

**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:**

Community

and

Black Country Living Museum

**Introduction**

1. Community (the Union) submitted an application to the CAC on 8 January 2018 that it should be recognised for collective bargaining by Black Country Living Museum (the Employer) for a bargaining unit comprising the "Costume Demonstrators who work at the Black Country Living Museum". The CAC gave both parties notice of receipt of the application on 9 January 2018. The Employer submitted a response to the CAC dated 16 January 2018 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 Her Honour Judge Stacey, Chairman of the Panel, and, as Members, Mr Mike Regan and Mr Matt Smith OBE. The Case Manager appointed to support the Panel was Nigel Cookson.

## **Issues**

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; and therefore should be accepted.

### **The Union's application**

4. In its application the Union said that it had written to the Employer with a formal request for recognition on 20 October 2017 following informal discussions taking place earlier in the year at Acas. A further meeting was held on 16 November 2017 following which the Employer informed the Union, by way of letter dated 23 November 2017, that it did not currently identify the desire to have a recognised trade union within the proposed bargaining unit. A copy of the Union's letter of 20 October 2017 was enclosed with the application.

5. According to the Union, there were a total of 123 workers employed by the Employer with 78 of these falling within the proposed bargaining unit. The Union stated that it had 39 members within the proposed bargaining unit. Asked to provide evidence that a majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining, the Union said that it believed that it had a majority of those employed in the bargaining unit as members, as well as a petition form from non-members in support of recognition. The Union had recruited members on the basis that it would be seeking trade union recognition and had seen new members join in response to campaign activities.

6. When asked to give its reasons for selecting the proposed bargaining unit, the Union stated that the proposed bargaining unit comprised a significant number of workers who had a unique role to play at the museum in particular issues including costumes, issues around the age of the machinery that they had to demonstrate and so on. The workers in the proposed bargaining unit were the most public facing group of staff: they worked in every building on site, including the mine. The nature of the work meant that the role of the costume demonstrators was distinct and very different to that of other workers, such as administrators

and other "back office" staff. The Union believed that the proposed bargaining unit was consistent with effective management of the organisation and was reflected in the company's staff forum and also its organisational chart. The Union confirmed that the bargaining unit had not been agreed with the Employer.

7. Finally, the Union said there had not been a previous application in respect of this, or a similar, bargaining unit and there was no existing recognition agreement that covered any of the workers in the proposed bargaining unit.

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

8. In its response dated 16 January 2018 the Employer explained that the Union made its first approach about recognition in March 2017. The proposed bargaining unit at the time was the whole of the Museum workforce. A meeting including ACAS was held on 16 June 2017 to discuss the request. As the Employer was confident that the Union did not have sufficient support/membership within the proposed bargaining unit it informed the Union that it did not feel that recognition was appropriate. The Employer's position had been shown to be correct as the Union then revised its request for recognition to a much narrower proposed bargaining unit of the costume demonstrators only.

9. The Employer received a Schedule A1 request for recognition of the bargaining unit of the costume demonstrators in a letter dated 20 October 2017. On receipt of this letter the Employer invited the Union to discuss its revised request and views on the suitability of the revised proposed bargaining unit. A meeting was held on 16 November 2017. The Employer did not consider that the Union addressed its concerns of the limited bargaining group within a larger community of workers who shared a location, local pay negotiations, management and common terms and processes, and so it rejected the formal request for recognition by way of letter dated 23 November 2017. A copy of this letter was enclosed with the completed response form.

10. When asked to give the date it received a copy of the application form directly from the Union, the Employer stated this was 9 January 2018. The Employer confirmed that it had not agreed the bargaining unit prior to having received a copy of the completed application form and when asked if it agreed, the bargaining the Employer again answered "no". The

Employer then went on to list its objections to the proposed bargaining. First, it operated from one location only. The proposed unit would establish a small and/or fragmented bargaining unit within a much larger community of workers all managed at the same site and who shared locally negotiated terms and conditions and share common interests. Second, the proposed bargaining unit would fragment other workers that wear costume but who were Learning Assistants or members of the Food and Drink team, some of whom shared the same pay, terms and conditions and locally negotiated pay to those in the proposed bargaining unit. Third, the proposed bargaining unit would hive off a small group within a much larger common community of staff who were also all subject to the same procedures and the same management, and budget. Fourth, the Union had suggested that the proposed group were bound by unique issues relating to health and safety. This was not something the Employer accepted and did not believe it to be appropriate to hive off a minority group of workers from the wider community of workers who all shared an interest in health and safety issues, which were capable of being influenced and enforced outside the realms of a collective agreement. In summary, the Union had chosen a small and minority group in an attempt to achieve recognition and recognition alone. It was the Employer's view it was not compatible with effective management, good industrial relations or appropriate within a much larger undertaking.

11. The Employer stated that it employed 156 Contracted Staff and 107 Casual Workers, a total of 263 workers, at the site. Asked if it agreed with the Union's figure as to the number of workers in the bargaining unit, the Employer stated that it considered that the group "Costumed Demonstrators" would be workers in the Visitor Engagement team that spent the majority of the working time in historic costume as a demonstrator. On this basis there are currently 80 such workers within the bargaining unit. When asked to give reasons for disagreeing with the Union's estimate of its membership in the bargaining unit, the Employer stated that it believed that the Union had not accurately quoted the number of workers employed at the Museum and may be including member numbers from outside of the proposed bargaining unit, gained as part of the Union's earlier bid for a much broader bargaining unit. The Employer was concerned that the Union appeared to be under the mistaken view that there were only 123 workers employed within the Museum, 78 of which the Union asserted are within the proposed bargaining unit and would request that additional verification of such figures was carried out.

12. When asked to give reasons if it did not consider that a majority of the workers in the proposed bargaining unit were likely to support recognition, the Employer stated that in October 2017 the Employer carried out independently facilitated listening groups composed of a cross section of employed workers. The feed-back from such groups was that most confirmed a desire to maintain and/or enhanced the arrangements of local employee bargaining via the existing elected Staff Consultation Forum. In addition, the main concern across the departments was an apparent feeling of isolation and an atmosphere of 'them and us'. The proposed ideas to improve upon such issues did not feature further division within such groups via a small pocket of workers who wished to further separate themselves from the broader group via an isolated recognition arrangement. In light of the above response, the Employer respectfully requested that the CAC hold a ballot following a membership check at an appropriate time, in the interests of good industrial relations and bearing in mind the Union did not hold membership above 50% within the proposed bargaining unit.

13. The Employer confirmed that there was no recognition agreement in place covering any of the workers in the agreed bargaining unit. When asked whether, following receipt of the Union's request, the Employer had proposed that Acas be requested to assist, the Employer stated that following the initial approach from the Union in March 2017 to recognise the whole workforce, the Employer met with Acas on 15 May 2017. Subsequently, a meeting involving both parties and Acas was held on 16 June 2017. As stated above, the Employer was confident that the Union did not have sufficient support/membership within the proposed bargaining unit. The Employer had not proposed that Acas be requested to assist with the formal Schedule A1 request for recognition of the bargaining unit of the costume demonstrators.

14. Finally, when asked if it was aware of any previous application under the Schedule by the Union in respect of this or a similar bargaining unit the Employer answered "Not known".

### **Membership and Support Check**

15. To assist in the application of the admissibility tests, the Panel proposed independent checks of the level of union membership in the proposed bargaining unit and the number of workers in the unit who had signed a petition supporting recognition of the union. It was

agreed with the parties that the Employer would supply to the Case Manager a list of the full names, dates of birth and job titles of workers within the bargaining unit, and that the Union would supply to the Case Manager a list of the full names and dates of birth of the paid up union members within that unit and a copy of its petition. The information from the Union was received by the CAC on 19 January 2018 and from the Employer on 17 January 2018. 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 and that agreement was confirmed in a letter from the Case Manager to both parties dated 17 January 2018.

16. The Union provided a list of its 47 fully paid up members which included their full name, and columns headed: Branch; Member Number; Member Status and Date of birth. The Union also provided two petitions. One took the form of 18 A4 pages and the other was 15 pages. Both versions of the petition carried the following proposition:

**I support recognition of Community Union for the Costume Demonstrators at Black County Living Museum.**

17. The Employer provided two lists of workers consisting of one list of 46 names which was headed "Black Country Living Museum" and beneath this was "Contracted staff working within Visitor Engagement Dept in costume as a demonstrator". The second list consisted of 34 names and was headed "Casual workers working within Visitor Engagement Dept in costume as a demonstrator". In total there was 80 individuals and the following details were provided: name, ID reference and date of birth.

18. According to the Case Manager's report, the number of Union members in the bargaining unit was 36, a membership level of 45%. The check of the petition showed that it had been signed by 25 workers in the bargaining unit, a figure which represents 31.25% of the bargaining unit. Of those 25 signatories, 23 were members of the Union (28.75% of the bargaining unit) and 2 were non-members (2.50% of the bargaining unit).

19. A report of the result of the membership check was circulated to the Panel and the parties on 23 January 2018 and the parties' comments invited.

## **Parties' comments on the Case Manager's report**

20. In an email dated 25 January 2018 the Employer stated that it accepted the content of the report which was self-explanatory in reference to the work which had been carried out and so the Employer had no formal comments in that regards. In terms of the differences, it was difficult to offer an explanation without the detailed information, which the Employer fully understood was confidential. Therefore the Employer could only assume that it arose as a result of a slightly differing classification of the bargaining unit of the Costume Demonstrators by the two parties.

21. In an email from the Union dated 29 January 2018 it stated that it was concerned that the figure for union members within the proposed bargaining unit was lower than it expected and it had therefore requested the Case Manager to provide the names on the Union's list which were not on that of the Employer. Having received this information the Union believed that membership in the bargaining unit on the date in question should have been higher by two individuals, one of whom was one of the leading campaigners for union recognition for Costume Demonstrators.

22. The Union did not dispute the Employer's figure of 80 workers in the proposed bargaining unit. Taking this figure, the Union believed that the percentage of union membership with the two "missing" members would be 47.5%. The Union had an ongoing campaign for trade union recognition and membership had increased as the campaign progressed, which the Union believed supported the proposition that the Union's own members were in favour of recognition for the proposed bargaining unit.

23. The Union agreed that at the time of the check, it had submitted 33 petitions forms and did not contest the Case Manager's analysis in his report. The Union believed that it was reasonable for the Panel to conclude that those signing the petition were in favour of the Union's recognition and noted that two of the petitioners were non-members who worked in the proposed bargaining unit.

24. In the period since the membership check information was sent to the CAC the Union had received, and forwarded copies of, a further 13 petitions from non-members working in the bargaining unit who had signed to say that they supported the recognition of the Union for

Costume Demonstrators. The Union believed that since word had spread that an application had been submitted to the CAC this had acted as a catalyst for non-members to show their support and enthusiasm for the application.

25. In concluding, the Union stated that if one took the number of union members within the proposed bargaining unit and accepted the proposition that it advanced, that they were likely to support the recognition of the Union, and added to that number those non-members who had submitted a petition in support of recognition then the Union would contend that at least 49 of the 80 working as Costume Demonstrators had indicated that they would be likely to support recognition, some 61.25%.

### **Considerations**

26. In determining whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 3 of this decision are satisfied. The Panel has considered all the evidence submitted by the parties in reaching its decision.

27. The Panel is satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 35 and paragraphs 37 to 42 and that it was made in accordance with paragraph 12 of the Schedule in that before the end of the first period of 10 working-days following the Employer's receipt of the request for recognition, the Employer indicated a willingness to negotiate but no agreement was reached during the second period of 20 working days following the end of the first period. 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)**

28. 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. In this case the check of Union membership, as set out in paragraphs 14 to 18 above, reported a membership level of 45% within the proposed



bargaining unit. It is therefore clear to the Panel that members of the Union constitute at least 10% of the workers in the bargaining unit.

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

29. 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 Union relied upon its membership as well as a petition it had conducted.

30. The Panel, in applying its industrial relations experience for which it was appointed, is of the view that, in the absence of any evidence to the contrary, workers primarily join a trade union so that that union may collectively bargain on their behalf and membership of union is therefore a legitimate indicator of an individual's view on trade union recognition.

31. Here, the Union relies on both its membership and its petition as evidence that the test under this paragraph was satisfied. The check conducted by the Case Manager showed that 45% of the workers in the bargaining unit were in membership and it could point to a further 2.50% verified support as demonstrated by the two non-members that had signed its petition calling for the Union to be recognised. This puts demonstrable support at 47.5%. When commenting on the Case Manager's report the Union also referred to further petition forms that it had received since submitting its information to the Case Manager for the check of membership and support to be conducted. These further pledges of support have not been tested against the Employer's list of those workers in the proposed bargaining unit as they were received too late to be included in the check. They may well be indicative of an upward trajectory in support but since the names have not been verified against the Employer's list, the information carries less weight.

32. But even if we disregard the additional names, the density of Union membership and petition support is sufficient to conclude that a majority of the workers in the proposed bargaining unit are likely to support recognition. Even though the Union has not demonstrated an actual majority, the statutory test seeks to understand the likelihood of support – whether disclosed or not - at a time when the Employer has made plain that it does

not agree with recognising a Union and the Union has limited opportunity to set out its stall to the workers in the proposed bargaining unit. We conclude that the visible, declared support is less than the likely support and that the majority likely test has been comfortably satisfied in this case on the information available to us at this stage of the proceedings. We therefore conclude that the Union has provided sufficient evidence that has been tested by the Case Manager, that would persuade us that it is likely, on the balance of probabilities, that a majority of the workers would support recognition of the Union and it is for this reason we find the test in paragraph 36(1)(b) is met.

33. For the reasons given, the Panel is satisfied that a majority of the workers in the bargaining unit would be likely to support recognition of the Union and the test set out in paragraph 36(1)(b) is therefore met.

### **Decision**

34. For the reasons given above, the Panel's decision is that the application is accepted by the CAC.

### **Panel**

Her Honour Judge Stacey, Chairman of the Panel

Mr Mike Regan

Mr Matt Smith OBE

5 February 2018