

23 October 2014

**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:**

GMB  
and  
Mitie Services Ltd

**Introduction**

1. GMB (the Union) submitted an application to the CAC that it should be recognised for collective bargaining by Mitie Services Ltd (the Employer) in respect of a bargaining unit comprising “All staff employed to clean Non Advertising Bus Shelters” located at Unit 3, Valmar Trading Estate, Valmar Road, Camberwell, London SE5 9NW. The application was received by the CAC on 22 September 2014. The CAC gave both parties notice of receipt of the application on 23 September 2014. The Employer submitted a response to the CAC dated 29 September 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 Lynette Harris, chairing the Panel, and, as Members, Mr Len Aspell and Mr Bob Purkiss MBE. The Case Manager appointed to support the Panel was Linda Lehan.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 6 October 2014. The acceptance period was extended to 20 October 2014 and again until 24 October 2014 in order to allow time for a membership check to take place, 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. The Union stated that it had submitted its formal request for recognition to the Employer on 18 August 2014, a copy of which was enclosed, and that no response was received from the Employer.

6. The Union stated that there were 73,000 workers employed by the Employer, of whom 31 were in the proposed bargaining unit. Out of the 31 workers in the bargaining unit 19 were members of the Union. When asked to provide evidence that a majority of the workers in the bargaining unit were likely to support recognition for collective bargaining, the Union stated that it was willing to provide a membership list and petition to the CAC on a confidential basis and that the petition contained 21 signatures.

7. The Union stated that the reason for selecting the proposed bargaining unit was that it was a traditional bargaining unit comprising of workers employed to work on non advertising bus shelters as contracted by Transport for London. It believed this made industrial common sense and was fully compatible with effective management. The Union stated that it was approached by a large number of employees from the Camberwell site with a request to obtain recognition with the company.

8. The Union stated that the bargaining unit has not been agreed with the Employer and confirmed that it held a current certificate of independence.

9. The Union confirmed that it had not made a previous application for workers in the proposed bargaining unit or a similar unit and that it was not aware of any existing agreement which covered any of the workers in the proposed bargaining unit.

## **The Employer's response**

10. The Employer stated that it had received the Union's written request letter on 1 April 2014. The Employer enclosed a copy of its response which was an e-mail dated 16 July 2014 stating that at that stage they were not looking to set up any formal agreement with the Union but were happy to keep in touch on an informal basis if there were any issues the Union wanted to raise.

11. The Employer confirmed that it had received a copy of the application from the Union on 17 September 2014.

12. The Employer stated that it had not agreed the bargaining unit before it received a copy of the application form from the Union but in answer to the question do you agree the proposed bargaining unit the Employer stated yes.

13. The Employer stated that it did not agree with the number of workers in the bargaining unit, as defined in the Union's application which stated 31, as the Employee head count showed there were 40 employees in the proposed bargaining unit.

14. The Employer stated that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit.

15. In answer to the question whether it disagreed with the Union's estimate of membership in the proposed bargaining unit and reason for disagreeing, the Employer stated that the head count was 40.

16. As to whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer stated that it had no evidence to confirm numbers of staff active in the Union.

## **The 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 bargaining unit are members of the union (paragraph 36(1)(a)) and whether a majority of the workers in the 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 within the bargaining unit, and of the petition. It was agreed with the parties that the Employer would supply to the Case Manager a list of the names, date of birth and job titles of workers within the bargaining unit, and that the Union would supply to the Case Manager 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 would not be copied to the other party. These arrangements were confirmed in a letter dated 6 October 2014 from the Case Manager to both parties. The information from the Union was received by the CAC on 6 October 2014 and from the Employer on 7 October 2014. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

18. The Union provided a list of 17 members and the Employer provided a list of 42 workers. The job titles given for the workers by the Employer were Operative, Supervisor, Night Manager, Account Manager and Administrator.

19. The Union's petition consisting of 21 signatories was set out as follows:

**PETITION IN SUPPORT OF RECOGNITION  
MITIE TRANSPORT SERVICES LIMITED**

GMB is asking your employer to recognise it for collective bargaining. We have to show the Central Arbitration Committee that a majority of workers favour our application. If you want your employer to recognise this union for collective bargaining, please sign the petition.

I support recognition of GMB as entitled to conduct collective bargaining on pay, hours and holidays:

PRINT NAME	JOB TITLE	SIGNATURE	DATE

20. The membership check established that there were 17 members of the Union within the bargaining unit; a membership level of 40.47%. The result of the comparison of the Union’s petition with the Employer’s list of workers revealed that a total of 20 workers had indicated that they wanted the Union to represent them, which corresponds to 47.61% of the bargaining unit. 15 of the 20 were union members (35.71%) and 5 were non-members (11.90%).

21. A report of the result of the membership check was circulated to the Panel and the parties on 7 October 2014 and the parties were invited to comment on the result.

**Union’s comments on membership and support check**

22. A response was received from the Union dated 8 October stating that they had one specific comment to make in respect of the membership and support check which was that the Employer was claiming 42 employees in the bargaining unit and asked clarification be sought as to whether the employer had included agency workers and that all employees listed had job titles consistent with those it would expect to be in the bargaining unit. The Union stated that it was always their intention to petition the whole bargaining unit and would have approached all employees; however that would have meant having access to the employer’s list of employees at an earlier date. A copy of the Union’s letter was sent to the Employer on 9 October asking for their comments.

23. The Employer was given additional time to make a response to the Union’s letter but none was received.

**Considerations**

24. In determining whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 4 above are satisfied.

The Panel has considered carefully the submissions of both parties and all the evidence in reaching its decision.

25. The Panel is satisfied that the Union made a valid request to the Employer within the terms of paragraphs 5 to 9 of the Schedule and that its application was made in accordance with paragraph 11. Furthermore, 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 of the Schedule. 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)**

26. 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.

27. The membership check conducted by the Case Manager showed that 40.47% of the workers in the proposed bargaining unit are fully paid up members of the Union. 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 proposed bargaining unit as required by paragraph 36(1)(a) of the Schedule.

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

28. The test in paragraph 36(1)(b) is whether 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. This is not a test of actual support, rather a threshold requirement whereby the Panel must be satisfied that a majority of the workers in the bargaining unit would be likely to favour recognition. Therefore, for the purposes of paragraph 36(1)(b) it is not necessary that a majority of workers actually do show support. The Schedule provides that, if appropriate, a test of actual support in the bargaining unit follows acceptance

of an application and it is the level of that actual support which will determine whether or not recognition is awarded.

29. The Panel noted that the Union questioned the number of employees submitted by the Employer for the membership check. Notwithstanding this query, based on those numbers provided by the Case Manager's check of the Union's petition against the list of 42 workers provided by the Employer indicated that 20 of the 42 petition signatories were identifiable as workers within the bargaining unit, a support level of 47.61%. Of those there were 15 union members (35.71%) and 5 non-members in the bargaining unit (11.90%). If the non union members who signed the petition are added to the number of Union members within the bargaining unit this would equate to 22 workers (52.37%) of the bargaining unit. 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**

30. The Panel is satisfied that the application is valid within the terms of paragraphs 5 to 9, is made in accordance to with paragraph 11 and is admissible within the terms of paragraphs 33 to 42 of the Schedule. The application is therefore accepted by the CAC.

### **Panel**

Professor Lynette Harris

Mr. Len Aspell

Mr. Bob Purkiss MBE

23 October 2014