

**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:**

IWGB

and

The Doctors Laboratory Limited

**Introduction**

1. IWGB (the Union) submitted an application to the CAC, which was received on 31 July 2017, that it should be recognised for collective bargaining by The Doctors Laboratory Limited (the Employer) for a bargaining unit comprising “All walking, pushbike, scooter and motorbike couriers who work at The Doctors Laboratory (TDL), based at Whitfield Street Site”. The CAC gave both parties notice of receipt of the application on 1 August 2017. The Employer submitted a response to the CAC dated 14 August 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 Mr Charles Wynn-Evans, chairing the Panel, and, as Members, Mr Peter Martin and Mr Paul Noon OBE. The Case Manager appointed to support the Panel was Linda Lehan.

3. By a decision dated 8 September 2017, the Panel accepted the Union’s application. The parties then entered a period of negotiation, which was extended at the request of the Union, in an attempt to reach agreement on the appropriate bargaining unit.

4. The Union, in an email to the CAC dated 15 January 2018, confirmed that agreement had been reached between the parties and that the agreed bargaining unit was “All individuals engaged as couriers by TDL at its central London site (currently Whitfield Street), in the Greater London area (Ealing and Blackheath) and in Sawbridgeworth. Couriers include: cyclists, motorcyclists, van drivers, foot couriers and train couriers”.

5. The Employer’s representative in an email to the CAC dated 16 January 2018 confirmed that it remained the case that the Union’s proposed bargaining unit was not agreed by the Employer and that the Employer maintained that the appropriate bargaining unit was comprised of its couriers engaged at its central London site, in the Greater London area (Ealing and Blackheath) and in Sawbridgeworth.

6. Due to the similarities of the parties’ descriptions of the appropriate bargaining unit the Case Manager sought clarification from the Union and the Employer as to whether the bargaining unit had in fact been agreed and, if so, how it differed to that originally proposed by the Union in its formal request for recognition and subsequently in its application to the CAC. In correspondence received from both parties dated 23 January 2018 it was confirmed that the bargaining unit had been agreed namely “All individuals engaged as couriers by TDL at its central London site (currently Whitfield Street), in the Greater London area (Ealing and Blackheath) and in Sawbridgeworth. Couriers include: cyclists, motorcyclists, van drivers, foot couriers and train couriers”. The Employer confirmed that the agreed bargaining unit differed to that originally proposed by the Union in that it included couriers engaged by the Employer at a number of other sites in the Greater London area and at Sawbridgeworth in Essex as well as the Employer’s train couriers.

7. The Employer also stated that it believed the majority of individuals within the bargaining unit were not members of the Union and looked forward to receiving notification of the CAC’s intention to arrange a secret ballot for the purposes of collective bargaining on their behalf. The Employer contended that such a ballot would, in any event, be in the interests of good industrial relations as it would be willing to cooperate with the Union if a ballot supported recognition. The Employer said that it had received concerns from a number of individuals within the bargaining unit about the Union being granted recognition and that a clear result through an independently conducted ballot would, it believed, help to improve working relationships.

## **Issues**

8. Since, as was clearly established by the correspondence between the parties, 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. 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*)

9. In a letter dated 24 January 2018 the Case Manager invited each party to make submissions on these points for consideration by the Panel.

## **Views of the Union**

10. In an email dated 26 January 2018 the Union stated that there was no existing recognition agreement covering any of the workers within the new bargaining unit. The Union stated that there was no competing application from another union that covered any worker in the new bargaining unit and that there had been no previous application in respect of the new bargaining unit.

11. 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 “Yes”. The Union submitted that its membership levels of couriers who worked for TDL had significantly increased since the CAC’s last membership check and also that there were workers who, despite not being members of the Union, had signed a petition declaring that they were TDL couriers and that they wanted the IWGB to be recognised by TDL for the purposes of collective bargaining.

### **Views of the Employer**

12. In a letter dated 26 January 2018 the Employer’s representative confirmed that there was no existing recognition agreement covering any of the workers within the bargaining unit and, as far as it was aware, there was no competing application from any other trade union. It was also confirmed that the Employer was not aware of there having been a previous application in respect of the new agreed bargaining unit.

13. The Employer’s representative stated that as the Employer did not operate check-off the Employer was unable to confirm whether there was 10% union membership within the new agreed bargaining unit.

14. In response to the question as to whether the majority of workers in the new bargaining unit were likely to favour recognition, the Employer’s representative reiterated the points made in its letter of 23 January 2018 referred to above in paragraph 7 maintaining a secret ballot would be in the interests of good industrial relations. In relation to this contention, the Panel noted that the appropriateness of a ballot is a matter that falls to be considered at the next stage in the statutory recognition process.

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

15. To assist in the determination of two of the validity tests specified in the Schedule - namely, whether 10% of the workers in the agreed bargaining unit are members of the union (paragraph 45(a)) and whether a majority of the workers in 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 (paragraph 45(b)) - the Panel proposed an independent check of the level of union membership within the agreed 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 agreed 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 29 January 2018. The information from the Union was received on 30 January 2018 and from the Employer on the 31 January 2018. The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

16. The list supplied by the Employer indicated that there were 108 workers in the agreed bargaining unit. The list of members supplied by the Union contained 61 names. According to the Case Manager's report, the number of Union members in the agreed bargaining unit was 59, a membership level of 54.63%. The Union provided a petition signed by 6 workers and the check established that 5 (4.63%) of the signatures were from workers in the agreed bargaining unit. Of the 5 signatures all were non-members of the union (representing 4.63% of the bargaining unit).

17. A report of the result of the membership check was circulated to the Panel and the parties on 31 January 2018 and the parties were invited to comment on the result.

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

18. In an email dated 5 February 2018 the Union stated that, as ascertained by the independent check, more than 50% of the individuals in the bargaining unit were members of the union and supported recognition. The Union stated that on top of the already highly favourable percentage there were a few individuals who, despite not being members of the Union, wanted the Union to be recognised. The Union argued that further evidence of the level of support for its being recognised was the membership check conducted at the end of October 2017 by an ACAS conciliator in relation to the agreed bargaining unit which found that the majority of the individuals in the bargaining unit were members of the Union. In conclusion the Union asked the CAC to issue a declaration of recognition without a ballot.

19. In a letter dated 5 February 2018 the Employer stated that, although the Employer noted that following the membership check it appeared that some 58% of the workers in the agreed bargaining unit were either members of the Union or had signed the Union's petition in support of recognition, as set out in their earlier correspondence, they had received concerns from a number of individuals within the new agreed bargaining unit about the Union being granted recognition. The Employer also stated that it had received reports that a number of its couriers may have been registered as members of the Union and/or had their names entered into the petition without their permission or consent. The Employer reiterated why it felt that a secret ballot should be held. In relation to this contention, the Panel noted that the appropriateness of a ballot is a matter that falls to be considered at the next stage in the statutory recognition process..

20. In a further email from the Union dated 5 February 2018 the Union adamantly refuted the allegations made about people being added against their will and said it was not physically possible for the Union to add individuals as paying members (which all TDL members were) unless they had provided the Union with their bank details. The Union also made the point that, notwithstanding that, if any paying members had somehow signed up against their will, then presumably they would have cancelled their membership but that this was something that had not occurred, as shown by the consistency of the result of the membership checks carried out so far. The Union pointed out that, even if all the petition signatures were disregarded, the Union could still demonstrate over 54% membership in the bargaining unit.

### **Considerations**

21. 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 agreed bargaining unit; that there is no competing application from another union; and that there has been no previous application in respect of the agreed 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)*

22. 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 agreed bargaining unit.

23. The membership check conducted by the Case Manager described above showed that 54.63% of the workers in the agreed bargaining unit were members of the Union. The Panel notes the Employer's comments concerning reports that a number of its couriers may not have been registered as members of the Union but no specific evidence in support of this allegation was provided and the allegation was adamantly refuted by the Union. 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 agreed bargaining unit as required by paragraph 45(a) of the Schedule.

*Paragraph 45(b)*

24. Under paragraph 45(b) of the Schedule, an application is invalid unless the Panel decides that 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.

25. The result of the membership check showed a membership level of 54.63% and the check of the petition showed that 6 workers had signed the petition of which 5 were non-members which equates to 4.63% of the agreed bargaining unit.

26. The Panel notes the Employer's comments concerning reports that a number of its couriers may have had their names entered into the petition without their permission or consent but no specific evidence in support of this allegation was provided. The Panel can only make its decision on the evidence available to it. On the basis of the level of Union membership alone (54.63%) the Panel has decided that, on the balance of probabilities, a majority of the workers in 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, as required by paragraph 45(b) of the Schedule.

**Decision**

27. 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 Charles Wynn-Evans, chairing the Panel,

Mr Peter Martin

Mr Paul Noon

07 February 2018