

**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

Metallink Fluid Power Systems

**Introduction**

1. GMB (the Union) submitted an application to the CAC dated 14 December 2015 that it should be recognised for collective bargaining by Metallink Fluid Power Systems (the Employer) for a bargaining unit comprising "All permanently employed Manufacturing/Production Operatives at Metallink Crook, excluded from our application will be; Office Staff, Management, Administration, Contractors, Fixed Term Workers and Agency Workers". The CAC gave both parties notice of receipt of the application on 14 December 2015. The Employer submitted a response to the CAC dated 15 December 2015 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 Mr Chris Chapman, the Panel Chair, and, as Members, Mr David Bower and Ms Virginia Branney. The Case Manager appointed to support the Panel was Linda Lehan.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 30 December 2015. The acceptance period was extended to 14 January 2016 in order to allow time for the parties to comment on the results of a membership check and for the Panel to consider these comments before arriving at a decision.

### **Issues**

4. The Panel is required by paragraph 15 of Schedule A1 to the Act (the Schedule) to decide whether the Union's application to the CAC is valid within the terms of paragraphs 5 to 9; is made in accordance with paragraphs 11 or 12; is admissible within the terms of paragraphs 33 to 42; and therefore should be accepted.

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

5. In its application to the CAC the Union stated that it had made a request for recognition on 23 October 2015 and a copy of that letter was attached to the application. The Union stated that on 16 November 2015 they had met with the Employer to discuss voluntary recognition with ACAS assistance and on 20 November 2015 an email was received from the Employer confirming that they were unwilling to meet/engage with ACAS regarding voluntary recognition.

6. The Union stated that there were 40 workers employed by the Employer, of whom 34 were in the proposed bargaining unit. Out of the 34 workers in the proposed bargaining unit the Union stated that 14 were members of the Union. When asked to provide evidence that a majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining, the Union stated that it had petitions.

7. The Union stated that the reason for selecting the proposed bargaining unit was because their members at the Crook site had made a request.

8. The Union stated that the bargaining unit had not been agreed with the Employer and

that it was not aware of any existing recognition agreement which covered any worker in the proposed bargaining unit. The Union confirmed that it held a current certificate of independence. The Union stated that it had copied the application made to the CAC, and supporting documents, to the Employer on 14 December 2015.

**The Employer's response to the Union's application.**

9. The Employer confirmed that it had received the Union's written request letter on 27 October 2015. The Employer stated that it had responded on 2 November 2015 and had a face to face meeting on 16 November 2015.

10. The Employer stated that it had not received a copy of the application form from the Union.

11. The Employer stated that it did not agree the proposed bargaining as it excluded the 6 Office Staff/Management team.

12. As to the number of workers employed by them the Employer stated there were 40 and that they did not agree with the number of workers in the bargaining unit as it excluded the 6 Office Staff/Management team.

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

14. In answer to the question whether it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer said that members had advised them that numbers in the bargaining unit had reduced.

15. As to whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer stated that membership numbers had reduced and employees had informed them that they no longer wished to have Union recognition.

16. The Employer confirmed that it was not aware of any previous application in respect of the proposed bargaining unit.

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

17. On 15 December 2015 the Employer's response was cross-copied to the Union and the Union was asked to comment on the Employer's response to question 3 whereby it stated that it had not received a copy of the application from the Union.

18. In an email to the CAC from the Union dated 16 December 2015 the Union confirmed that a copy of the application was posted first class to the Employer on 14 December 2015. A copy of the email was sent to the Employer and in an email dated 18 December 2015 the Employer confirmed that a copy of the application had been received.

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

19. To assist the determination of two of the admissibility criteria specified in the Schedule, namely, whether 10% of the workers in the proposed bargaining unit are members of the union (paragraph 36(1)(a)) and whether a majority of the workers in the proposed bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit (paragraph 36(1)(b)), the Panel proposed an independent check of the level of union membership within the proposed bargaining unit. It was agreed with the parties that the Employer would supply to the Case Manager a list of the names, dates of birth and job titles of workers within the proposed bargaining unit, and that the Union would supply to the Case Manager a list of its paid up members within that unit (including their full name and date of birth) together with a copy of petitions. 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 2015 from the Case Manager to both parties. The information from the Union and Employer was received by the CAC on 21 December 2015.

20. The Union provided a list of 14 members and the Employer provided a list of 34 workers.

21. The Union's petition consisting of 13 names/signatories was set out as follows:

**GMB @ Work in Metallink**

“Yes I support the GMB claim through recognition to conduct collective bargaining on my behalf and would welcome the opportunity to register my opinion in a secret ballot”.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Please note this section can be completed by both members and non-members.

Surname: \_\_\_\_\_

Forename: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_

Job Title: \_\_\_\_\_

Are you an existing union member? YES/NO

If yes, please indicate which union you are a member of:

GMB

OTHER: \_\_\_\_\_

Membership number (if known): \_\_\_\_\_

**This information will NOT be shown to your employer**

Please return this slip in the envelope provided or to  
GMB Middlesbrough, Freepost RTJZ-AEZK-HSXZ,  
GMB Northern, 1 Mosley Street, Newcastle Upon Tyne.  
NE1 1YE

**GMB@WORK**  
You can join online at:  
[www.gmb.org.uk/join](http://www.gmb.org.uk/join)

22. The membership check established that there were 13 members of the Union within the bargaining unit; a membership level of 38.24%. The result of the comparison of the Union’s petition with the Employer’s list of workers revealed that a total of 11 workers had indicated that they wanted the Union to be recognised which corresponded to 23.53% of the bargaining unit. 8 of the 11 were union members (23.53%) and 3 were non-members (8.82%).

23. A report of the result of the membership and support check was circulated to the Panel and the parties on 22 December 2015 and the parties were invited to comment on the results and to bear in mind the two admissibility tests set out in paragraph 36 (1)(a) and paragraph 36 (1)(b) in so doing. The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

### **The parties' comments on the result of the membership check**

24. No comments were received from either party.

### **Considerations**

25. 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.

26. The Panel is satisfied that the Union made a valid request to the Employer within the terms of paragraphs 5 to 9 of the Schedule and that its application was made in accordance with paragraph 12. 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)*

27. Under paragraph 36(1)(a) of the Schedule an application is not admissible unless the Panel decides that members of the union constitute at least 10% of the workers in the proposed bargaining unit.

28. The membership check conducted by the Case Manager showed that 38.24% of the workers in the proposed bargaining unit were members of the Union. As stated in paragraph 23 above, the Panel is satisfied that this check was conducted properly and impartially and in accordance with the arrangements agreed with the parties. The Panel has therefore decided

that members of the union constitute at least 10% of the workers in the proposed bargaining unit as required by paragraph 36(1)(a) of the Schedule.

*Paragraph 36(1)(b)*

29. Under paragraph 36(1)(b) of the Schedule, an application is not admissible unless the Panel decides that a majority of the workers constituting the proposed bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit.

30. Based on those numbers provided by the Case Manager's check of the Union's petition against the list of 34 workers provided by the Employer, this indicated that 11 of the 13 petition signatories were identifiable as workers within the bargaining unit, a support level of 32.35%. Of those there were 8 union members (23.53%) and 3 non-members in the bargaining unit (8.82%). If the non union members who signed the petition are added to the number of Union members within the bargaining unit this would equate to 16 workers (47.06%) of the bargaining unit. On the basis of the evidence before it, the Panel has decided that, on the balance of probabilities, a majority of the workers in the proposed bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit, as required by paragraph 36(1)(b) of the Schedule.

**Decision**

31. For the reasons given above the Panel's decision is that the application is accepted by the CAC.

**Panel**

Mr Chris Chapman, Chairman of the Panel

Mr David Bower

Ms Virginia Branney

11 January 2016