

**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

Lidl Ltd

**Introduction**

1. GMB (the Union) submitted an application to the CAC dated 7 March 2016 that it should be recognised for collective bargaining by Lidl Ltd (the Employer) for a bargaining unit comprising "Warehouse Operatives working in the following sections: Goods In, Goods Out & Selection" employed at the Employer's Bridgend Regional Distribution Centre,<sup>1</sup> Waterton Industrial Estate, Bridgend. The application was received by the CAC on 10 March 2016 and the CAC gave both parties notice of receipt of the application on 11 March 2016. The Employer submitted a response to the CAC dated 17 March 2016 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 Gillian Morris, the Panel Chair, and, as Members, Mr Paul Talbot and Mr Paul Wyatt. After the Chairman had appointed a Panel, Mr Talbot identified a possible conflict

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<sup>1</sup> Referred to elsewhere by the parties as Bridgend RDC.

of interest and was replaced by Ms Judy McKnight CBE. The Case Manager appointed to support the Panel was Nigel Cookson.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 24 March 2016. The acceptance period was extended to 6 April 2016 in order to allow time to conduct a membership check and to allow time for the parties to comment thereon before the Panel arrived 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. In its application to the CAC the Union stated that it had made an informal request for recognition to the Employer on 24 November 2015 and that this was followed by a formal request on 8 February 2016. The Union attached to its application copies of both these letters together with other correspondence between the parties. In its letter of 8 February 2016 the Union described its proposed bargaining unit as comprising "Warehouse Operatives". In a letter to the Union dated 15 February 2016 the Employer stated that it would respond to the request within the statutory timetable and that it would assume, unless otherwise informed, that the proposed bargaining unit included all warehouse staff and supervisors in the goods in section; all warehouse staff and supervisors in the goods out section; all warehouse staff and supervisors in the selection section; and all support staff (such as maintenance staff, security staff and administrative staff) who were principally assigned to support these functions. In a letter to the Employer dated 17 February 2016 the Union stated that its proposed bargaining unit comprised Warehouse Operatives working in the goods in, goods out and selection sections but that it did not include supervisors or support staff such as maintenance staff, security staff or administrative

staff. In a letter to the Union dated 24 February 2016 the Employer rejected the request for recognition.

6. When asked whether the Union had made a previous application under the Schedule for statutory recognition for workers in the proposed bargaining unit or a similar unit the Union answered "No". The Union stated that, following receipt of the request for recognition, the Employer had not proposed that Acas should be requested to assist the parties.

7. When asked for the total number of workers employed by the Employer the Union answered "Unknown". The Union stated that there were 219 workers in the proposed bargaining unit, of whom 83 were Union members. When called upon to provide evidence that the majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining, the Union stated that it had 83 paying members in the bargaining unit and a petition with 137 signatures. The Union stated that supporting evidence could be provided confidentially when required.

8. The Union stated that the reason for selecting the proposed bargaining unit was that this was where it had the majority of its members, who were warehouse operatives, carrying out the same or similar work. The Union said that the bargaining unit had not been agreed with the Employer and that, as far as it was aware, there was no existing recognition agreement in force covering any of the workers in the proposed bargaining unit.

9. The Union confirmed that it held a current certificate of independence and attached a copy thereof to its application. The Union stated that it had copied its application and supporting documents to the Employer on 7 March 2016.

### **Summary of the Employer's response to the Union's application**

10. In its response to the Union's application the Employer stated that it had received the Union's written request for recognition on 10 February 2016 and that it had requested further information from the Union in a letter dated 15 February 2016 to which the Union responded on

17 February 2016<sup>2</sup>. In a letter dated 24 February 2016 the Employer had informed the Union that it was rejecting the request for recognition. Copies of the letters of 15, 17 and 24 February 2016 were attached to the response.

11. The Employer stated that it had received a copy of the application form from the Union on 9 March 2016.

12. The Employer stated that it had not, before receiving a copy of the application form from the Union, agreed the bargaining unit with the Union and that it did not agree it. The Employer said that it had a flat structure, standard buildings, standard policies, procedures and operating models as well as standard key performance indicators, which were set both at national level and by its parent company in Germany. The Bridgend RDC did not control, set, or indeed have any influence on issues of pay or holiday, which were set at a national level and international level. The Employer said that it conducted its business in accordance with its published company principles. The Employer stated that the proposed bargaining unit comprised category 6 warehouse operatives at the Bridgend RDC and that the number of employees in that unit equated to less than 1.3% of its employees, approximately 1.4% of category 6 employees and only about 10% of warehouse employees. The Employer stated that the proposed bargaining unit was incompatible with effective management and its operating model for reasons which included that it was artificial and negligible in size compared with its UK business as a whole and it was artificial and unworkable to require the Employer to consult and negotiate over pay, hours and holidays with such a small subsection of its workforce, particularly where the terms and conditions were set at a national and international level.

13. The Employer stated that, following receipt of the Union's request, it had not proposed that Acas should be requested to assist.

14. The Employer stated that it employed a total of 18,177 workers. Asked whether it agreed with the number of workers in the proposed bargaining unit as defined in the Union's application

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<sup>2</sup> See paragraph 5 above.

the Employer stated that the correct number was 221. The Employer confirmed that there was no existing agreement for recognition in force covering workers in that bargaining unit.

15. In answer to the question whether it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer said that it did not know if the figures were correct. In answer to the question whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer stated that according to the Union's application it only had 83 members in the bargaining unit which equated to 37.5% of the 221 in the proposed bargaining unit. The Employer said that the Union had referred to a petition but a copy of the petition had not been provided and it was not known what question was asked or what information provided or assurances given to procure the signatures. The Employer stated that an internal survey amongst warehouse staff at the Bridgend RDC, conducted between 25 and 29 January 2016, had indicated that 71.2% of the employees within the Bridgend warehouse would recommend working for the Employer to others and the Employer submitted that this indicated an absence of dissatisfaction with terms and conditions relating to pay, hours or holidays.

16. When asked if it was aware of any previous application under the Schedule for statutory recognition by the Union in respect of this or a similar bargaining unit the Employer answered "None". When asked whether it had received any other applications under the Schedule in respect of any workers in the proposed bargaining unit, the Employer answered "None".

### **The membership check**

17. 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 are 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 independent checks of the level of union membership in the proposed bargaining unit and the number of workers in that unit who had signed the Union's petition in support of recognition. It was agreed with the parties that the

Employer would supply to the Case Manager a list of the full 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 the full names and dates of birth of the paid up union members within that unit and a copy of the petition. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and the petition would not be copied to the other party and these arrangements were confirmed in a letter from the Case Manager to both parties dated 23 March 2016. The information from the Union was received by the CAC on 24 March 2016 and the information from the Employer was received by the CAC on 29 March 2016. The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

18. The list supplied by the Employer showed that there were 212 workers in the proposed bargaining unit.<sup>3</sup> The list of members supplied by the Union contained 83 names. According to the Case Manager's report the number of Union members in the proposed bargaining unit was 80, a membership level of 37.74%.

19. The Union provided a petition which was set out as follows:

GMB @ Lidl Bridgend

Date January 2016

GMB TRADE UNION IS ASKING YOUR EMPLOYER TO RECOGNISE 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 THIS PETITION.

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<sup>3</sup> In a covering letter the Employer explained that the difference between this figure and the figure of 221 given in its response to the application was because warehouse administrators had been included in the figure of 221.

I SUPPORT RECOGNITION OF THE GMB TRADE UNION AS ENTITLED TO BARGAINING ON PAY, HOURS AND HOLIDAYS ON BEHALF OF WAREHOUSE OPERATIVES.

There followed two columns: one headed “**NAME – IN BLOCK CAPITALS**” the other headed “SIGNATURE”.

20. The Case Manager’s report showed that the petition was signed by 131 workers in the proposed bargaining unit, a figure which represents 61.79% of the bargaining unit. Of those 131 signatories 65 were members of the Union (30.66% of the proposed bargaining unit) and 66 were non-members (31.13% of the proposed bargaining unit).

21. A report of the result of the membership and support check was circulated to the Panel and the parties on 30 March 2016 and the parties were invited to comment on the results by noon on 4 April 2016.

#### **Parties’ comments on the result of the membership check**

22. In a letter dated 4 April 2016 the Union stated that it was clear that 80 of the 212 workers were members of the Union. This figure equated to 37.74% of the total number, and was sufficient to satisfy the 10% test set out in paragraph 36(1)(a) of the Schedule. A further check of the Union's petition against the number of workers in the proposed bargaining unit revealed that 131 in total (excluding names not on the Employer's list and duplicates) or 61.79% of the total had signed, inclusive of some 66 workers who were not members of the Union at the time. On the basis of the information presented for the purposes of the membership check, the number of Union members, when added to the number of non-Union members that had signed the petition, produced a sum total of 80 plus 66 equal to 146. On the Employer's figure of 212, this represented 68.87% of the total number in the proposed bargaining unit. The Union submitted that the application was admissible on the basis that both at least 10% of the workers were Union members and that the majority were likely to favour Union recognition.

23. In a letter dated 4 April 2016 the Employer stated that it had no comments on the Case Manager's report but it contended that the bargaining unit was inappropriate and it was not known how the workers within it would vote, should a vote be necessary.

### **Considerations**

24. 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.

25. The Panel is satisfied that the Union's letter of 8 February 2016 constituted 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 11 in that before the end of the "first period"<sup>4</sup> the Employer informed the Union that it did not accept the request. 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 set out in paragraph 36(1)(a) and paragraph 36(1)(b) are met.

#### *Paragraph 36(1)(a)*

26. 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. The membership check conducted by the Case Manager (described in paragraphs 17 and 18 above) showed that 37.74% of the workers in the proposed bargaining unit were members of the Union. As stated in paragraph 17 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

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<sup>4</sup> The "first period" is defined in paragraph 10(6) of the Schedule as "the period of 10 working days starting with the day after that on which the employer receives the request for recognition".



10% of the workers in the proposed bargaining unit as required by paragraph 36(1)(a) of the Schedule.

*Paragraph 36(1)(b)*

27. 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. The check conducted by the Case Manager showed that 61.79% of the workers in the proposed bargaining unit had signed a petition in support of recognition. The Employer has not disputed the validity of the petition in any respect. 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**

28. For the reasons given in paragraphs 25 to 27 above, the Panel's decision is that the application is accepted by the CAC.

**Panel**

Professor Gillian Morris, Panel Chair

Ms Judy McKnight CBE

Mr Paul Wyatt

06 April 2016