

**CENTRAL ARBITRATION COMMITTEE**  
**TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992**  
**SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION**  
**DETERMINATION OF THE BARGAINING UNIT**

**The Parties:**

Unite the Union

and

Paragon Labels Ltd

**Introduction**

1. Unite the Union (the Union) submitted an application to the CAC dated 10 September 2013 that it should be recognised for collective bargaining by Paragon Labels Ltd (the Employer) for a bargaining unit comprising "all hourly paid undertaking the following tasks: non food printers, Make Ready Inks; Plain & Simple; Engineering; Digital; Tagging Machine; Printers Edale; Pre Press; Rewinders; Paper; Warehouse & Despatch, at Paragon Labels, Tenens Way, Boston". The CAC gave both parties notice of receipt of the application on 12 September 2013. The Employer submitted a response to the CAC dated 18 September 2013.

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 Chris Chapman, Chairman of the Panel, and, as Members, Mr Paul Gates OBE and Mr Peter Martin. The Case Manager appointed to support the Panel was Nigel Cookson and, for the purposes of this decision, Adam Goldstein.

3. By a decision dated 14 October 2013 the Panel accepted the Union's application.

4. The parties then entered a period of negotiation in an attempt to reach agreement on the appropriate bargaining unit but no agreement was reached. The parties were invited to supply the Panel with, and to exchange, written submissions ahead of a hearing to determine the appropriate bargaining unit. Before the hearing the Case Manager, upon the direction of the Panel, supplied the parties with a copy of *R (on the application of Cable & Wireless Services U.K. Limited) v Central Arbitration Committee & The Communication Workers Union [2008] EWHC 115 (Admin)* as a reference when preparing their submissions, as the Employer in particular had raised the issue of fragmentation. The hearing was held in Derby on 22 November 2013 and the names of those who attended the hearing are appended to this decision. In accordance with paragraph 19 of Schedule A1 to the Act (the Schedule) the Panel's task was to determine first whether the Union's proposed bargaining unit was appropriate and then, if it was found not to be so, to determine a bargaining unit that was appropriate.

#### **Preliminary matters**

5. The Employer applied, at the hearing, to submit a document it had entitled 'Skeleton Argument on Behalf of the Paragon Labels Limited'. The Employer had supplied the Union with a copy of this document before the hearing and the Union offered no objection to this document being submitted at the hearing. The Panel agreed to accept this document.

6. At the beginning of the hearing the Panel Chairman asked the parties to assist the Panel with a factual enquiry. This was to establish the total number of workers at Tenens Way in job categories whose exclusion from the proposed bargaining unit had been questioned by the Employer. These roles, with the relevant number of workers, had been listed by the Union in its written submissions as follows:

Apprentice Engineer, 1

Plate maker, 8

Plate QA/Cyril ITR Operator, 4

Shift Manager, 1

Reworker, 2

Technical Support, 1

Technical Administrator, 1

Both parties confirmed that these above listed roles covered a total of 18 workers.

## **Background**

7. The Employer stated that the Paragon Print and Packaging Group, which employed 1,234 workers at 17 sites nationwide, manufactured labels, food packaging and non-food packaging for household products and healthcare retail market sectors. There were four companies within the Paragon Print and Packaging Group of which only two, Paragon Labels and Paragon Flexible Packaging Limited, employed workers. Within the Paragon Print and Packaging Group were three operational divisions - Flexible Packaging, Labels and Cartons and Sleeves. Workers in Flexible Packaging were employed by Paragon Flexible Packaging Limited whilst workers in the Labels and Cartons and Sleeves divisions were employed by the Employer. There were 560 workers in the Labels division over eight sites in Spalding, Boston, Norfolk, Cramlington, Tenens Way, Benner Road, Hereford and Holland Place and the Cartons and Sleeves division employed approximately 113 hourly paid workers at one site in Wisbech.

8. The Employer submitted a chart entitled “Organisational Structure: Operations Team Labels & Sleeves and Cartons”. This showed, at the top, Dennis Patterson (Group Operations Director) with reporting lines connecting, on the left, to Michael Marshall (Labels Operations Manager) and, on the right, Martin Penn (S&C Operations Manager). Mr Marshall and Mr Penn were shown at the same level on the chart. From the Labels Operations Manager a line connected downwards to seven individuals as follows: Roly Banks (Factory Manager Cramlington), Brian Penniston (Factory Manager Norfolk), Phillip Stott (Factory Manager Boston), Adrian Price (Factory Manager Hereford), Lee Burdass (Factory Manager Spalding), Andrew Wiltshire (Acting Factory Manger Tenens Way) and David Dickinson (Engineering Manager). Below the factory manager level there were was then a further level consisting of seven individuals with the following job titles: Shift Manager or Supervisor, Production Co-ordinator and Finishing Manager. Below this level was a row consisting of just one individual being Clive Newell (Warehouse & Distribution Manager). A reporting line connected Mr Newell upwards to Mark Chapman (Production Co-ordinator) on the level above and thence up to Phillip Stott (Factory Manager Boston). Below the S&C Operations Manager, on the right hand side of the chart, there were two levels of

management (with vertical lines connecting) with both of these levels shown as being above, but with no lines connecting downwards, to the levels from Factory Manager downwards at the bottom of the page. The level below the S&C Operations Manager were: Gary Turton (Print Litho Manager), Trevor Storr (Print Flexo Manager), Lee Pollard (Finishing Manager) and Sarah Bardsley (Warehouse Manager). The level below this was a row of three Shift Supervisors with vertical lines connecting them to all of the above excluding Sarah Bardsley, below whom no one was shown.

### **Summary of the submission made by the Union**

9. The Employer had stated, in its response to the application and in its written submissions for this hearing, that it did not agree the proposed bargaining unit and it had put forward an alternative bargaining unit it believed appropriate.

10. Having regard to the factors set out in paragraph 19B of the Schedule, the Union explained that the Employer claimed the proposed bargaining unit would not be compatible with effective management yet it recognised the Union at its Gainsborough site (Paragon Flexible Packaging Limited) demonstrating that single site arrangements were compatible with effective management.

11. As for the need to avoid small fragmented bargaining units within an undertaking the Union contended that the proposed bargaining unit numbered 85 in total and was therefore not small. In this regard the Union referred, as the Employer had done (see paragraph 35 of this decision), to *TUR1/259/03 GMB & Halo Healthcare Ltd* noting that the CAC Panel, at paragraph 9 of its 17 June 2003 decision, had found that a bargaining unit accounting for 50% of the Employer's workforce was not small. The proposed unit was also separately managed as were others of Paragon's sites. The workers at Tenens Way that were excluded from the Union's proposals were also managed separately from those included. The workers in the proposed bargaining unit formed a coherent group. The argument advanced by the Employer that seeking recognition for a single site would lead to fragmentation was simply speculation. The Union addressed the Employer's argument in reference to a second CAC application by Unite the Union in respect of another of Paragon Labels' sites at Cramlington. That application was dated 11 November 2013 for a bargaining unit comprising all shop floor staff. The Employer had argued that the latter application suggested the Union was seeking

recognition on a site by site basis, risking further future fragmentation. The Union stated that it had no such overarching plan and that, in fact, the first it had heard of the Cramlington application was when it had read the Employer's written submissions.

12. Having regard to the characteristics of the workers falling within the proposed bargaining unit and of any other relevant employees the Union explained that the workers in the proposed bargaining unit were separately managed by managers on the Tenens Way site. Terms and conditions were uniform but the Tenens Way management decided individuals' pay grades. One distinction was that the workers on the Tenens Way site were the only ones that produced promotional labels on machines.

13. A restructuring exercise took place within the business in early 2013 and the reshaping of the Tenens Way site was handled by Tenens Way management.

14. As for the location of the workers the proposed bargaining unit was on a distinct site in Boston. The Employer had one other site in Boston and sites in Spalding, Newcastle, Hereford, Thetford, Wisbech and Gainsborough.

15. Although the Employer's primary case was that the appropriate bargaining unit should be a national bargaining unit, it had also suggested that additional workers in the following roles should be included in a Tenens Way based bargaining unit: Apprentice Engineer, Plate maker, Plate QA/Cyril ITR Operator, Shift Manager, Reworker, Technical Support and Technical Administrator. According to the figures, there were 85 members in the Union's proposed bargaining unit and 103 in the Employer's whole site alternative. In its written submissions, the Union gave its reasons for excluding the additional workers identified by the Employer. These are set out in the following paragraphs.

#### *Apprentice engineer*

16. The Union had excluded the Apprentice Engineer as he was on a state subsidised training scheme and was not involved in the 2013 restructuring.

*The Plate Makers and Paper Q/A Cyril ITR operators*

17. The Plate Makers and Paper Q/A Cyril ITR operators were excluded as these individuals made printing plates which originated from the Spalding studio. The plates that they produced were sent to all of the Employer's sites nationwide and they were only at Tenens Way because there was no space for them at Spalding. This group was managed directly by the manager of the Spalding studio. When the 2013 restructure took place, this group was restructured by Spalding and not by Tenens Way management. Appraisals were done for them by Spalding management and annual leave was arranged through the management at Spalding. Communication in respect of this group was rolled out from Spalding and there was no interchangeability between these workers and those in the proposed bargaining unit. Any vacancies in this group were not offered to Tenens Way workers but were filled externally and this group did not wear Paragon work wear but wore their own clothes. Their rest breaks were taken flexibly and not as the rest of the site which had fixed breaks. One example as to how Spalding management treated them differently was when a plate maker had an affair with the wife of a member of the proposed bargaining unit. The plate maker was sent to Spalding to avoid bad feeling. However, Spalding management decided to send him back to Tenens Way, despite the unpopularity of this move.

*Shift Manager, Reworkers, Technical Support and Technical Administrator*

18. The Shift Manager was excluded from the proposed bargaining unit as the position was salaried. Those in Reworker, technical support and technical administrator roles were excluded on the basis that this group corrected rewind work for all the Employer's sites not just Tenens Way. It was managed separately and not managed by Tenens Way. This group had their own rest room and clocking in machine. There was no interchangeability between these workers and those in the Union's proposed bargaining unit. This group was only located at Tenens Way because a former site in Spalding burnt down and they were relocated. The 2013 restructuring of this group of workers was not undertaken by Tenens Way management.

19. At the hearing, following oral submissions by the Employer, the Union referred to the above mentioned roles whose exclusion had been questioned by the Employer. The Union stated that it accepted, in the light of the Employer's submissions, that all the roles in

question were hourly paid. The Union did not, however, propose a modified bargaining unit as a result of this.

20. The Union stated that much contained in the Employer's submissions assisted the Union's case. The Employer had shown that each site was separately managed on site. Although the Employer stated there were common terms and conditions for hourly paid workers across 9 of its sites, there were gaps in the Employer's submissions. The Employer argued that pay was standardised but then stated in its submissions that pay rates differed according to the type of machine used. The Employer also stated there were differentials in pay due to reasonable adjustment for a disabled worker and different pay rates to workers who had been subject to a transfer under the TUPE regulations. Also revealed in the Employer's submissions was that there were differences to the weekly shift supplement by location and that the Cartons and Sleeves division had different rates of pay to the Labels division. Regarding pay grade changes, the Employer argued that these were decided by the company's Operations Manager whilst the Union held that this was decided by the Factory Manager and merely "rubber stamped" by the Operations Manager. In requesting to be on a higher a grade, a worker would approach the supervisor or the Factory Manager.

21. The Union stated that hours of work did in fact vary across the company and lunch breaks were flexible for some workers.

22. The Employer had stated that Paragon's workers were centrally managed by senior management with the input of Factory Managers at a local management level being limited. However the Employer had also detailed in its submissions the duties of Factory Managers. These included responsibility for the day-to-day running of the site for example ensuring work is 'on track', dealing with health and safety issues and implementing factory improvements. Factory Managers did not provide 'local' level management for the job roles of 'Plates', 'Reworkers', 'Technical' and 'Warehouse' workers but were still responsible for all site issues irrespective of whether the workers were managed on-site or off-site. Also, Factory Managers attended quarterly Management Meetings with senior managers. These meetings focused on such topics as health and safety updates, financial updates on the performance of Paragon and sales and operational planning. Factory managers also had a limited ability to approve normal overtime and were able to authorise normal overtime within the parameters of an annual budget provided for this purpose. Factory Managers were

generally responsible for the disciplinary and grievance processes for workers at their site. The Employer's submissions also indicated that Factory Managers conducted an informal appraisal process. Factory Managers, together with the HR team, conducted the consultation process regarding proposed redundancies. Local management was responsible for approving holiday and sickness absence, and managing shifts.

23. It was unusual for workers to be moved in or out the proposed bargaining unit rather than a regular occurrence as the Employer had submitted. It was also unusual for work to be transferred to or from Tenens Way. When workers did, occasionally, move to different sites this would be as result of a permanent move to a new locality or possibly would occur at the request of management. Temporary movements of workers between sites, if these movements did occur, were small in number. The Employer had provided a list of its Customer Services Executives who had moved to different Paragon sites with reasons and dates of these moves. These employees, however, were not in the Union's proposed bargaining unit.

24. The Employer had submitted that it had one profit and loss account which reflected the financial performance of all its sites; figures were collated centrally and were not broken down by site. However, the Employer had provided a redacted spreadsheet titled "Paragon Print & Packaging Limited: Capital Expenditure 2014" which was broken down by site and so showed that budgets were set on a site by site basis.

25. The Union responded to the Employer's questioning of the inclusion in the Union's proposed unit of Warehouse workers. The Employer argued that the Warehouse workers' 'local' management was off-site, the same as the categories of workers the Union had excluded. The Union stated that it had drawn up its proposed bargaining unit on the ground that part of the warehouse was managed by Tenens Way local management.

26. If it was awarded recognition by the CAC, the Union would not interfere with the company's ethos or the way the company worked. The Union planned to work with managers and Union representatives would be elected. The Union would promote a constructive relationship with the Employer, negotiating on pay and terms and conditions.

27. Summing up its submissions, the Union referred to the argument that the Employer's alternative proposed national bargaining unit was fair because it covered all employees with



common characteristics. The Union questioned how such a proposal could be fair given its concentration of Union membership at the Tenens Way site. This meant that, if the Employer's proposed bargaining unit was adopted, the Union would, effectively, be disenfranchised. The Union's proposed bargaining unit of 85 workers was not small. It was also not fragmented because it had clear boundaries. The unit was a coherent group of people with a common description, being hourly paid, who were commonly managed. They were excluded from the collective bargaining structures in place within the company. The proposed bargaining unit was compatible with effective management. The Employer had argued that having different rates of pay at one site would make effective management impossible. The Union did not accept this argument as other comparable companies had coped with such a situation and there had been site-specific bargaining related to shift patterns at the Employer's Cramlington site, proving that this could be done. Differences in pay rates could be built into the calculations when receiving customers' orders. There was a distinction between Tenens Way and other sites. The site was separately managed and the Employer's submissions showed the degree of local management afforded. The Employer had cited past CAC decisions where Panels had determined company-wide bargaining units but the Union could have pointed to numerous past decisions that had been to determine site-specific units only. The proposed unit did not have to be the most effective but simply had to be workable, sensible and predictable. The Union asked the CAC to order that the bargaining unit proposed by it was an appropriate bargaining unit.

### **Summary of the submission made by the Employer**

28. The Employer stated that the Union's proposed bargaining unit was the "classic example of undesirable fragmentation". The Employer cited, in this regard, *Cable & Wireless*. This stated at paragraph 17 that while small fragmented units were regarded as undesirable in themselves,

"the real problem is the risk of proliferation which is likely to result from the creation of one such unit. Hence it is important to see whether such a unit is self-contained. Fragmentation carries with it the notion that there is no obvious identifiable boundary to the unit in question so that it will leave the opportunity for other such units to exist that will be detrimental to effective management."

29. As well as the risk of fragmented bargaining across the whole business, the Union's proposal could also create fragmentation within the site. The categories of worker excluded by the Union were, like those included, all hourly paid, were subject to the same terms and conditions of employment, worked at the same location, were subject to the same procedures, policies and rules and were required to wear the same uniform.

30. There was an inconsistency to the Union's exclusion and inclusion of certain workers. The rationale behind the exclusions appeared to be that they were different from those included in terms of immediate line management (ie they were managed off-site). However all the hourly paid workers were under the local manager and were subject to the same centrally imposed and harmonised terms and conditions of employment. There was, therefore, no difference between those included in the Union's proposed bargaining unit and those it had excluded. A further example of the inconsistency in the Union's approach was that they had included 'Warehouse' workers in the bargaining on the basis that that these workers' 'local' management was also off-site. In practice, the difference between being managed by 'local' management off-site or on-site was negligible because all workers were driven by the centrally managed planning system. Therefore the Union's proposed bargaining unit was inconsistent with effective management.

31. The category of "Print supervisor" was included in the Union's proposed bargaining unit whereas the "Shift manager" role was excluded. The role of "Print supervisor" no longer existed as it had been upgraded to "Shift manager". Shift managers were responsible for the output of that shift, and were hourly paid.

32. Another category excluded from the Union's proposed bargaining unit was "Apprentice engineer". However, the apprentice engineer was paid by the Employer. The role was subject to the same terms and conditions as other workers and worked alongside the engineer.

33. Also excluded were Plate Makers and Paper Q/A Cyril ITR Operators. These workers created the files that were then sent to the plate room. These should be included in a bargaining unit because they were hourly paid and shared the same terms and conditions as other workers.

34. The Employer then turned to its alternative proposed bargaining unit being all its hourly paid workers over nine of its sites located at Enterprise Way, Boston, Norfolk, Cramlington, Tenens Way, Benner Road, Hereford, Holland Place and Wisbech. In arguing that this was the only appropriate bargaining unit the Employer cited a number of past CAC decisions. These included the decision dated 29 June 2007 regarding *TURI/557/07 Unite the Union and Kettle Foods Ltd*. Here the Employer had operated a “one-company” ethos and the Panel on the case had considered a local bargaining unit to be “divisive and incompatible with effective management”. The Employer submitted that where there was commonality of terms and conditions, to single out a particular category of workers, for example by role or location, could lead to “artificiality or disruptiveness”. The Employer also cited, in support of its arguments, the decision dated 8 July 2008 in *TURI/619/08 Unite the Union and Sports Direct International plc*. The Employer contended that the decision, at paragraph 38, supported the view that functional flexibility in relation to the workforce may render a proposed limited bargaining unit which only covered some of the workers to be incompatible with effective management. The Employer cited a number of past cases where the existence of standardised terms and conditions of employment throughout the organisation had led Panels to reject a local proposed bargaining unit as being incompatible with effective management because it could lead to undesirable fragmentation. In this regard the Employer cited the decision dated 9 March 2001, especially paragraphs 17-19, in *TURI/33/00 ISTC and Hygena Ltd (Scunthorpe)* and the decision of 4 July 2007 in *TURI/563/07 Unite the Union and the College of Law*, referring to paragraphs 44-45 in particular. In the cited cases there was centralised management and local management only implemented policy with no autonomy or discretion regarding rates of pay, hours of work or holiday entitlements. In the instant case, the Union had accepted that there were common terms and conditions of employment across the workforce.

35. The Union had argued that a bargaining unit of 85 was not small but this derived from an incorrect approach argued the Employer. The crucial point was the size of the proposed bargaining unit relative to all the relevant workers. At paragraph 44 of the decision in *TURI/563/07 Unite the Union and the College of Law*, the Panel had noted that the Union’s proposed bargaining unit of 27 tutors, comprised a small proportion of the total 292 tutors with tutors at other work places having generally the same of similar characteristics as those within the proposed bargaining unit. The decision of 17 June 2003 in *TURI/259/03 GMB & Halo Healthcare Ltd* reinforced this point, stating at paragraph 9 that, “whilst the bargaining

unit may appear small it is not one that is proportionally small as it accounts for over 50% of the Company's total workforce." Accordingly, as a proportion of the hourly paid workforce, the 85 within the proposed bargaining unit represented 12.6% of that workforce. The Employer submitted that this was "small".

36. The Union had denied that it had a central strategy to seek recognition with the Employer on a site by site basis, starting at Tenens Way and then at Cramlington. However, whether there was such a strategy or not, the risk of fragmentation remained.

37. The Employer's alternative proposed bargaining unit was the only appropriate unit because it included all hourly paid workers doing the same type of work on 9 of the company's sites. It was compatible with effective management. The whole company worked on a centralised, flexible and reactive basis. There was central allocation of work and work was centrally costed. One customer's work could be moved to different sites in order to retain a competitive edge and to complete the work in time. This approach depended upon staff working a uniform and consistent pattern regarding rates of pay and work shifts. Seven of Paragon Print and Packaging Group's 17 sites employed only salaried workers who were on materially different terms and conditions to the hourly paid workers and so should not form part of the appropriate bargaining unit whether they were located within the operational division or not.

38. Local managers did have a role to play in management including the day to day running of their site and dealing with health and safety issues. However the role of local managers was limited to the implementation of policy that was rigidly and centrally imposed; each quarter Managers from each site attended a meeting with the Operations Manager and the Operations Director so that the work at each site could be monitored and to ensure uniform decisions were made. Local managers had no discretion regarding rates of pay, hours and holiday entitlements. Only the Group Operations Director could authorise double overtime to meet customer demand on large scale projects and, when it was authorised, it was usually rolled out to all of the sites irrespective of whether some were busier than others. There was no power at site level to authorise this form of overtime although the Factory Managers did have a limited ability to approve normal overtime within an annual budget prepared by the Group Operations director and either the Labels and Operations Manager or the Sleeves & Cartons Operations Manager.

39. The Employer explained that management of the day to day work at its sites was primarily conducted via a team working under the Group Operations Director on a central planning system. All work and projects were fed into the system and work was allocated to the different sites based on factors such as cost, workload, machinery, skill set, complexity, storage facilities and geography. Local management were simply required to take the information from the system and action it based on any variations such as machines available or workers on site during that day. Local management would be on-site for some categories of worker, but may be off-site for others. However, in practice, whether local management were on-site or off was negligible because all the Tenens Way workers followed the same central planning system and both on-site and off-site local management would use this to drive what work would be carried out. The very same process was also carried out in the Cartons and Sleeves division.

40. The Group Operations Director was responsible for the strategic development and the tactical operational issues for all of the sites, including Tenens Way. This involved preparing annual budgets and sales plans for the whole of Paragon Print and Packaging Group. Under the Operations Director were the Operations Managers, one for the Labels division and one for the Cartons and Sleeves division. These Operations Managers made the day-to-day operational decisions in relation to their division's sites and reported back to the Group Operations Director. The Group Operations Director worked together with the Operations Managers to ensure that all decisions were made to ensure uniformity in the way that the sites were run and the standard of work produced.

41. The Paragon Print and Packaging Group had a central HR Team in Spalding and whilst each member of this team was responsible for a couple of sites, in practice they would cover other sites if required and some had additional responsibilities that cut across the entire Paragon Print and Packaging Group. Uniform policies and procedures were in place and the Company Handbook applied to all workers within the Paragon Print and Packaging Group. Although the Factory Manager would generally be responsible for the disciplinary and the grievance process for their site, the central HR Team heavily managed and guided them through both processes. In addition, Factory Managers could become involved in disciplinary proceedings at other sites where the Factory Manager at that site was too involved or where there was a conflict of interest. The central HR Team was responsible for organising 'people' training, which was rolled out to all of the Paragon Print and Packaging

Group's sites. Training would be based on workplace issues and be prepared by the HR team. Such training would be provided at a particular venue and workers at all sites would be required to attend. Likewise, technical training, which was incredibly important for all workers, would be rolled out across all sites to ensure standards were consistent.

42. The Employer was in the process of introducing National Vocational Qualifications and four sites were piloting the scheme although Tenens Way was not one of them. However, the Employer intended to roll out this training programme to all sites. In addition, all hourly paid workers at all of the sites were subject to precisely the same basic induction training when starting their role.

43. Local managers were responsible for approving holiday and sickness absence, and managing shifts. However, central management controlled all pay rates, holiday entitlement and the type of shift patterns worked. Terms and conditions had been largely harmonised across the business over a period 9 or 10 years.

44. Save for differences based on machines operated and shift pattern worked, all hourly paid workers were on standardised terms and conditions of employment across all sites. In particular all were entitled to overtime at set standardised rates; subject to a six month probationary period; eligible for the same sick pay entitlement; eligible for the same life assurance cover; eligible for the same pension benefits; subject to the same notice period rules; and subject to the same company policies and procedures.

45. Standardised pay rates were based on the type of machine a worker operated. For example, a 'Prepress' worker would be paid the same hourly rate irrespective of location. There were four levels of pay for "Impressionist Printer". These standard pay rates were reviewed once a year (except for Printers, which was reviewed twice a year) by the Group Operations Director and Operations Manager. There was no discretion at a local level to apply different rates and so there were no local, market or geographical supplements.

46. There were a small number of pay inconsistencies across the sites, currently covering four individuals. These were due to reasonable adjustments being made for disabled workers and for workers that had transferred from another business. In both situations, the workers had retained their existing pay rates. In addition, there was a small variation in the weekly

shift supplement due to historical pay rates inherited through business transfers. The HR Team was in the process of bringing this small number of inconsistencies in line with its standardised pay rates. The Cartons and Sleeves division also had slightly different standardised rates of pay as they operated a different type of machinery but for all other aspects the material terms and conditions were identical. All hourly paid workers were paid monthly into their bank account on the same day each month and there was no bonus or commission scheme for hourly paid workers.

47. Hours of work were standardised and this standardisation was particularly important because the standardised shift patterns depended upon it. Four shift patterns operated throughout all the sites: triple shift, days, double days and continental. These shift patterns were fixed by the Group Operations Director and Operations Managers. The workers in the proposed bargaining unit did not all work the same shift pattern with some working the continental shift pattern. The pattern operated depended on customer demand and sales predictions. For business reasons there was a slight difference in the number of hours worked in each shift pattern but the standard hourly rates of pay remained the same. Workers on the same shift pattern, operating the same machine at the same skill level and with the same length of service would be paid the same standard hourly rate irrespective of location.

48. The Employer included in its written submissions a sheet showing the Paragon Print and Packaging Group's shift patterns. This was split into the categories of type of shift pattern being "Triple shift", "Continental", "Double days", "Permanent night shift" and "Permanent weekend shift". Different sites were listed for each of these patterns with, for each site, the hours per week and weekly shift supplement if that applied. Under questioning from the Panel, the Employer referred to that fact that, on the sheet, Cramlington was shown as 36 hours per week and Wisbech was shown as 39 hours per week. This was because there had been negotiations to adopt a different shift pattern at Cramlington, being permanent weekend shifts rather than continental shifts. This option was made available to other sites. The impact of the negotiation on shift patterns at Cramlington had been beneficial. Also referring to the shift patterns sheets the Employer addressed a question from the Union as to why there was a lower weekly shift supplement rate, relating to the night shift, for Norfolk. The Employer's reply was that this difference was a result of a central rather than a local management decision.

49. Most of the hourly paid workers at both the Labels and Cartons and Sleeves divisions were entitled to a standard 20 days annual leave, increasing to 26 days based on length of service, excluding bank holidays. However those on the continental shift pattern were entitled to a standard 17 days annual leave increasing to 21 days based upon length of service and which included five of the normal bank holidays. So, other than those on the continental shift pattern, all hourly paid workers received the same standard holiday entitlement irrespective of job role or location. The only difference in entitlement being the accrual of additional days based on length of service.

50. The standard terms and conditions for all workers included an express mobility clause in relation to working at other locations. This allowed the Employer to relocate workers to a new site within reasonable travelling distance. Workers did move from one company site to another for short periods although the Employer tried to limit this. Two people had moved during summer 2013 including one from Tenens Way to Cramlington but workers were not being moved on a daily or even weekly basis. Permanent moves also occurred such as when particular machinery was moved or if vacancies become available at an alternative site.

51. As supporting evidence, and in particular to emphasize that the workers were mobile, the Employer submitted the following templates: one letter confirming an employee's change of position, six job offer letters and seven statements of terms and conditions of employment. The wordings regarding place of work were as follows:

*Offer letter*

Place of Work: You may, on occasion, be required to work at such other place as Paragon may from time to time require. We reserve the right to relocate you on a permanent basis to one of the Company's other sites, subject to consultation.

*Statement of Terms and Conditions of Employment*

Place of Work: You may, on occasion, be required to work at such other place as Paragon may from time to time require. If the workload at your site diminishes or for other sound business reasons, you may be required to relocate to work at a new site within reasonable travelling distance.

As mentioned, the template statements of terms and conditions fell into two categories. One was in the form of a job offer, opening as follows: "Further to your recent interview, I am pleased to confirm the terms for the above position..." There were six of these template



letters, four of which stated that the position being offered was “within Paragon Labels”. Of these four letters, one had as a notepaper footer, “Paragon Labels Ltd”, and the footer for the remaining three letters stated, “Paragon Print and Packaging Ltd”. The remaining two offer letters stated that the position offered was “within Paragon Sleeves and Cartons” with footers stating “Paragon Sleeves and Cartons Ltd”. None of the offer letters specifically identified the identity of the employer. The second category of template statements, consisting of seven documents, were sub-headed “Statement of Terms and Conditions of Employment” and were signed on behalf of “Paragon Print & Packaging”. Four of these were headed “PARAGON LABELS (“The Company”) and stated that the employer was “Paragon Labels” with one statement each relating to the following shift patterns: “Continental Shift”, “Day Shift”, “Double Day Shift” and “Rotating Triple Shift”. The remaining three, all headed “PARAGON SLEEVES & CARTONS (“The Company”) stated that the employer was “Paragon Sleeves & Cartons” with one statement each relating to the following shift patterns: “Rotating Triple Shift”, “Continental Shift” and “Rotating Double Day Shift”.

52. Customer orders could also be moved between sites. Work was moved around frequently, even on an hourly basis and whilst a Factory Manager may be consulted, they would not make the final decision to move work elsewhere. Large customer orders could be broken down and split out between a number of sites to ensure that deadlines were met and that the work was carried out in the most efficient way possible. This was to help limit the movement of people and to minimise the use of overtime. In summer 2013 work was moved from Tenens Way to Lealand Way (Boston) and to Spalding. The decision to move work was made at the capacity planning stage. The decision was not driven by profit but by “Key Performance Indicators” The Employer explained further how movement of work took place. For example, if Tenens Way could not cope with a given order the work could be moved without workers there even knowing that this had happened. On the week of the hearing an order was printed at Enterprise Way and reworked and dispatched at Tenens Way.

53. For the purposes of reporting financial performance, the sites were all dealt with as one company with one profit and loss account reflecting the financial performance of all of the sites. The financial figures were collated by a central Finance Team and they were not broken down separately for each site and were not shared with each individual site. The spreadsheet titled “Paragon Print & Packaging Limited: Capital Expenditure 2014” (cited by the Union, see paragraph 23 above), simply set out what was purchased and did not

undermine the point that business was run on a company-wide basis.

54. Given the importance of central management in determining operation of the business, it would be unmanageable to negotiate and agree pay, hours and holidays on a site by site or single site basis. Some 20% of the company's work was bespoke orders with a short completion time. For example, the Employer allowed for customers to place an order on a Friday for delivery on Saturday. Such flexibility and quick turn-around times were its unique selling point and any limits on this would severely damage its market position.

55. Turning to points raised by the Union the Employer stated that single site collective bargaining at Gainsborough did not show that bargaining at a single site was appropriate. Gainsborough was not one of the Employer's sites but was the sole site of Paragon Flexible Packaging Limited (Paragon Flexibles), another of the Paragon Print and Packaging Group's companies. The terms and conditions for Paragon Flexibles were separate to those of Paragon Labels and had been inherited from another company following a TUPE transfer and the relevant workers were still under these terms and conditions which were better than those at Paragon Labels. So, in fact, Gainsborough was an example of company wide collective bargaining. Collective bargaining was carried out by the Group Operations Director and the HR advisor. There was an annual salary review in the summer.

56. The restructuring exercise in 2013 (see paragraph 13 above) was conducted by central management. Warehouse and dispatch had also been subject to restructure. This had been conducted by the company's HR Advisor who had worked with the Warehouse and Distribution Manager to identify redundancies.

57. Contrary to the Union's submissions (see paragraph 18), those in Reworker and Technical Support and Technical Administration roles used the same rest room and clocking in machines as the Warehouse and Dispatch workers. One site at Spalding burnt down in 2008. Reworkers were relocated to Tenens Way more recently from the remaining site at Spalding.

58. Regarding the characteristics of workers the Employer submitted, contrary to the Union's submissions (see paragraph 12), that promotional labels were produced at Tenens Way and at the other sites excluding Wisbech.

59. The Employer did not currently have any national or local bargaining arrangements in place in respect of its Labels, and Cartons and Sleeves divisions.

60. In summing up the Employer referred to *R (on application of Kwik-Fit (GB) Ltd) v Central Arbitration Committee* [2002] EWCA Civ 512 to argue that compatibility with effective management could be defined as consistent with effective management or able to coexist with effective management. The Union's proposed bargaining unit was not consistent with effective management. The Employer also referred to paragraph 171 of the Schedule identifying the CAC's object "of encouraging and promoting fair and efficient practices and arrangements in the workplace, so far as having regard to that object is consistent with applying other provisions of this Schedule in the case concerned." Further, as supported by paragraph 13 of *Cable & Wireless*, the requirement for compatibility with effective management and the need to avoid small fragmented bargaining units went "hand in hand". To accept the Union's proposed bargaining unit as an appropriate bargaining unit was neither an efficient way forward, nor would it promote fairness in that it could lead to workers on different terms and conditions from those working at other sites or even those working side by side with them. The overarching thrust of evidence was that the Employer's was a business that required harmonised terms and conditions of employment and had striven to harmonise these terms and conditions. The only appropriate bargaining unit was one containing all employees sharing the same characteristics.

### **Considerations**

61. The Panel is required, by paragraph 19(2) of the Schedule to the Act, to decide whether the Union's proposed bargaining unit is appropriate and, if found not to be appropriate, to decide in accordance with paragraph 19(3) a bargaining unit which is appropriate. Paragraph 19B(1) and (2) state that, in making those decisions, the Panel must take into account the need for the unit to be compatible with effective management and the matters listed in paragraph 19B(3) of the Schedule so far as they do not conflict with that need. The matters listed in paragraph 19B(3) are: the views of the employer and the union; existing national and local bargaining arrangements; the desirability of avoiding small fragmented bargaining units within an undertaking; the characteristics of workers falling within the bargaining unit under consideration and of any other employees of the employer whom the CAC considers relevant; and the location of workers. Paragraph 19B(4) states that

in taking an employer's views into account for the purpose of deciding whether the proposed bargaining unit is appropriate, the CAC must take into account any view the employer has about any other bargaining unit that he considers would be appropriate. The Panel must also have regard to paragraph 171 of the Schedule which provides that "[i]n exercising functions under this Schedule in any particular case the CAC must have regard to the object of encouraging and promoting fair and efficient practices and arrangements in the workplace, so far as having regard to that object is consistent with applying other provisions of this Schedule in the case concerned." We have reached our decision after full and detailed consideration of written and oral submissions and the evidence before us and responses to questions addressed to the parties at the hearing.

62. Turning to the question of whether the Union's proposed bargaining unit is an appropriate unit, the Panel notes the respective positions of the parties. The Union contended that its proposed bargaining unit at the Tenens Way site was an appropriate unit because the workers included are commonly managed on site and the Employer had detailed the specific duties of Factory Managers including (but not confined to) dealing with requests for a pay grade rise, health and safety matters and discipline and grievance procedures. Further, there were examples of single site negotiation at Cramlington and Gainsborough showing this could be done. The Union's position was that its proposed bargaining unit was neither small nor fragmented and it submitted that it was purely speculation that collective bargaining with the proposed unit would lead to further fragmentation. The Employer argued that the Union's proposed one-site bargaining unit was not appropriate because Paragon Labels offered common terms and conditions of employment for all the hourly paid workers at nine of its sites including Tenens Way. These terms and conditions were decided by central management and had been largely harmonised with some minority exceptions. These terms and conditions included pay, overtime rates, hours, shift patterns and holiday entitlements. The potential for differing terms and conditions of employment at Tenens Way, would, the Employer submitted, harm its ability to run its business in a fast and reactive way (notably work was currently moved from one site to another at short notice) by complicating the costings. Further, the Employer argued that fragmentation could arise both within the bargaining unit (because of certain roles that had been excluded) and in the whole business.

63. The Panel accepts the Union's submissions in so far as they highlight the distinctive role local management plays at Tenens Way. Clearly, the Factory Manager is an essential link

between the workers and the company and has an important role in respect of pay grade rises, shifts and dealing with grievances. However, the Panel considers that the evidence presented suggests an employer with workers with largely common terms and conditions of employment that have been determined by central management with a very limited scope for modification by Factory Managers (for example overtime is allocated to relevant workers by Factory Managers within a budget set by central management). The Panel concludes that collective bargaining at the single site of Tenens Way would make little sense when Factory Managers could do no more than act as messengers to and from central management, with no real power to decide upon the subjects under negotiation. Further, the Panel has noted both parties' comments regarding fragmentation with reference made to *Cable & Wireless*. We consider that there is a genuine difficulty presented by the Union's proposed bargaining unit in relation to potential fragmentation and fragmented bargaining. Firstly, the proposed bargaining unit excludes roles that share a number of characteristics with roles that have been included. They share the same terms and conditions and are hourly paid. The only difference, for some at least, appears to be a differing channel of management, such as with the Plate Workers and related roles. The risk of further fragmentation of bargaining also exists in separating one site for collective bargaining amongst a number of sites with workers with the same terms and conditions that are decided by central management. It strikes the Panel that the Employer has, in this case, raised a valid argument regarding effective management. The Employer's is a business that is particularly dependent upon the fast reaction to customer orders. The Panel considers that having one site with differing terms to others, such as regarding pay, hours and holidays presents an obstacle to effective management. The Panel concludes that the Union's proposed bargaining unit is not an appropriate unit.

64. The next stage, then, is for the Panel to decide an appropriate bargaining unit. We have been presented with one alternative proposed unit. This unit consisted of all the Employer's hourly paid workers over nine of its sites located at Enterprise Way, Boston, Norfolk, Cramlington, Tenens Way, Benner Road, Hereford, Holland Place and Wisbech.

65. In assessing the Employer's proposal the Panel first turns its attention to the question of the identity of the employer or employers of the workers in the bargaining unit advanced. The Panel draws the parties' attention to paragraph 2(4) of the Schedule. This identifies the employer in its singular form, stating as follows: "References to the employer are to the employer of the workers constituting the bargaining unit concerned." While it is up to every

CAC panel to assess each individual case in the light of the legislation, the Panel considers that the effect of the relevant section of the Schedule is that the Panel is precluded from determining a bargaining unit comprising workers employed by more than one employer. The Employer submitted (paragraph 7 of this decision) that, within the Paragon Print and Packaging Group there were only two companies which employed workers: Paragon Labels and Paragon Flexible Packaging Limited. Further, it submitted there were three operational divisions within the Paragon Print and Packaging Group (Flexible Packaging, Labels and, finally, Sleeves and Cartons) with all employees of those divisions, excluding Flexible Packaging who were employed by Paragon Flexible Packaging Limited, being employed by Paragon Labels. Terms and conditions including rates of pay, hours of work and holiday entitlement were common for workers in both the Labels and the Sleeves and Cartons divisions. However, the Employer also submitted a bundle of supplementary documents with its written submissions. These included the template statements of terms and conditions (see paragraph 51 above). Amongst these, of particular note were the three statements identifying the employer as being “Paragon Sleeves & Cartons” and headed “Paragon Sleeves & Cartons” (“The Company”). The Panel has not been supplied with any supporting evidence identifying either Paragon Labels or another employer as the employer of Paragon Sleeves and Cartons’ employees. The evidence that has been supplied by the Employer, however, strongly indicates that the Paragon Sleeves and Cartons division is a separate employer, albeit an associated employer in the Paragon Group, from Paragon Labels Limited. As Paragon Labels Ltd is not on the Panel’s assessment of that evidence the employer of workers based at Wisbech in the Sleeves and Cartons Division the Panel concludes it is precluded by paragraph 2(4) from including Wisbech in the bargaining unit.

66. The Panel’s secondary consideration is the position of the Sleeves and Cartons division within the management structure of the Paragon Print and Packaging Group. The organisational chart supplied by the Employer (see paragraph 8 above) shows that all eight Labels sites, via the relevant Factory Manager, report to the Paragon Print and Packaging Group via an Operations Manager for Labels. The Panel would expect that if Sleeves and Cartons was a division of Labels, the two would share the same Operations Manager. However, the Sleeves and Cartons division has a separate Operations Manager from the Labels division who, like Michael Marshall (Labels Operations Manager) reports to the Paragon Print and Packaging Group via Dennis Patterson (Group Operations Director). The Sleeves and Cartons division is a separate division with separate management accountability

to the Paragon Print and Packaging Group. The Panel therefore considers that the inclusion in the bargaining unit of the Sleeves and Cartons division is not compatible with effective management.

67. The Panel concludes that the Employer's alternative proposed bargaining unit is appropriate but with the qualification that Wisbech should be excluded for the reasons given above. In this regard, the Panel accepts the Employer's submissions that across the eight sites of Enterprise Way, Boston, Norfolk, Cramlington, Tenens Way, Benner Road, Hereford and Holland Place there are largely common terms and conditions of employment and the similar type of work of the workers in the Employer's proposed unit. The Panel notes that the terms and conditions are generally common but not completely uniform. There are variations, for example in shift patterns, and the total hours worked. Despite these differences, the overall picture is of workers with largely shared characteristics. The Union submitted that it was unfair to include sites with no Union membership. However the Panel, in deciding if a bargaining unit is appropriate, must take into the account the matters listed in paragraph 19 of the Schedule. The overriding criterion is the question of compatibility with effective management. The relevant legislation does not allow the Panel to take into account the question of actual or potential Union representation as a distinct issue outside of the question of compatibility with effective management.

## **Decision**

68. The appropriate bargaining unit in this matter is all hourly paid workers at the Employer's sites in Enterprise Way, Boston, Norfolk, Cramlington, Tenens Way, Benner Road, Hereford and Holland Place.

69. As the appropriate bargaining unit differs from the proposed bargaining unit, the Panel will proceed under paragraph 20(2) of the Schedule to decide if the application is invalid with the terms of paragraphs 43 to 50.

**Panel**

Mr Chris Chapman, Chairman of the Panel

Mr Paul Gates OBE

Mr Peter Martin

10 January 2014



## **Appendix**

Names of those who attended the hearing on 22 November 2013:

### **For the Union**

|              |   |                                 |
|--------------|---|---------------------------------|
| Dave Roome   | – | Regional Officer                |
| Neil Johnson | – | Solicitor, Thompsons Solicitors |

### **For the Employer**

|                     |   |                                 |
|---------------------|---|---------------------------------|
| Nigel Porter        | – | Counsel                         |
| John Macaulay       | – | Director, Geenwoods Solicitors  |
| Siobhan Thomson     | – | Solicitor, Geenwoods Solicitors |
| Suzanne Smith       | – | Group HR Director               |
| Dennis Patterson    | – | Group Operations Director       |
| Andrew Wiltshire    | – | Acting Factory Manager          |
| Michaela Van-Noordt | – | HR Advisor                      |