

**15 December 2014**

**CENTRAL ARBITRATION COMMITTEE**

**TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992**

**SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION**

**DECISION ON WHETHER THE APPLICATION IS VALID FOLLOWING**

**THE AGREED BARGAINING UNIT**

**The Parties:**

**Bakers Food and Allied Workers Union**

**(BFAWU)**

**and**

**Aryzta Bakeries UK Limited**

**Introduction**

1. The Bakers Food and Allied Workers Union (the Union) submitted an application to the CAC dated 4 September 2014 which was received by the CAC on 8 September 2014 that it should be recognised for collective bargaining purposes by Aryzta Bakeries UK Ltd (the Employer) formerly known as Honeytop Speciality Foods Ltd. The application was for a bargaining unit consisting of "All units on site, consisting of all hourly paid Production /Hygiene/Dispatch/team Leaders, excluding Management/Senior Staff/ HR Staff, working in all units on site". The Union stated that the location of the proposed bargaining unit was "Across the company's units located at Woodside Industrial Estate, Dunstable LU5 4TT". The CAC gave the

parties notice of receipt of the application on 9 September 2014. The Employer submitted a response to the application on 12 September 2014.

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 Her Honour Judge Stacey, Panel Chairman, and, as Members, Mr Christopher Ball and Mr David Crowe. The Case Manager appointed to support the Panel was Miss Sharmin Khan.

3. By a decision dated 5 November 2014 the Panel accepted the Union's application. The parties then entered a period of negotiation and reached an agreement on the appropriate bargaining unit. In an e-mail to the Employer dated 24 November 2014, the Union confirmed that after meeting with its National Officers and members from the Aрызta bakery it would accept the Employer's proposal to remove hourly paid team leaders from the bargaining unit. In later e-mails to the CAC dated 3 and 5 December 2014 the parties also reached an agreement on the terms that should be used to define the scope of the bargaining unit. The description of the agreed bargaining is as follows.

**“All hourly paid Production /Hygiene/Dispatch, staff who are located in all units except Unit 12 on site at Woodside Industrial Estate, Dunstable LU5 4TT, but excluding Management/Senior Staff/ HR Staff and hourly paid Team Leaders”.**

### **Issues**

4. As the agreed bargaining unit differed from that proposed by the Union in its application, the Panel is required by paragraph 20 of Schedule A1 to the Act (the Schedule) to decide whether the Union's application is valid or invalid within the terms of paragraphs 43 to 50 of the Schedule.

5. The CAC wrote to the parties on 27 November 2014 inviting them to submit their responses to the questions asked by the validity tests set out in the Schedule. These were:

(a) Was there an existing recognition agreement covering any of the workers within the new bargaining unit?

(b) Was there 10% union membership within the new bargaining unit?

(c) Were the majority of the workers in the new bargaining unit likely to favour recognition?

(d) Was there a competing application, from another union, where their proposed bargaining unit covered any workers in the new bargaining unit?

(e) Had there been a previous application in respect of the new bargaining unit?

6. The Employer responded with its answers by its letter to the CAC dated 29 November. In its response the Employer first confirmed that “Production Supervisor” or “Line Manager” were the two job roles/titles that were excluded from the proposed bargaining unit. Production Supervisor was a historic job title for Line Manager. The Employer informed the Panel that it believed there to be only one individual with this title on the data it had previously supplied for the membership check. The CAC Case Manager had conducted a membership and support check at the acceptance stage of the statutory recognition process.<sup>1</sup> The Employer also provided the current breakdown of the number of employees in each category of worker as follows:

Hygiene/Cleaning – 10	Laundry Assistant - 1
NPD Assistant – 2	Production Operators - 460
Quality Controller - 19,	SAP Operator - 4,
Warehouse Operative - 19	
Total 515	

7. In answer to test (b) the Employer stated that “This had been determined by the membership check” (see above foot note).

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<sup>1</sup> The Union’s application was accepted by the CAC by the Panel’s decision of 5 November 2014. The Panel’s written decision reported the findings of the Case Manager’s confidential and independent check of the level of Union membership and the level of support demonstrated by a petition produced by the Union within the proposed bargaining unit. That report established there was Union membership level of 20% within the proposed bargaining unit of 599 and that 32 % of the proposed bargaining unit who had signed the petition in support of the Union were non-Union members. The Panel concluded that it was reasonable to conclude that 52% of the proposed bargaining unit were likely to favour recognition. The full acceptance decision is published on the CAC’s website on [www.gov.uk](http://www.gov.uk)

8. In answer to test (c) the Employer stated that it did not believe that the majority of the new bargaining unit was likely to favour recognition and that:

“...we have entered into significant communication and consultation with our workers and we do not believe there is an appetite for union recognition within our workforce.”

No evidence was provided to support this assertion.

9. The Union provided its answers to the CAC on 5 December 2014 by e-mail. The Union noted that the Employer agreed that the 10% test was met. It believed there to be circa 6 hourly paid Team Leaders now excluded from the bargaining unit. This was therefore a de minimis change to the proposed bargaining unit and that the CAC could rely upon the original evidence submitted on the point, and upon which the CAC had based its decision to accept the application dated 5 November 2015.

10. Without knowing whether the 6 now excluded workers were in the group of 275 petition signatories, the group of 74 unreadable names, or whether they did not sign the petition at all meant that the potential swing in those already accepted as likely to support recognition was between 0 and 6 individuals which was a minimal change of only 1%. The Union believed that that the reasoning in paragraph 23 of the acceptance decision of 5 November 2014 remained valid. The Union also proposed that if the 6 individuals were non-member signatories the adjusted calculation would be:  $185 + 123 = 308$ ,  $308/599 = 51.4\%$ . This was enough to pass the threshold test as it demonstrates the necessary level of likely support.

11. Finally the Union felt unable to comment on the employer's declared figures in their letter of 28 November 2014 (see paragraph 6 above). It simply noted the Employer's inconsistency with earlier responses. It did not propose to submit any further evidence on the validity tests.<sup>2</sup>

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<sup>2</sup>On 27 October by e-mail to the CAC, in response to the Union's queries surrounding the number of workers in the proposed bargaining unit. The Employer confirmed that it had included 30 employees from Unit 12 in error on the list that was provided for the membership and support checks at the acceptance stage and needed to be excluded as they did not form part of the proposed bargaining unit. The Employer stated that it would obviously send a full and updated list prior to any ballot taking place.

12. The CAC copied the Union's response to the Employer by e-mail on 5 December 2014 to which, by reply, the Employer confirmed it wished to make no further comments on the validity tests.

13. Neither party suggested that tests (a), (d) and (e) above were not satisfied in their correspondence with the CAC.

### **Considerations**

14. The Panel is satisfied on the evidence available that the application is valid in terms of the tests laid down in paragraphs 44 and 46 to 49 of the Schedule, namely that the application is not invalid by the existence of a recognition agreement in force covering any of the workers in the relevant bargaining unit (the new bargaining unit), that there is no competing application and that there has been no previous application to the CAC in respect of the new bargaining unit.

15. The remaining tests before the Panel are whether in accordance with paragraphs 45(a) and (b) of the Schedule the application is invalid.

### **Paragraph 45 of the Schedule states:**

"45. The application in question is invalid unless the CAC decides that-

(a) members of the union (or unions) constitute at least 10 per cent of the workers constituting the relevant bargaining unit, and

(b) a majority of the workers constituting the relevant bargaining unit would be likely to favour recognition of the union (or unions) as entitled to conduct collective bargaining on behalf of the bargaining unit."

In this application the relevant bargaining unit is the agreed bargaining unit as described in paragraph 3 above and will be referred to as the new bargaining unit in the following paragraphs.

### **Paragraph 45(a)**

16. The Case Manager's membership and support check conducted at the acceptance stage of the application established that there was a Union membership level of 20% within the proposed, original bargaining unit of 599 workers. The Panel notes the information provided by the Employer on 28 November 2014 that there was one individual in the category of worker excluded from the new bargaining unit.

Neither party has claimed that this test has not been met by the change to the proposed bargaining unit. The Panel is therefore satisfied that the test set out in paragraph 45(a) of the Schedule is met, namely that at least 10% of the workers constituting the new bargaining unit are members of the Union.

#### **Paragraph 45(b)**

17. The Panel has not been provided with any reasons as to why it should not rely on the findings of the Case Managers membership and support check conducted at the acceptance stage of the application as a starting point to assist with its decision on whether the new bargaining unit meets this test. The Employer has provided a current breakdown of the number of workers in the new bargaining unit. The Panel notes the Employer's assertion that support for the Union may have declined since, but has not produced any evidence to substantiate this. It has however helpfully informed that to its knowledge the change affects the removal of only one worker currently.

18. The results of the Case Manager's membership and support check at the acceptance stage of the application led the Panel to conclude that the level of likely support for recognition of the Union within the original bargaining unit, demonstrated by the Union's petition reached a level of at least 52%. In the absence of any evidence to the contrary, the Panel concludes that the potential effect of the change to the bargaining unit has a minimal effect on the established findings. The Employer has confirmed that to its knowledge, the change currently means the exclusion of only one worker. In other words the change is highly unlikely to affect the validity of the new bargaining unit in respect of the majority likely support test. The Panel has been provided with no other new evidence to draw upon from the parties. On the balance of probabilities the Panel can therefore conclude that, in respect of the new bargaining unit, the test in paragraph 45(b) is met, namely that a majority of the workers constituting the new bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the new bargaining unit.

#### **Decision**

19. The decision of the Panel is that the Union's application is not invalid within the terms of paragraphs 43 to 50 of the Schedule and pursuant to paragraph 20(5) of the Schedule, and the CAC will continue to the next stage of the application process.

**Panel**

Her Honour Judge Stacey– Panel Chairman

Mr Christopher Ball

Mr David Crowe

15 December 2014