

**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  
GE Alstom

**Introduction**

1. GMB (the Union) submitted an application to the CAC that it should be recognised for collective bargaining by GE Alstom (the Employer) in respect of a bargaining unit comprising “All Coal Operative Employees. All Category of Employees as per petition in Coal Ops Dept.” The location of the bargaining unit was stated as “GE Alstom, West Burton Power Station, Retford, Nottinghamshire”. The application was received by the CAC on 17 November 2016. The CAC gave both parties notice of receipt of the application on 18 November 2016. The Employer submitted a response to the CAC dated 24 November 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, Chairman of the Panel, and, as Members, Mr Michael Leahy OBE and Mrs Jackie Patel. The Case Manager appointed to support the Panel was Miss Sharmin Khan.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 1 December 2016. The acceptance period was extended on four occasions until 17 February 2017 in order to allow time for the Union to comment on the Employer’s response to the application; for a membership and support check to take place, for the parties to comment on the subsequent report and for the Panel to consider all the evidence 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.

## **Summary of the Union's application**

5. The Union stated that it had submitted its request for recognition to the Employer on 15 August 2016 and 22 September 2016 but had received no response to either letter. A copy of both letters were enclosed with the Union's application.

6. The Union stated that there were approximately 80 workers employed by the Employer and 80 workers in the proposed bargaining unit. Out of the 80 workers in the bargaining unit 22 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 inserted the words "See enclosed petition". A copy of this petition was provided with the application.

7. The Union stated that the reason for selecting the proposed bargaining unit was that it was not covered by any collective agreement.

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.

## **Summary of the Employer's response**

10. The Employer completed the CAC's Employer's Response Questionnaire. The Employer confirmed that it had received a copy of the application to the CAC from the Union on 14

November 2016.

11. The Employer also confirmed that it received the Union's letter of 15 August 2016 on 17 August 2016 and the Union's letter of 22 September 2016 (the Union's written request under Schedule A1) on 26 September 2016. The Employer explained that a year prior to receiving these two letters from the Union, the issue of recognition was raised in an exchange of correspondence between the parties in 2015 (a copy of which was attached) including a letter from the Union dated 14 August 2015 and a letter from the Employer to the Union dated 25 August 2015. However that exchange concluded when the Employer sought further information from the Union in order for it to assess whether or not it would be appropriate to consider further discussions with a view to reaching a voluntary recognition agreement to which the Employer did not receive a reply or the information requested, other than the Union's current request for recognition in its letters of 15 August 2016 and 22 September 2016 a year later.

12. The letter dated 15<sup>th</sup> August 2016 was received during the holiday period. Following receipt of the second letter dated 22<sup>nd</sup> September 2016, the Employer had prepared a response on 29 September 2016 asking the Union to confirm (1) the bargaining unit in respect of which it was seeking formal recognition; and (2) how many employees the Union believed fell within the scope of the bargaining unit so that it could properly assess the request. The Employer had not discovered that the email was not received until it had received the notification from the Union on 14<sup>th</sup> November 2016 that a formal application to the CAC for recognition had been made.

13. The Employer forwarded its original e-mail to the Union on 15<sup>th</sup> November 2016, suggesting they discuss the questions raised when the Union was due to be on site on another matter on 18 November 2016. The Union was unable to come to the site that day but the Employer received an e-mail from the Union on Monday 21 asking if it wished to have discussions with a view to reaching a voluntary agreement. Copies of these e-mails were attached for the Panel.

14. The Employer stated that it had not agreed the bargaining unit before it had received a copy of the Union's application and that it did not agree the proposed bargaining unit. The proposed bargaining unit of "*All coal operative employees. All category of employees as per*

*petition in Coal Ops department*” at the West Burton Power Station was unclear to the Employer so it felt it was unable to comment on the appropriateness of the bargaining unit. There were 80 employees currently working at the West Burton site across operations and maintenance but only 36 of these were in Coal Ops. The other employees at the West Burton site were a mixture of office staff, Dust & Depac, coal maintenance, FGD operations and maintenance plus 8 agency workers. One or more employees from all sections other than Office, DSEAR and Dust & Depac appeared on the Union’s petition. The Employer was unclear whether the bargaining unit being proposed was:

- (1) Coal Ops at West Burton Power Station (in which case the number of workers in the bargaining unit was only 36)
- (2) all workers across operations and maintenance at the West Burton Power Station but excluding Office, DSEAR and Dust & Depac (in which case the number of workers in the bargaining unit was 70) or
- (3) or all workers across operations and maintenance at the West Burton Power Station.

15. Given that the application referred to “approx. 80 employees” it was the Employer’s assumption that the intended bargaining unit was either (2) or (3). If this was the case, the Employer considered the application defective as this bargaining unit would contain one or more employees who were already covered by an existing trade union recognition agreement, namely an employee in the Coal Maintenance Department was covered by the National Agreement for Engineering and Consultation Industry (NAECI) 2016 – 2018. A copy of that agreement was attached for the Panel.

16. In answer to the question as to whether it disagreed with the Union’s estimate of membership in the proposed bargaining unit and the reason for disagreeing, the Employer stated that the application stated that there were 22 Union members in the proposed bargaining unit. However, it was not clear if this was the number of Union members in Coal Ops or the total number at the West Burton site across operations and maintenance and, if so, how the Union membership was broken down across the functions. The application also referred to the Union’s membership list which was not attached to the application.

17. As to whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer answered that the lack of clarity regarding the proposed

bargaining unit made it difficult for it to assess this with any certainty. It did, however, believe that the Union's petition could not be relied on for the following three main reasons.

18. Firstly, there were concerns that the employees who signed the petition did not actually understand what they were being asked to sign. The header indicating the purpose of the petition was shown only on the first sheet of the petition. Furthermore, the header did not state for which bargaining unit the Union was seeking recognition.

19. Secondly, it had spoken to team supervisors at the site who had been told by employees that they had understood the petition was to demonstrate their support for the union representative to have access to the West Burton site rather than a petition for the union to collectively bargain on their behalf. The Employer believed that approximately two thirds of the individuals who signed the petition did not know what they were signing and that a number of the employees who signed the petition were actually members of Unite rather than the GMB.

20. Thirdly, the petition included the signatures of agency workers who were not company employees and not part of the proposed bargaining unit. Based on discussions between the supervisors and the employees at the West Burton site, the Employer estimated that significantly less than half of the employees at the site had indicated that they would be supportive of a formal recognition agreement with the Union.

21. Finally, the Employer inserted "N/A" when asked: if the application was made by more than one union; if it was aware of any previous application under Schedule A1 for statutory recognition made by the Union in respect of this bargaining unit or a similar bargaining unit and If it had received any other applications under Schedule A1 for statutory recognition in respect of any workers in the proposed bargaining unit.

### **Further Comments from the parties**

22. On 30 November 2016 the CAC copied the Employer's response to the application to the Union. The Union submitted its responding comments by e-mail to the CAC on 5 December 2016. The Union explained that it had contacted the Employer in August 2015 to request the paid release of a new Union representative at West Burton. It reported that the Employer had informed the Union that this was not an automatic right under the NAECI agreement, to which

the GMB was a signatory, as the Union representative concerned worked in Coal Ops and this category of worker was not covered by the NAECI agreement but that if the Union could increase its membership it would consider a voluntary agreement to cover the workers in Coal Ops.

23. The Union informed the Panel that it had until September 2016, increased its membership in Coal Ops and the FGD plant which formed its proposed bargaining unit. The Union's view was that now having 22 members in Coal ops and the FGD plant was a sufficient trigger for the CAC application. It had written to the Employer on two occasions without receiving a reply before submitting its application. In its view the petition was indicative that the majority of employees in both Coal Ops and the FGD plant would be in support of its application and a ballot to establish trade union recognition for a group of workers that were not currently included in any recognition agreement.

24. The Union's comments of 5 December 2016 were copied to the Employer by the CAC. The Employer submitted a response to these comments by a letter to the CAC dated 9 December 2016 in which it made the following points:

25. The Employer stated that it remained unclear on the proposed bargaining unit as the Union's e-mail to the CAC of 5 December 2016 suggested that the proposed bargaining unit was '*Coal Ops and FGD plant*' employees in which case the proposed bargaining unit would be 58 employees rather than the approximate 80 employees stated in the Union's application.

26. The Employer also confirmed that no existing bargaining unit was in place to cover the Union rep who had been the subject of discussions between the parties and that there was no existing collective agreement, with NAECI or otherwise, covering Coal Ops and FGD plant workers at West Burton.

27. The Employer went on to inform that it did not recall informing the Union that it would consider a voluntary agreement if the Union could increase its membership in Coal Ops. It did not hear from the Union again on the issue of recognition until the letter from the Union dated 14th August 2016 seeking formal recognition under Schedule A1 of the Trade Union & Labour Relations (Consolidation) Act. The Employer explained that its failure to respond was not an attempt to ignore the Union but, as already identified, the letter came in during the

holiday period and its response to the Union's follow up letter of 22 September 2016 did not reach the Union.

28. Finally the Employer reiterated its concern that the petition submitted with the application was not indicative that the majority of employees in Coal Ops and FGD would support the GMB's application and a ballot to establish trade union recognition. Since the date of the Employer's Response to the application, site management and HR had had further discussions with employees and based on these discussions it still believed that approximately two thirds of the individuals who signed the petition did not know what they were signing.

29. The CAC copied the Employer's letter of 9 December 2016 to the Union invited its comments. The Union replied to the CAC by e-mail on 19 December 2016. The Union for the Panel that the proposed bargaining unit was "Coal Ops employees and FGD plant employees" and that it accepted the figure of 58 as quoted in the Employer's letter to the CAC dated 9 December 2016.

30. With reference to the exchange of correspondence between the parties in 2015, the Union had not received or seen before the Employer's letter to the Union of 25 August 2015 as referred to and copy attached by the Employer in its response to the application (see paragraph 11 above). The Union had only been made aware of this letter when the Employer's response to the application was copied to the Union by the CAC and so could not comment on it.

### **The Membership and support Check**

31. 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 the 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 21 December 2016 from the Case Manager to both parties. The information from the Union was received by the CAC on 21 December 2016 and from the Employer on 22 December 2017. The Panel is satisfied that the check was conducted properly, impartially and in accordance with the agreement reached with the parties.

32. The Union provided a list of 21 members and the Employer provided a list of 58 workers. The job titles given for the workers by the Employer were:

FGD EC&I Supervisor; FGD EC&I Tech; FGD Materials Handling Operator, FGD Mech Chargehand; FGD Mech Fitter; FGD Mech Supervisor; FGD Operations Supervisor; FGD Permit Engineer; Leading Hand; Materials Handling Operator; Materials Handling Supervisor; Operations Leading Hand; Plant Cleaner; Stockground Supervisor and Plant Cleaning Chargehand.

33. The Union's petition was on 4 x one sided A4 pages. At the top of the first page was the Union's logo "GMB – GMB@work" beneath which was the following statement:

**“PETITION IN SUPPORT OF RECOGNITION  
GE ALSTOM, WEST BURTON POWER STATION**

GMB Trade Union is asking your employer to recognize it for collective bargaining. We have to show the Central Arbitration Committee that a majority of workers in the “bargaining unit” support our application. If you do support us, please sign the petition.

I support recognition of the GMB trade union as entitled to conduct collective bargaining pursuant of **s178 TULR(C)A 1992** on behalf of all employees at West Burton Power Station.”

Beneath the statement was a table with columns headed “NAME”, “SIGNATURE”, and “JOB TITLE” which were completed by signatories of the petition.

34. The membership check established that there were 18 members of the Union within the bargaining unit; a membership level of 31%. The result of the comparison of the Union's petition with the Employer's list of workers revealed that a total of 54 workers had indicated



that they wanted the Union to represent them, which corresponds to 93% of the bargaining unit. 18 of the 54 were union members (31%) and 36 were non-members (62%).

35. The report of the result of the membership and support check was circulated to the Panel and the parties on 23 January 2017 and the parties were invited to comment on the result.

### **Parties' comments on membership and support check**

36. A response was received from the Union 31 January 2017 in which it stated that it believed that the application by the GMB for recognition met both tests as set out by paragraph 36 of the schedule.

37. The Employer responded on 26 January 2017. It noted that the report established a Union membership of 31%. It informed there had since been one leaver in FGD Ops who it understood to be a Union member so the membership level was now 29.8%.

38. The Employer maintained its belief that a majority of the workers in the proposed bargaining unit who signed the petition did not know what they were signing and would not be likely to favour recognition of the union for the purposes of collective bargaining on their behalf. The Employer repeated its case put to the Panel in its response to the application but with more detail:

39. It stated that on the basis of numerous discussions with workers at the site since the Union's application, signatories thought that they were signing to demonstrate their support to allow the union rep to be granted access to the site. Recognition for collective bargaining purposes was not mentioned. The Employer explained in some detail the background to the issue or incident regarding access to the Union rep which had been around the time the petition was passed around but this is not included here as it is not relevant to the Panel's decision on the admissibility of the application. It believed there was a lack of consistent explanation as to the purpose of the petition. It had been informed that when asked to sign employees were told it was to demonstrate their support for the Union rep to have access to the site and not told that it was a petition in support of an application for union recognition for collective bargaining. It had also been told that a number of workers who signed the petition were members of other unions. It was not clear whether the position with regard to the purpose of the petition was

misrepresented or just not explained properly. Also the header which indicated the purpose of the petition was shown only on the first page of the four-page petition. Even that did not state in respect of which bargaining unit the Union was seeking recognition. Employees had reported that the first page was not visible to people signing the petition subsequently. Only 19% i.e. 9 workers out of 58 (8 from Coal Ops and 1 from FGD Ops) had signed the first page of the petition. The remaining 77.6% of workers in the proposed bargaining unit who signed the petition did so on pages where there was no header indicating the purpose of the document that they were signing.

40. On the 3 February 2017 the Union submitted a response to the Employer's comments on the membership and support check report and the issue or incident surrounding access to the union rep (again not set out here for the purposes of this decision). The Union stated that the petition was posted to its activist on site who had obtained the signatures. The Union was assured by its activist that each and every worker who signed the petition did so with a full and clear explanation as to what the petition was for.

41. The Union also stated that it accepted the Employer's point that the first page was signed by 8 employees from Coal Ops and 1 employee from FDG Ops, but also maintained that the other 3 pages were signed with a full understanding of the nature of the petition. It restated its view that the CAC application should proceed as it had fairly demonstrated that it had met both strands of the test set out in paragraph 36 of the Schedule.

### **Employer's Evidence regarding the Petition**

42. On 8 February 2017, the CAC wrote to the Employer on behalf of the Panel, requesting it provide by 10 February any evidence it had that employees were not aware of what they were signing regarding the Union's petition which had led to its stated concerns in its response to the Union's application for recognition.

43. On 10 February 2017 the Employer submitted statements from the Site Manager, HR Manager and 9 workers who had signed the petition (a mixture of Coal Ops, FGD supervisors and FGD employees) confirming that they did not understand what they were signing. In its covering letter to the CAC, the Employer explained the nature of the shift patterns on site and the limited time available to respond meant that at the time of writing, it had been unable to

reach a significant number of the employees on site to see if they would be happy to provide a written statement. However, it believed that the statements were indicative of the views and beliefs of a majority of the employees in the proposed bargaining unit. The Employer's submission of evidence and covering letter was copied to the Union on 13 February 2017.

### **Considerations**

44. 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.

45. The Panel is satisfied that the Union made a valid request to the Employer by its letter dated 22 September 2016 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)**

46. 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.

47. The membership check conducted by the Case Manager showed that 31% 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, 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)**

48. 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.

49. The Panel noted that Employer's concern that workers had signed the petition without a full understanding of what the purpose of the petition was and with that in mind before reaching a decision, the Employer was specifically provided with an opportunity to submit such evidence. Like the Union's petition, the Employer's evidence of workers was cross copied to the Union with the Employer's permission to do so.

50. Based on the numbers provided by the Case Manager's check of the Union's petition against the list of 58 workers provided by the Employer there is an indication that there was a support level of 93% and more than half of which was from non-Union members. In a consideration of the evidence requested from the Employer in support of its concerns, the Panel concluded that 9 letters out of a bargaining unit of 58 workers did not constitute sufficient evidence that the majority of those signing the Union's petition did not know what they were signing particularly as there had been over two months since the application was submitted to provide such evidence.

51. The Panel is also mindful that the test required by the Schedule at this stage of the process is for the Panel to be satisfied that a majority of the workers in the bargaining unit are *likely* to favour 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**

52. 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 – Chairman of the Panel.

Mr Michael Leahy OBE

Mrs Jackie Patel.

20 February 2017