

**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:**

United Road Transport Union  
and  
UTL Consumer Solutions

**Introduction**

1. United Road Transport Union (the Union) submitted an application to the CAC dated 2 November 2015 that it should be recognised for collective bargaining by UTL Consumer Solutions (the Employer) for a bargaining unit comprising “all warehouse operatives/shunters based at UTL Consumer Solutions, Kimberley Clark RDC, Revolution Park, Buckshaw Avenue, Buckshaw Village, Chorley, Lancashire, PR7 7DW”. The CAC gave both parties notice of receipt of the application on 4 November 2015. The Employer submitted a response to the application on 17 November 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, as chair of the Panel, and, as Members, Mr Bill Lockie and Mr Keith Sonnet. The Case Manager appointed to support the Panel was Linda Lehan.
  
3. The CAC Panel extended the acceptance period in this case. The initial period expired on 17 November 2015 and was extended to 1 December 2015 in order to allow time for a membership and support check to take place and for the parties to comment on the subsequent report. It was further extended until 4 December 2015 to allow the Panel to consider said comments before arriving at a decision and

subsequently until 8 December 2015 to allow for the issuing of the 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 of the Schedule; and therefore should be accepted.

## **The Union's application**

5. The Union stated that its request for recognition was sent to the Employer on 21 May 2015; a copy of this and a subsequent request letter dated 10 June 2015 was sent to us under cover of an email from the Union dated 26 November 2015. The Union also sent us copies of the Employer's responses rejecting a voluntary agreement dated 19 June 2015 and 25 September 2015. The Union stated that following receipt of the request for recognition the Employer proposed that ACAS be requested to assist which they agreed to and the ACAS contact was Mr Brian Sykes.

6. The Union stated that there were a total of 32 workers in the proposed bargaining unit of which 13 were union members. Regarding evidence demonstrating that the majority of workers in the bargaining unit were likely to support recognition for collective bargaining, the Union attached a work place petition which they were happy to be shared with the Employer.

7. The Union stated that the reason for selecting the bargaining unit was that it already had a proportion of members on site and was a specialised Trade Union that looked after the interests of HGV drivers and warehouse operatives in the logistics industry.

8. In answer to whether there was any existing recognition agreement which covered any of the workers in the bargaining unit the Union stated that 2 shunter drivers were covered by an agreement that stood from when Norbert Dentressangle/XPO Logistics had the contract which was transferred through TUPE.

The Union stated that the original agreement was for shunter drivers and drivers at site that originated when TDG had the contract.

9. Finally the Union confirmed that it held a current certificate of independence.

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

10. In its response dated 17 November 2015 the Employer stated that the first application was received on 10 June 2015 via email but there had been no further request since being told that the application was withdrawn and case closed as per the CAC's letter dated 9 October 2015 Ref: TUR1/0926(2015). The Employer stated that all additional questions were being answered on the basis of the first application.

11. The Employer confirmed that their response had already been sent to the CAC as part of the previous application.

12. The Employer confirmed that it received a copy of the application form from the Union by email on 26 June 2015 and that it did not agree the bargaining unit.

13. The Employer stated that when the first application was received they had no details on levels of membership and had since contacted the Union to request that ACAS be requested to assist.

14. The Employer stated that the total number of workers employed by them at that site was 51.

15. As to whether it agreed the number of workers in the bargaining unit the Employer stated that there were 33 workers employed in the proposed bargaining unit. The Employer stated that it had no basis to disagree with the Union's estimate of membership in the proposed bargaining unit and had to assume the membership list provided by the Union was correct.

16. As to whether the Employer considered that a majority of the workers in the bargaining unit are likely to support recognition the Employer stated that it took an active approach in collective engagement with their workforce and were making considerable

headway with their Colleague Forum (3 members of which they noted were listed as union members). The Employer stated that as part of the process there had been a review of various terms and conditions. The Employer stated that the work of the Forum continued and as such did not have any evidence that the majority of the workers in the bargaining unit supported the formal recognition of the Union.

17. Finally the Employer stated that the only previous application it was aware of was the application which ended in October 2015 with a formal withdrawal and case being closed Ref TUR1/0926(2015).

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

18. To assist the determination of two of the admissibility criteria specified in the Schedule, namely, whether 10% of the workers in the agreed bargaining unit are members of the Union (paragraph 36(1)(a)) and whether a majority of the workers in the bargaining unit are likely to support 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 agreed bargaining unit and of the petition.

19. 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 proposed bargaining unit, and that the Union would supply to the Case Manager a list of their members within that unit and the petition attached to the application would be used to enable comparisons to be undertaken. 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 23 November 2015 from the Case Manager to both parties.

20. The Case Manager carried out the membership and support check using the information that was received by the Union and Employer on 24 November 2015 and the petition supplied with the Union's application.

21. The Union provided a list of 13 members and the Employer provided a list of 31 workers.

22. The Union's petition consisting of 29 names/signatories was set out as follows:

**Petition for Trade Union  
Recognition For The  
United Road Transport Union**

Please print and sign your name and tick whether or not you would be in favour of the URTU being recognised at the Chorley site. You do not have to be a Member of the Union this is purely a consultative exercise.

Thank you.  
Lee Pimbley Regional Officer URTU

<u>Name</u>	<u>Yes</u>	<u>No</u>
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23. The membership check established that there were 13 members of the Union within the bargaining unit; a membership level of 41.94%. The result of the comparison of the Union's petition with the Employer's list of workers revealed that a total of 26 workers had indicated that they wanted the Union to be recognised at the Chorley site, which corresponded to 83.87% of the bargaining unit. 12 of the 26 were union members (38.71%) and 14 were non-members (45.16%).

24. A report of the result of the membership and support check was circulated to the Panel and the parties on 25 November 2015 and the parties were invited to comment on the results and to bear in mind the two admissibility tests set out in para 36 (1)(a) and para 36 (1)(b) in so doing. The Panel is satisfied that the checks were undertaken appropriately.

**Union's comments on the result of the membership & support check**

25. No comments were received from the Union.

**Employer's comments on the result of the membership & support check**

26. The Employer, under cover of an email dated 27 November 2015, submitted a letter stating that it seemed clear that the Union did have more than 10% membership. However, in terms of whether the majority of workers were in favour of recognition it was not sure that the petition was particularly helpful. The Employer stated that the petition was undated and the question it asked was not about statutory recognition

(pay, hours and holidays) as opposed to wider recognition. The Employer stated that their own experience continued to show that the majority of the employers within the proposed bargaining unit were not in favour of recognition.

### **Considerations**

27. 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.

28. The Panel is satisfied that the Union made a valid request to the Employer within the terms specified in 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.

29. 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)**

30. 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.

31. The membership check conducted by the Case Manager showed that 41.94% of the workers in the proposed bargaining unit were members of the Union. As stated in paragraph 24 above, the Panel is satisfied that this check was conducted properly and impartially and in accordance with the arrangements agreed with the parties. The Employer in their letter under cover of their email dated 27 November 2015 confirmed that it seemed clear that the Union had more than 10% membership. 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)**

32. The test in paragraph 36(1)(b) is whether a majority of the workers constituting the agreed bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit. The Case Manager's check of the Union's petition against the list of 31 workers provided by the Employer indicated that 26 of the petition signatories were workers from within the agreed bargaining unit, a support level of 83.87%. The Panel noted the Employer's comments that the petition was undated and the question it asked was not about statutory recognition but about wider recognition. The Panel also noted the Employer's argument that their own experience continued to show that the majority of the employees within the proposed bargaining unit were not in favour of recognition but no actual evidence to support this was statement was provided.

33. Given the level of Union membership which alone stood at 41.94% and support demonstrated by the petition the Panel is satisfied that, in accordance with paragraph 36(1)(b) of the Schedule, a majority of the workers in the proposed bargaining unit would be likely to favour recognition of the Union.

**Decision**

34. The Panel is satisfied that the application is valid within the terms of paragraphs 5 to 9, is made in accordance 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**

Mr Chris Chapman, Chair of the Panel

Mr. Bill Lockie

Mr Keith Sonnet

8 December 2015