

**CENTRAL ARBITRATION COMMITTEE**  
**TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992**  
**SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION**  
**DECISION ON WHETHER THE APPLICATION IS VALID FOLLOWING**  
**AGREEMENT ON THE BARGAINING UNIT**

**The Parties:**

BFAWU  
and  
Wealmoor Ltd

**Introduction**

1. BFAWU (the Union) submitted an application to the CAC dated 7 September 2017 that it should be recognised for collective bargaining by Wealmoor Ltd (the Employer) for a bargaining unit comprising: “All hourly paid employees who are retained on non-seasonal full-time or part-time contracts. We do not seek recognition in respect of seasonal workers; workers on contracts of less than 6 months duration; line leaders; supervisors or managers”. The bargaining unit was stated to be at the company’s site at the Industrial Estate, Atherstone on Stour, Stratford-upon-Avon, Warwickshire CV37 8BJ. The application was received by the CAC on 11 September 2017 and the CAC gave both parties notice of receipt of the application on the same day. The Employer submitted a response to the CAC dated 14 September 2017 which was 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 James Tayler, Chairman of the Panel, and, as Members, Rod Hastie and Paul Gates OBE. The Case Manager appointed to support the Panel was Linda Lehan.

3. By a decision dated 17 October 2017 the Panel accepted the Union's application. The parties then entered a period of negotiation in an attempt to reach agreement on the appropriate bargaining unit. As no agreement was reached, the parties were invited to supply the Panel with, and to exchange, written submissions relating to the question of the determination of the appropriate bargaining unit. A hearing was held in Birmingham on 3 January 2018. Following the hearing the Panel decided that the appropriate bargaining unit in this matter should comprise "all hourly paid employees who are retained on non-seasonal full-time or part-time contracts excluding seasonal workers; workers on contracts of less than 6 months duration; line and team leaders; supervisors or managers at the Industrial Estate, Atherstone on Stour, Stratford-upon-Avon, Warwickshire, CV37 8BJ". This bargaining unit differed to that proposed by the Union by the exclusion of the team leaders.

### **Issues**

4. Having decided that the determined 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. The tests that the Panel must consider under these paragraphs are:-

- is there an existing recognition agreement covering any of the workers within the new bargaining unit? (*paragraph 44*)
- is there 10% union membership within the new bargaining unit? (*paragraph 45(a)*)
- are the majority of the workers in the new bargaining unit likely to favour recognition? (*paragraph 45(b)*)
- is there a competing application, from another union, where their proposed bargaining unit covers any workers in the new bargaining unit? (*paragraph 46*)
- has there been a previous application in respect of the new bargaining unit? (*paragraphs 47 to 49*)

In a letter dated 12 January 2018 the Case Manager invited each party to make submissions on these points for consideration by the Panel.

## **Views of the Union**

5. In a letter dated 15 January 2018 the Union's Solicitor stated that they were not aware of any existing recognition agreement covering any of the workers within the new bargaining unit. The Union also stated that they were not aware of any competing application from another union that covered any worker in the new bargaining unit or whether there had been a previous application in respect of the new bargaining unit.

6. In response to whether there was 10% union membership within the new bargaining unit and whether the majority of workers in the new bargaining unit were likely to favour recognition the Union stated that for practical purposes the only difference to the definition was an explicit reference to the exclusion of team leaders. The Union said they noted from paragraph 21 of the Panel's decision that there were currently 10 team leaders and there was vacancies for up to 12 more. The Union stated and it was unclear from the face of the membership and support check carried out on 26 September 2017 whether that analysis included team leaders as they were not identified separately and therefore they were unable to specifically analyse the existing figures within that report with a view to addressing the validity tests. The Union stated that if team leaders were not included then they repeated the content of their letter of 6 October 2017 in respect of the validity tests which the Panel accepted in the acceptance decision of 17 October 2017. The Union said that if team leaders had previously been included then those observations remained appropriate with the adjustment that the denominator could be reduced to as low as 452 thereby pushing the percentages even further in their favour.

## **Views of the Employer**

7. On 15 January 2017 the Employer confirmed that there was no existing recognition agreement covering any of the workers within the bargaining unit and that there was no competing application from any other trade union.

8. As for whether there was 10% union membership within the new bargaining unit the Employer said that based on the previous membership count of 14.8% from September 2017 they felt there should be a recount of membership numbers based on a new list. The Employer said that it was likely that with high attrition that figure may have changed.

9. When asked whether the majority of workers in the new bargaining unit were likely to favour recognition the Employer stated that they believed the majority of the workers in the bargaining unit would not favour recognition. The Employer said that based on the membership check only 14.8% signed the petition which was well below the percentage needed for a majority.

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

10. To assist in the determination of two of the validity tests specified in the Schedule, namely, whether 10% of the workers in the determined bargaining unit are members of the union (paragraph 45(a)) and whether a majority of the workers in the determined bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit (paragraph 45(b)), the Panel proposed an independent check of the level of union membership and support within the determined bargaining unit. The Employer agreed to supply to the Case Manager a list of the names, date of birth and job titles of workers within the determined bargaining unit and the Union agreed to supply to the Case Manager a copy of its petition and a list of its paid up members within that unit, including their full name and date of birth. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and petition would not be copied to the other party and that agreement was confirmed in a letter from the Case Manager to both parties dated 15 January 2018. The information from both parties was received by the CAC on 17 January 2018. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

11. The list supplied by the Employer indicated that there were 377 workers in the determined bargaining unit. The list of members supplied by the Union contained 101 names. According to the Case Manager's report, the number of Union members in the determined bargaining unit was 68, a membership level of 18.04%. The Union provided a petition signed by 247 workers and the check established that 164 (43.50%) of the signatures were from workers in the determined bargaining unit. Of the 164 signatures 107 were non-members (representing 28.38% of the bargaining unit).

12. A report of the result of the membership check was circulated to the Panel and the parties on 17 January 2018 and the parties were invited to comment on the result.

### **Parties' comments on the result of the membership check**

13. In an email dated 19 January 2018 the Employer stated that although over 10% of the bargaining unit were members of the Union the information showed that those within the unit favouring recognition did not form a majority of the unit. The Employer said, as there was not a majority favouring recognition, recognition should not be declared.

14. A response was received from the Union dated 22 January 2018. The Union stated that they noted that the Employer accepted that the previous total number of employees within the bargaining unit was inflated and that that justified their concerns raised at the time. The Union said that despite that they noted that the key indices were slightly more favourable to the Union than when the application was first accepted:

- The proportion of members in the bargaining unit was up from 14.88% to 18.04%
- The proportion of petitioners in the bargaining unit was up from 40.46% to 43.50%
- The proportion of non-member petitioners in the bargaining unit rose slightly from 28.30% to 28.38%

15. The Union submitted that their observations on the statutory thresholds in their letter of 6 October 2017 could be conveniently repeated here *mutatis mutandis* and as they were accepted by the CAC Panel on 17 October 2017 would invite the same decision on the basis of the more persuasive figures.

### **Considerations**

16. The Panel is required to determine whether the Union's application is valid or invalid within the terms of paragraphs 43 to 50 of the Schedule. In reaching its decision the Panel has taken into account the submissions of both parties and all the other evidence before it. On the evidence available, the Panel is satisfied that there is no existing recognition agreement covering any of the workers within the determined bargaining unit; that there is no competing

application from another union; and that there has been no previous application in respect of the determined bargaining unit. The remaining issues for the Panel to decide are whether the validity criteria contained in paragraph 45(a) and paragraph 45(b) are met.

*Paragraph 45(a)*

17. Under paragraph 45(a) of the Schedule an application is invalid unless the Panel decides that members of the union constitute at least 10% of the workers in the determined bargaining unit.

18. The membership check conducted by the Case Manager outlined above showed that 18.04% of the workers in the determined bargaining unit were members of the Union which the Employer did not dispute. As previously stated the Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties. The Panel has therefore decided that members of the Union constitute at least 10% of the workers in the determined bargaining unit as required by paragraph 45(a) of the Schedule.

*Paragraph 45(b)*

19. Under paragraph 45(b) of the Schedule, an application is invalid unless the Panel decides that a majority of the workers constituting the determined bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit.

20. The Panel considers that members of the Union would be likely to favour recognition of the Union for collective bargaining (18.04%), as would non-union members who signed the petition (28.38%); giving a total of 46.42% (as opposed to 43.18% when the application was originally accepted).

21. The Panel has noted the Employer's comments in paragraph 13 above and reminds the parties that this is not a definitive test of support and that, for this test to be met, the Panel must only be satisfied that a majority of the workers in the bargaining unit would be *likely* to favour recognition. It is not a test as to whether the Union has majority membership within the bargaining unit. The panel considers that the bandwagon effect is likely to increase

support for recognition as a result of union campaigning and the possibility of recognition drawing closer. On the basis of the evidence before it, the Panel has decided that, on the balance of probabilities, 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, as required by paragraph 45(b) of the Schedule.

### **Decision**

22. The decision of the Panel is that the application is valid for the purposes of paragraph 20 of the Schedule and the CAC must proceed with the application.

Panel

Mr James Tayler, Chairman of the Panel

Mr Rod Hastie

Mr Paul Gates OBE

**26 January 2018**