

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

The Parties:

Bakers Food and Allied Workers Union
(BFAWU)

and

Fyffes Group Limited

Introduction

1. The Bakers Food and Allied Workers Union (the Union) submitted an application to the CAC on 6 May 2015 that it should be recognised for collective bargaining by Fyffes Group Limited (the Employer) for a bargaining unit comprising “all hourly paid workers employed at Cross Point Business Park” adding “We do not seek recognition in relation to managers”. Cross Point Business Park is the Employer’s site in Coventry and to avoid confusion it is referred to as Cross Point Business Park in this decision. The CAC gave the parties notice of receipt of the application on 12 May 2015. The Employer submitted a response dated 15 May 2015 which was duly 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 Her Honour Judge Stacey, Chairman of the Panel, and, as Members, Mr Len Aspell and Mr Malcolm Wing. The Case Manager appointed to support the Panel was Nigel Cookson.

3. By a decision dated 12 June 2015 the Panel accepted the Union's application. 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. The hearing was held in Birmingham on 17 July 2015 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. A considerable amount of further information came to light during the course of the hearing and both parties and the panel had an opportunity to ask questions of the parties present. Neither side had provided witness statements in advance of the hearing but were both content to proceed on the basis of unfolding information during the course of the hearing and neither side sought an adjournment or further time to consider matters further or to obtain rebuttal evidence.

4. In its request for recognition, the Union proposed that the bargaining unit should be "all hourly paid workers employed at Cross Point Business Park. We do not seek recognition in relation to managers." The Employer declined the request for recognition, without commenting on the Union's proposed bargaining unit.

5. The Employer had confirmed in its letter of 18 June 2015 that there were 169 workers in the proposed bargaining unit in the following categories:- QA Assistant; Production Operative; Packer; FLT/Intake; Maintenance; Label Printer; LGV Driver; Despatch Operative and Cleaner.

6. Paragraph 19 of the Schedule A1 states that the CAC must decide whether the proposed bargaining unit is appropriate and that, if the CAC decide that the proposed bargaining unit is not appropriate, it must decide a bargaining unit which is appropriate. In deciding whether a Union's proposed bargaining unit is appropriate, paragraph 19B of the Schedule states that the CAC must take into account the need for the unit to be compatible with effective management and the following matters insofar as they do not conflict with that need: the views of the employer and of the union; existing national and local bargaining arrangements; the desirability of avoiding small fragmented bargaining units; 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.

7. In taking an employer's views into account for the purpose of deciding whether the proposed bargaining unit was appropriate, the CAC must take into account any view the employer has about any other bargaining unit he considers would be appropriate.

8. It is not the role of the CAC to determine the ideal or optimum bargaining unit, but to consider appropriateness.

Summary of the submission made by the Union

9. The Union submitted that the proposed bargaining unit was logical and would not present any conflict with effective management and largely reflected the existing framework within the company with the workers already divided by the separate salary structure in place. The Employer's concerns that the proposed bargaining unit would interfere with its style of management was not a statutory consideration. The Union was unaware of any existing national or local bargaining arrangements. Any arrangements in place that were merely consultative were not relevant to the issue of the appropriate bargaining unit.

10. The proposed bargaining unit was neither small nor fragmented and so satisfied the desirability of avoiding small fragmented bargaining units and as it consisted of 165 out of a total of 270 workers on site was neither small nor fragmented.

11. As for the characteristics of workers falling within the bargaining unit under consideration and of any other employees of the employer whom the CAC considers relevant the Union submitted that it was not appropriate to include managers in the bargaining unit as they would have a conflict of interest.

12. The Employer had stated that some of the QA Assistants were paid weekly and others with that job title were salaried as was also the case for the Label Printers. The Union found the distinction puzzling, but when asked by the Panel explained that whilst they had sought recognition for the hourly (ie weekly) paid shop floor workers including QA Assistants and Label Printers and therefore salaried (monthly paid) workers with those job titles would fall

outside the proposed bargaining unit, now that they were aware of the sub-grouping they were neutral as to whether they were included. The QA Assistants and Label Printers worked on the shop floor and the Union could not understand the reason for the two different pay structures being in place. The hourly paid QA Assistants and hourly paid Label printers were not managers or supervisors: they were shop floor workers. Their inclusion would not prevent their close working with management and it would not have an adverse effect upon the quality control team.

13. The Union was party to other agreements in the food industry where it was routine for QA Assistants and Label Printers to be included in a shopfloor worker bargaining unit and the Union failed to comprehend why the inclusion of the hourly paid QA Assistants and Label Printers would cause the Employer any difficulty. The Union noted that the workers in the proposed bargaining unit were all based in the same location.

14. Commenting on the cases referred to by the Employer the Union said that the decision could be distinguished from *Unite and Kettle Foods Limited (TUR1/557/07, 29 June 2007 CAC)* where there was strong evidence of a One Company Ethos in place, in contrast to the present case where it was mere say-so.

15. Nor, in the Union's submission, was the Employer's case supported by the CAC in the matter of *Unite and Sports Direct International plc (TUR1/619/08, 8 July 2008 CAC)* as shown by the findings of the Panel in paragraph 38 of that decision. Neither was the Employer's submissions supported by the CAC in the matter of *NUJ and Chartered Institute of Environmental Health/Chadwick House Group Ltd (TUR1/685/09, 2 November 2009 CAC)* as the Union's proposed bargaining unit had clear boundaries and was not fragmented.

16. Commenting on the options put forward by the Employer the Union said that a Packers only bargaining unit would be a small bargaining unit and it did not feel that it was appropriate to isolate a group of workers on the national minimum wage from the rest of the workforce. In any event, the Union would query the scope for collective bargaining for a group paid on this basis. As for the alternative unit suggested by the Employer, i.e. those workers in the Union's proposed bargaining unit save for the QA Assistants and Label Printers, the Union did not consider that this was an appropriate bargaining unit as the

monthly paid workers were not managers and their roles did not warrant their exclusion.

Summary of the submission made by the Employer

17. It was the view of the Employer that the bargaining unit as proposed by the Union was not an appropriate unit. As mentioned in the summary of the Union's submissions above, within the list of job titles in the proposed bargaining unit were two roles - QA Assistants and Label Printers – had some workers who were monthly paid and some who were weekly¹ paid. The Employer referred the Panel to the schedule of the workers by job description both within and outside of the proposed bargaining unit which was attached to its submissions and is reproduced below - and dividing the QA Assistants and the Label Printers who effectively carried out the same role, would be divisive and not compatible with effective management, the Employer submitted. To do so would result in fragmented bargaining units within the undertaking cutting across roles. It was also not consistent with the characteristics of the workers within those groups who were more closely aligned with workers outside the bargaining unit such as other monthly paid workers and management.

	<u>Weekly Paid</u>	<u>Monthly Paid</u>
QA Assistant	10	3
Production Operative	75	0
Packer	48	0
FLT/Intake	11	0
Maintenance	3	0
Label Printer	3	2
LGV Driver	3	0
Despatch Operative	10	0
	168	5
Management		7
Packing Controller		1
Admin Assistant		1
Sales Admin		7
Production Controller		4
Line Supervisor		15
Warehouse Supervisor		3
Ripener		5

18. The Employer explained (and the Panel accepted as accurate) that its aim was to

¹ The Employer uses the term "weekly" when referring to the workers in the Union's proposed bargaining unit whereas the Union refers to them as "hourly paid". Both definitions refer to the same group of workers.

promote from within the company and to develop the skills of its workers to their full potential. Workers were initially employed via an agency as packers and then, if suitable, would be taken on by the company as direct employees. From packing they could progress to picking and then be promoted to QA Assistant or Label Printers. The Employer accepted that the QA Assistant and Label Printer roles were essentially shop floor roles but with a quality control element and scope for demonstrating management and supervisory potential, which was a subtle, but important distinction. It was hoped that the QA Assistants would then learn supervisory duties in anticipation of further promotion to supervisor, controller or managerial position. Mr Cartledge gave himself as an example of the Employer's ethos in practice – he had started as a packer and is now Operations Director.

19. Asked to detail the differences in contracts between the weekly and monthly paid workers the Employer explained that the rate of pay and was the same but the length of notice differed with the monthly paid having to give the Employer a month's notice and the weekly paid, a week's notice. All other terms and conditions were the same for the two groups. Receiving pay monthly required better budgeting and financial responsibility for the staff concerned and some staff preferred to be paid weekly to assist with household budgeting.

20. The Employer provided the Panel with a table showing a comparison between the terms and conditions of their employees. Pay for both weekly and monthly paid workers depends on the role, with some roles attracting an enhanced rate. Pay is reviewed annually and the same percentage increase is applied across the board save for the Packers who are paid the minimum wage and whose pay only increases as and when an annual increase in the minimum wage is announced. All workers were automatically enrolled into the company pension scheme although they could opt out should they so wish. A QA Assistant paid weekly would be paid overtime but if they were paid monthly they would only be entitled to time off in lieu. In practice this did not create any difficulties for the Employer as overtime was kept to an absolute minimum given the "just in time" nature of the fresh fruit business and overtime was very rarely available. In practice sick pay was discretionary for all the weekly and monthly paid workers, dependent on a number of factors such as the individual's service record.

21. Asked by the Panel to explain the reason as to why there were both weekly paid and monthly paid QA Assistants and Label Printers the Employer confirmed that the work was exactly the same for both groups and they had the same line management structure, tasks, status and no visible differences between them. The reason for the two sub-categories was partly historic with one QA Assistant having requested to be monthly paid, another worked longer hours and also length of service was a factor. There was no set structure which determined whether a worker in these two categories was weekly or monthly paid other than monthly paid workers tended to have been employed long term. The Employer stated that it had wanted to move all of the QA Assistants and Label printers across to monthly pay, but the majority were reluctant to change. Since the Employer was sensitive to their employees concerns about budgeting and not receiving pay weekly, it had not wished to press the point. The same offer was not extended to the Packers, Operatives or Fork Lift truck drivers who all remained weekly paid. It also tried to move workers to monthly pay when it has identified potential but if the worker wishes to remain weekly paid the Employer would acquiesce.

22. Given that 3 of the 13 QA Assistants and 2 of the 5 label Printers were paid monthly, the Employer submitted that dividing out those job roles between weekly and monthly workers would create a situation that provided no effective way of resolving issues of pay, hours and holidays since part of the same job group would be collectively bargained for and others, the monthly paid workers, would fall outside of the proposed bargaining unit.

23. The Employer therefore believed that weekly paid Label Printers and weekly paid QA Assistants should not be within the bargaining unit. This was because the proposed bargaining unit did not offer a sensible and workable vehicle for settling, by collective bargaining, pay, hours and holidays of workers with identical jobs. The inclusion of these groups would affect the flexibility on the part of the workers who regularly worked across skills categories and would affect the single status of their terms and conditions. Previous case law of the CAC had determined that that was an undesirable outcome as in *Sports Direct*.

24. The inclusion of the QA Assistant and Label Printer meant that the bargaining unit was not a self-contained unit as case law had decided was necessary as in *Chadwick House*.

25. It was, more generally, the Employer's position that the proposed bargaining unit will,

in addition, cause fragmentation and distract from the "one company" ethos within the business making a divisive bargaining unit incompatible with effective management. It was established that this could be a reason for rejecting a bargaining unit as in *Kettle Foods*. The bargaining unit would create an "us and them" environment which was of great concern to the Employer particularly in a multi-racial workplace such as theirs. The Employer believed that the bargaining unit would further polarise the groups of workers.

26. The characteristics of the QA Assistants and Label Printers also meant that they were not appropriate for inclusion in the bargaining unit as they were far more closely aligned with the lines of management as opposed to other weekly paid workers. The QA Assistants and Label Printers should be excluded from the bargaining unit as they formed part of the quality control team rather than being production operatives; an effective quality control team was essential to the business especially one with such a huge focus on quality control. These workers must work closely with management and the Production Controllers, none of whom would be within the bargaining unit. The Employer accepted that the QA Assistants were not management but stated that they were subtly distinct from other shop floor workers. The Label Printers, who reported directly to the Production Controllers, also had distinct from the shop floor workers, especially those who had chosen to be monthly paid. Including them in the proposed bargaining unit could affect relationships. By limiting the direct contact with such staff the Employer was concerned that it may incur the cost of non conforming products and services. Collective consultation could also make it more difficult to determine the root causes of any issues that workers may have with the company.

27. The Employer was also concerned about the effect that the proposed bargaining unit would have on harmony within the business as it risked factions forming within the workplace, which could spill over into racial disharmony. The Union's bargaining unit would comprise 85% Polish workers whereas Polish people make up approximately 50% of the workers outside the proposed bargaining unit, and represent approximately 65% of the entire workforce. The remainder are mainly white British and those of Asian heritage or nationality. The Employer said it had noticed divisions both between and within different racial groups within the company since the Union recognition campaign had begun which was concerning.

28. The Employer was also concerned as to how the weekly paid QA Assistants and Label Printers would perceive the split from their monthly paid colleagues. It believed that

they would view themselves as being classed as shop floor workers and so would feel undermined vis a vis their colleagues with the same job title who happened to be monthly paid, whereas if the monthly paid workers were included in the bargaining unit they would perceive their status as undermined vis a vis the supervisors and production controllers. These were workers that had aspirations and saw themselves as moving from managing the quality of the product to managing workers in a supervisory role but this would all be undone if they were included in the bargaining unit. In response to questioning from the Panel the Employer submitted that if the monthly paid QA Assistants were included in the bargaining unit it would create a divide between them and the other monthly paid staff such as the supervisors and risked the possibility that they no longer viewed themselves as part of the Quality Control side of the business. This was of particular concern as the Employer believed collective bargaining could affect the quality control work carried out by the workers. Quality was critical to the business in satisfying the customers and retaining customer loyalty. Loss of direct contact with its workers could lead to loss of business or accreditation to quality systems.

29. The divisions within these groups would cause issues with a critical part of the business. It was essential that the quality group including the QA Assistants and the Label Printers were part of a strong, focused team. Separating the workers into weekly workers with collective consultation and negotiation rights and monthly workers who potentially could then be on separate deals in relation to pay, hours on holiday, would cause fragmentation and tension within the group.

30. The quality control team including the QA Assistants and Label Printers worked together with supervisors and managers to ensure quality. These workers were more closely aligned than the other weekly paid workers whom the Union sought to include in its bargaining unit

31. The Label Printers formed an integral part of the production and quality control process. It was essential that this small group worked in complete unity with the management and quality control areas. The inclusion of part of this group but not all of it, in the bargaining unit was inappropriate and would lead to a lack of effective management as well as fragmentation and, further, did not recognise the characteristics of the QA Assistants and Label Printer.

32. For the reasons above the Employer objected to the bargaining unit proposed by the Union and believed that it was not compatible with effective management as set out in paragraph 19B of the Schedule. A possible alternative bargaining unit, suggested the Employer, would be one consisting of the Packers alone. Whilst acknowledging that such a bargaining unit would not allay the Employer's fear of a small bargaining unit, however, based solely on pay, hours and holidays, it would not be difficult unit for the Employer to manage. In the alternative, the Employer suggested a bargaining unit comprising those workers in the Union's proposed bargaining unit save for the QA Assistants and Label Printers.

Considerations

33. 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 "in 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."

34. The Union has argued that its proposed bargaining unit reflects the current structure

within the business and so would be compatible with effective management whilst the Employer was particularly concerned about dividing the group of QA Assistants and Label printers, with some being inside, and others outside the collective bargaining unit. It is clear from the Employer's submissions that the vast majority of QA Assistants and a simple majority of Label Printers have chosen not to move over to monthly pay and the Employer is left with the anomaly of having both weekly (we will use the term weekly paid when referring to the workers in the Union's proposed bargaining unit rather than hourly paid) and monthly paid workers in the same roles and carrying out the same duties. The differences between those paid monthly and those paid weekly were minimal according to both the table showing the headline terms and conditions and the information provided about what happened in practice.

35. The Union's proposed bargaining unit which is defined in paragraph 1 and more clearly set out in the top half of the table in paragraph 17 currently totals 168 workers out of a total of 216 workers and staff at the premises. In considering the matters set out in paragraph 19B(3) the Panel questioned whether the Union's proposed bargaining unit could give rise to small fragmented bargaining units within the undertaking. During its submissions the Employer had referred to the words of Collins J in the matter of *R (Cable & Wireless Services U.K. Limited) & Central Arbitration Committee & The Communication Workers Union [2008] EWHC 115 (Admin)* albeit when he was quoted in *Chadwick House*. When addressing the desirability of avoiding small fragmented bargaining units Collins J observed:

"However, it is obvious that 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 and that will be detrimental to effective management."

In its submissions the Union argued that the Employer's submissions were not supported by *Chadwick* (meaning *Cable and Wireless*) in that its proposed bargaining unit was not fragmented and had a clear boundary. However, we disagree. In our view separating out the weekly and monthly paid QA Assistants and Label Printers would blur the edges of the bargaining unit and create the environment for another bargaining unit that could contain workers with exactly the same characteristics which would, as Collins J said, be "detrimental

to effective management". It would create an artificial distinction within a group of workers when the reasons for their being either weekly or monthly paid were somewhat anomalous and random, and would represent an inappropriate and unworkable severing of 2 categories of worker that would be wholly undesirable.

36. The Panel considers that the difference in the characteristics of the weekly and monthly paid QA Assistants and Label Printers to be minimal, with the shared characteristics outweighing the distinctions. For example, the Employer treats both sets of workers the same and, as for terms and conditions, could only really point to the amount of notice that each worker had to give and how they were remunerated for overtime as evidence of their differences.

37. Having decided that the Union's proposed bargaining unit is not appropriate because to exclude the monthly paid QA Assistants and Label Packers, would, in our view, give rise to a bargaining unit without a clear boundary as well as on the grounds of the shared characteristics of the workers, we must look at the alternatives put forward by the Employer.

38. The Employer's first preference was for a bargaining unit consisting solely of the Packers but we do not such a bargaining unit would be appropriate. The Packers represent a small group of mainly new employees within the shop floor workers and would represent a small bargaining unit that would fragment the shop floor workers. The aim of the company to nurture its talent to enable packers to progress learning the skills of other shop floor roles is incompatible with isolating the packers within the wider group. The Packers share more characteristics with the wider shop floor and other than for pay, their terms and conditions are the same as the other shop floor workers and their line management supervision and sense of identity is with the wider shop floor group.

39. The Employer's next proposal was for a bargaining unit comprising those workers in the Union's proposed bargaining unit excluding the QA Assistants and Label Printers whether weekly or monthly paid. In the industrial relations experience of the Panel and the experience of the Union – which, as an industry specific (as opposed to general workers union) bakers and allied food workers union, that quality assurance or quality control and label printing workers are perceived generally within the industry as shop floor workers – blue collar to use the old fashioned terminology, and whilst having some responsibility for

product quality, it is a wholly different role to one with managerial or supervisory responsibility. Traditionally and historically quality control is a shop floor role. Now if there was evidence that this particular employer had moved away from the way in which the workplace is usually organised in this type of industry we would take that into account and could find that it would be appropriate in the circumstances of their case to exclude all QA Assistants and Label printers. But the evidence was to the contrary – the majority of the workers in those categories have chosen to remain as weekly paid workers with all the symbolism that that implies. The Employer sees the QA Assistant role and Label printer as a training ground for the next generation of supervisors, controllers and managers and the Panel agrees – it is the pool from which the Employer hopes to fish from in the search for managers, supervisors and controllers for the future. It does not however follow that at the present time those QA Assistants and Label Printers have more in common with managers etc than their shop floor colleagues. They are demonstrating their potential on the shop floor and therefore are more naturally categorised as production workers along with the other categories of worker proposed in the Union’s suggested bargaining unit. They are clearly not supervisors, managers, or production controllers. The only alternative would be to consider them as their own little group – neither shop floor nor white collar, but there would be contrary to the Schedule and create a small fragmented group and place them in an invidious position, squeezed between the two larger groups. The Panel considers this would be quite unsatisfactory and risk exactly the disharmony within the workplace it is seeking to avoid.

40. In our view therefore, it follows that the appropriate bargaining unit in this matter is one comprising those workers in the Union's proposed bargaining unit with the addition of the five monthly paid QA Assistants and Label Printers.

41. The Panel has considered the matters listed in paragraph 19B(3) of the Schedule, so far as they do not conflict with the need for the unit to be compatible with effective management. The views of the Employer and the Union, as described earlier in this decision, have been fully considered. Finally, the Panel is satisfied that there are no existing national or local bargaining arrangements in this case.

Decision

42. The appropriate bargaining unit in this matter comprises workers in the following

categories:- QA Assistant; Production Operative; Packer; FLT/Intake; Maintenance; Label Printer; LGV Driver; Despatch Operative and Cleaner. This bargaining unit includes all QA Assistants and Label Printers irrespective of whether they are weekly or monthly paid.

Panel

Her Honour Judge Stacey, Chairman of the Panel

Mr Len Aspell

Mr Malcolm Wing

31 July 2015

Appendix

Names of those who attended the hearing on 17 July 2015:

For the Union

John Higgins - Organising Regional Secretary, BFAWU
Rachel Halliday - Solicitor, Thompsons

For the Employer

Paula Rome - Solicitor, Shoosmiths LLP
Michael Cartledge - Operations Director, Fyffes Group Ltd
Joanne Blake - Group HR Manager, Fyffes Group Ltd