a formal request for recognition, a union may apply to the CAC to decide whether (a) whether the proposed bargaining unit is appropriate; and (b) whether the union has the support of a majority of the workers constituting the appropriate bargaining unit. However, in order to make such an application, an employer must, before the end of the first



period, either have failed to respond to the request or refused the request without indicating a willingness to negotiate. The “first period” is defined in paragraph 10(6) as being “the period of 10 working days starting with the day after that on which the employer receives the request for recognition”.

32. Simply put, if the Employer did not receive the Union’s formal request for recognition as set out in its letter of 11 December 2015 until 21 January 2015, the day after the date of its application to the CAC, then not only had the first period of 10-working days as defined not expired before the Union lodged its application to the CAC but the period had not even commenced. In such circumstances as these, the Union’s application would be premature.

33. When asked for evidence of service, the Union provided a copy of an email it had sent to the Employer timed at 13:45 on 11 December 2014. This email had been sent to the correct email address for the Employer and there was no evidence to suggest non-delivery of the email. This email simply said “Please find attached a copy of a letter I am sending you today in the post”. The letter referred to was a copy of the Union’s formal request for recognition.

34. The Panel having examined the evidence submitted by the Union and referred to in paragraph 33 is satisfied on the balance of probabilities that the Union made its formal request for recognition by letter and email and that the request was received by the Employer on or about 11 December 2014, notwithstanding the indication from the Employer that it had no record of receiving the request prior to the application. The letter was not returned to the Union and the Union confirmed that its email of the same date had not been marked ‘undelivered’. Having made this finding, the first period of 10-working days expired well before the Union submitted its application to the CAC dated 20 January 2015 and the Panel is accordingly satisfied that the Union made a valid request to the Employer within the terms specified in paragraphs 5 to 9 of the Schedule to recognise it for collective bargaining in respect of the proposed bargaining unit as described in paragraph 1 of this decision. The request was made in writing and identified the Union, the proposed bargaining unit and that the request was made under the Schedule. The Panel is also satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 35 and 37 to 42 and that the application was made in accordance with paragraph 11 in that before the end of the first period the Employer failed to respond to the request.

35. The remaining issues for the Panel to address are whether the admissibility criterion set out in paragraph 36 of the Schedule are met.

### **Paragraph 36**

36. In accordance with paragraph 36(1)(a) of the Schedule the Panel must determine whether members of the Union constitute at least 10% of the workers in the Union's proposed bargaining unit. The check of Union membership in the proposed bargaining unit as conducted by the Case Manager on 11 March 2015 showed that Union membership stood at 26.88 % which clearly satisfies the requirements of this test. The Employer, although invited to comment on the Case Manager's report elected not to do so by the deadline imposed.

37. The test in paragraph 36(1)(b) is whether 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. To support its position the Union relied not only on its level of membership, which the Case Manager's report placed at 26.88%, but also on a petition in support of recognition which had been signed by 46.77% of the workers in the proposed bargaining unit. This figure included a total of 42 workers who were not members of the Union.

38. The Union questioned whether the Employer had given an accurate figure for the number of workers in the proposed bargaining unit as the number had increased from 151 in 2014 at the time when Acas had conducted a similar check, to 186 by the time the Case Manager conducted his comparison and its members had not noticed any increase in the workforce on site: the inference being that if the number of workers had been artificially inflated by the Employer then the true picture would show that support for the Union was in excess of 50%. In any event, the Union argued, the number of members within the proposed bargaining unit when added to the number of non-members that had signed its petition, still demonstrated that the majority of workers were likely to support recognition of the Union and the CAC had accepted applications with less support than that shown here. The Employer, although given the opportunity to do so, did not put forward any submissions in respect of this test.

39. Having considered the matter carefully the Panel takes the view that in the absence of evidence to the contrary, the level of Union membership, taken in combination with the evidence contained within the petition, provides a legitimate indicator of support for recognition of the Union. On the information presented for the purposes of the membership check the number of Union members, when added to the number of non-members that had signed the Union's petition, gives a total of 92. On the Employer's figure of 186 workers in the bargaining unit this number is one short of 50% and two short of a majority. We believe that, on balance, it is likely that the Union would have the support of two workers out of a field of 92 workers whose views on trade union recognition have yet to be expressed. We would remind the parties that this test is one of likely support rather than a definitive empirical test as to the views of the workers and the evidence put before the Panel in this particular case would suggest that the majority of 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. Accordingly, the test set out in paragraph 36(1)(b) is satisfied.

### **Decision**

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

### **Panel**

Mr Chris Chapman, Chairman of the Panel

Mr Mike Regan

Ms Virginia Branney

23 March 2015