

**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:**

BECTU

and

The Rio Centre (Dalston) Limited

**Introduction**

1. BECTU (the Union) submitted an application to the CAC dated 2 December 2014 that it should be recognised for collective bargaining by The Rio Centre (Dalston) Limited (the Employer) for a bargaining unit comprising “All grades and categories of staff employed by Rio Cinema (Dalston) Limited except for the General Manager”. The stated location of the bargaining unit was 107 Kingsland High Street, London E8 2PB. The application was received by the CAC on 3 December 2014 and the CAC gave both parties notice of receipt of the application on 4 December 2014. The Employer submitted a response to the CAC dated 18 December 2014 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 Professor Gillian Morris, Chairman of the Panel, and, as Members, Mr Arthur Lodge and Ms. Judy McKnight CBE. The Case Manager appointed to support the Panel was Nigel Cookson.

3. The CAC Panel has extended the acceptance period in this case on two occasions. The initial period expired on 17 December 2014. The acceptance period was extended to 24 December 2014 in the light of a request by the Employer to submit its response to the application at a later date than that originally specified by the CAC. The acceptance period was further extended to 16 January 2015 in order to allow time for a membership and support check to be carried out, for the parties to comment on the subsequent report, and for the Panel to consider these comments before arriving at a decision.

### **Issues**

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 therefore should be accepted.

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

5. In its application to the CAC the Union stated that it had sent a request for voluntary recognition to the Employer on 16 September 2014. This request sought recognition for all grades and categories of staff, with the exception of executive level management, in respect of all terms and conditions of employment and stated that if the Employer thought it necessary the Union could confirm staff in membership through an independent body such as Acas. The Union stated that this was not a request for statutory recognition at this stage. The Employer responded on 19 September 2014 confirming its willingness to explore a voluntary recognition agreement if there was sufficient support among the staff but stated that the subject-matter should be confined to that covered by the statutory procedure, ie. pay, hours and holidays. The Employer agreed that it may be appropriate to involve Acas to verify the level of support for recognition within the bargaining unit. On 30 October 2014, no agreement having been reached between the parties, the Union sent a formal request for recognition to the Employer for a bargaining unit including "all grades and categories of staff working at 107 Kingsland High Street except for the General Manager". This letter was headed "TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992 SCHEDULE A1: REQUEST FOR RECOGNITION". The Union stated that the Employer

had sent a response to this request on 5 November 2014.<sup>1</sup> In this response the Employer stated that the Board of Directors had decided that the Employer would agree to recognise the Union with an independent check but without a ballot for the matters specified in the statutory procedure. The Employer also stated that the Board had decided that it “will not agree to include the senior management team in the bargaining unit”. Copies of all these documents were attached to the application.

6. The Union stated that there were 28 workers employed by the Employer, of whom 27 were in the proposed bargaining unit. The Union stated that there were 17 members of the Union within the proposed bargaining unit. When asked to provide evidence that the majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining, the Union stated that 25 out of 27 members of staff within the proposed bargaining unit had signed a petition supporting its request for collective bargaining. The Union stated that it would be happy to provide the petition to an independent scrutineer.

7. The Union stated that the reason for selecting the proposed bargaining unit was that it was compatible with effective management, covering all cinema-based staff, including the senior management team, with similar terms and conditions. The Union stated that the bargaining unit had not been agreed with the Employer and, 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. The Union stated that it had copied its application and supporting documents to the Employer on 2 December 2014.

### **Employer’s response to the Union’s application.**

8. In its response to the Union’s application to the CAC the Employer stated that it had received the Union’s written request under the Schedule for recognition on 16 September 2014 and that its response was as attached to the Union’s application, summarised in

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<sup>1</sup> The copy of the Employer’s response enclosed with the Union’s application was undated but the Employer did not dispute the date given by the Union in its response to the Union’s application.

paragraph 5 above.<sup>2</sup>

9. When asked to give the date that it had received a copy of the application form from the Union, the Employer responded “n/a. I received the documentation on 16 December 2014 from Mr Nigel Cookson”.<sup>3</sup> The Employer stated that it did not agree the bargaining unit prior to receiving a copy of the application form from the Union and that it did not agree it. The Employer stated that it did not believe that it was in the best interests of the organisation to have a bargaining unit that included senior managers as well as all other members of the organisation’s staff save for the general manager, and that it did not believe that including the senior managers would be compatible with effective management. The Employer stated that it believed that the inclusion of the senior managers would create a conflict of interest for the Union, the senior managers and possibly the Employer’s Board itself and that it believed that it was appropriate for the senior managers to be on the “management side” in the Employer’s dealings with the Union. The Employer stated that, unlike all other members of staff, the senior managers were invited to (and did, in fact) attend Board meetings and participated in the recruiting and hiring process for the new general manager, who had been hired in November 2014. The Employer said that it had reviewed certain published “precedents” of the CAC which did not support the view that senior managers should be included in a bargaining unit.

10. The Employer stated that it did not, following receipt of the Union’s request, propose that Acas should be requested to assist.

11. The Employer stated that as of 25 November 2014, which was the date of the latest information available, there were 28 workers on the payroll of the organisation. However, it stated that it understood that not all 28 workers were active, and that 10 were casual workers on zero-hour contracts; one worker, for example, lived in Bristol and had largely “transitioned out of” the cinema.

12. The Employer stated that it did not agree with the number of workers in the Union’s

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<sup>2</sup> As recorded in paragraph 5 above, the Union’s letter of 16 September 2014 was not, in fact, a request for statutory recognition.

<sup>3</sup> Mr Cookson is the CAC Case Manager.

proposed bargaining unit as defined in the Union's application as it did not have adequate information to assess the figure. The Employer confirmed that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit and that it had not received any other applications for statutory recognition in respect of any workers in the proposed bargaining unit.

13. In answer to the question as to whether it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer stated that it had no basis to make an assessment. When asked for its reasons if it did not consider that a majority of the workers in the proposed bargaining unit would be likely to support recognition the Employer again said that it had no basis to make an assessment.

#### **Union's comments on the Employer's response**

14. In an e-mail dated 22 December 2014 the Union commented on the Employer's response and specifically on the question as to whether the Union had served a copy of its application to the CAC and supporting documentation directly on the Employer.

15. The Union attached to its comments an e-mail it had sent to the Employer on 2 December 2014, which the Union said had also included an attachment of the CAC application, in which the Union asked which was the best address to which to send a hard copy of the application. The Union also attached the Employer's reply of 3 December 2014 which stated that the Union could choose to send it either to the cinema or to an alternative address. The Union stated that in the light of this reply it had sent the copy by post to the cinema and it attached a record of the letter leaving the Union's office on 4 December 2014. The Union stated that this letter had been received by staff at the cinema and put in an envelope with other post for the Employer. The Union confirmed that on 22 December 2014 it had re-sent the application by recorded delivery to the Employer at the alternative address which the Employer had provided and it attached a scanned copy of the envelope which included the Royal Mail sticker (and tracking number) for recorded delivery items.

16. The Union said that it would provide its arguments that its proposed bargaining unit was compatible with effective management when required by the process. However it noted that the Union had consulted extensively with its members at the cinema and was absolutely

convinced that including the senior managers in the bargaining unit would not create a conflict of interests for the members. It also noted that it had a recognition agreement with an independent cinema chain where senior managers and GMs were included in the bargaining unit and said that the model was working harmoniously for both management and staff.

### **Membership and Support Check**

17. 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 and support 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 and job titles of workers within the proposed bargaining unit, and that the Union would supply to the Case Manager a list of its paid up members within that unit (including name and date of birth) and a copy of its petition in support of recognition. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and petition would not be copied to the other party. These arrangements were confirmed in a letter dated 22 December 2014 from the Case Manager to both parties. The information from the Employer was received by the CAC on 22 December 2014 and from the Union on 23 December 2014. The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

18. The list supplied by the Employer indicated that there were 27 workers in the Union's proposed bargaining unit. The list of members supplied by the Union contained 17 names. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was 16, a membership level of 59.26%.

19. The petition supplied by the Union contained 24 names and signatures, of which 22 were in the proposed bargaining unit, a figure that represented 81.48% of the proposed bargaining unit. Of those 22 signatories, 14 were members of the Union (51.85% of the proposed bargaining unit) and eight were non-members (29.63% of the proposed bargaining

unit). Two of the names/signatures on the petition did not appear on the Employer's list of workers in the proposed bargaining unit and these were not included in calculating the number of workers in the proposed bargaining unit who had signed the petition. The petition was set out as follows:

**Trade Union recognition petition for Rio Dalston**

**We the undersigned support BECTU's request for collective bargaining on behalf of Cinema Staff and General Managers at Rio Dalston.**

| NAME | SIGNATURE | DATE |
|------|-----------|------|
|      |           |      |

**NOTES:**

- 1. You do not need to be a member of BECTU to sign this petition.**
- 2. This petition will NOT be made available to Rio Dalston. We may submit it to the Advisory Conciliation and Arbitration Services (ACAS) and/or to the Central Arbitration Committee (the official body that has power to award recognition).**

20. A report of the result of the membership and support check was circulated to the Panel and the parties on 24 December 2014 and the parties were duly invited to comment on the results.

**Parties' comments on the result of the membership and support check**

21. In an email to the CAC dated 24 December 2014 the Union stated that it would not be submitting any comments on the results of the membership and support check. In an email to the CAC dated 5 January 2015 the Employer said that it did not have a basis to make any comments on the check.

**Considerations**

22. In deciding whether to accept the application the Panel must determine whether the validity and admissibility provisions referred to in paragraph 4 above are satisfied. The

Panel has considered carefully the submissions of both parties and all the evidence relating to these provisions in reaching its decision.

23. The Panel notes that the Employer in its response to the Union's application indicated that it regarded the Union's letter of 16 September 2014, summarised in paragraph 5 above, as the Union's written request under the Schedule. However the Union made clear that it was not requesting recognition under the Schedule at this stage and the Panel does not regard that letter as a valid request in accordance with paragraph 8(c) of the Schedule. However the Panel is satisfied that the Union's letter of 30 October 2014 constituted a valid request to the Employer within the terms specified in paragraphs 5 to 9 of the Schedule. The Panel is also satisfied that the application was made under paragraph 11 of the Schedule. The Employer's response to the Union's request of 30 October 2014 indicated that the Employer would agree to voluntary recognition of the Union but only for a bargaining unit which did not include the senior management team. The Employer did not indicate any willingness to negotiate on the bargaining unit proposed in the Union's request and the Panel has concluded that the Employer was, therefore, informing the Union that it did not accept the Union's request for the purposes of paragraph 11(1)(b) of the Schedule.

24. The Panel is satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 and 35 and paragraphs 37 to 42 of the Schedule. The remaining issues for the Panel to decide are whether the admissibility criteria contained in paragraphs 34 and 36 (1) of the Schedule are met.

25. Paragraph 34 of the Schedule states that an application under paragraph 11 or 12 is not admissible unless the Union gives to the Employer notice of the application and a copy of the application and any documents supporting it. In its response to the Union's application the Employer indicated that it had not received a copy of the application form and supporting documentation from the Union but had only received the copy sent by the CAC. When asked by the Panel for its comments, the Union provided evidence, summarised in paragraph 15 above, that it had sought clarification from the Employer as to the appropriate address to which to send the hard copy of the application and that it had been informed that it could choose between one of two addresses. The Union exhibited a copy of its post book which indicated that an item had been sent to the Employer on 4 December 2014. In addition the Union stated that it had re-sent the application by recorded delivery on 22 December 2014



and exhibited a copy of the relevant envelope. Having considered the evidence put forward by the Union the Panel is satisfied that, on the balance of probabilities, the requirements of paragraph 34 of the Schedule have been met.

26. The remaining issues for the Panel to decide are whether the admissibility criteria contained in paragraph 36(1)(a) and paragraph 36(1)(b) are met.

*Paragraph 36(1)(a)*

27. Under paragraph 36(1)(a) of the Schedule an application is not admissible unless the Panel decides that members of the union constitute at least 10% of the workers in the proposed bargaining unit. The membership check conducted by the Case Manager (described in paragraphs 17 and 18 above) showed that 59.26% of the workers in the proposed bargaining unit were members of the Union. As stated in paragraph 17 above, the Panel is satisfied that this check was conducted properly and impartially and in accordance with the arrangements agreed with the parties. The Panel has therefore decided that members of the Union constitute at least 10% of the workers in the proposed bargaining unit as required by paragraph 36(1)(a) of the Schedule.

*Paragraph 36(1)(b)*

28. Under paragraph 36(1)(b) of the Schedule, an application is not admissible unless the Panel decides that 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. For the reasons given in the previous paragraph the level of union membership is 59.26%. The Panel considers that, in the absence of evidence to the contrary, union membership provides a legitimate indicator of the views of workers as to whether they would be likely to favour recognition of the Union. No such evidence to the contrary was received in this case; indeed, the check conducted by the Case Manager of the Union's petition in support of recognition, described in paragraphs 17 and 19 above, showed that 51.85% of the workers in the proposed bargaining unit who were Union members supported recognition and that 81.48% of all the workers in the proposed bargaining unit supported recognition. 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 36(1)(b) of the Schedule.

### **Decision**

29. For the reasons given in paragraphs 23-28 above, the Panel's decision is that the application is accepted by the CAC.

### **Panel**

Professor Gillian Morris, Chairman of the Panel

Mr Arthur Lodge

Ms Judy McKnight CBE

12 January 2015