

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DECISION ON WHETHER THE APPLICATION IS VALID FOLLOWING
AGREEMENT ON THE BARGAINING UNIT

The Parties:

National Union of Rail, Maritime and Transport Workers
(RMT)

and

Go West Travel Ltd trading as Norfolk Green

Introduction

1. The National Union of Rail, Maritime and Transport Workers (the Union) submitted an application to the CAC dated 20 January 2015 that it should be recognised for collective bargaining by Go West Travel Ltd trading as Norfolk Green¹ (the Employer) for a bargaining unit comprising “Permanently employed bus drivers working for Norfolk Green based at Kings Lynn. This excludes any drivers employed on a zero hour contract, casual or agency basis”. The CAC gave both parties notice of receipt of the application on 22 January 2015. The Employer submitted a response to the CAC dated 28 January 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 Professor Gillian Morris, Chairman of the Panel, and, as Members, Mr Michael

¹ In its application the Union had identified Norfolk Green as the employer of the workers in its proposed bargaining unit but in its response to the application the Employer explained that Norfolk Green was a trading name and the company concerned was Go West Travel Ltd. In this decision we refer interchangeably to Go West Travel Ltd (“GWT”) and Norfolk Green to reflect the nomenclature used by the parties.

Leahy OBE and Mr Peter Martin. For the purposes of this decision Mr Arthur Lodge replaced Mr Peter Martin and the Case Manager was Ms Sharmin Khan.

3. By a decision dated 23 February 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. The appropriate period was initially due to end on 23 March 2015 but this period was extended, at the request of the Employer and with the agreement of the Union,² to enable discussions with assistance from Acas to take place. In an e-mail to the Case Manager dated 12 April 2015 the Union stated that it had met the Employer on 9 April 2015 and that the parties had agreed a bargaining unit. Following further e-mail correspondence between the Case Manager and the parties both parties confirmed, on 16 April 2015, that the agreed bargaining unit should be described as "all permanent hourly paid staff employed by the company at King's Lynn".

Issues

4. As the agreed bargaining unit differed from that originally proposed by the Union in its application, the Panel is required by paragraph 20 of Schedule A1 to the Act (the Schedule) to determine whether the Union's application is invalid within the terms of paragraphs 43 to 50 of the Schedule.

Membership and support check

5. To assist the determination of two of the validity tests specified in the Schedule, namely, whether 10% of the workers in the agreed bargaining unit are members of the union (paragraph 45(a)) and whether a majority of the workers in 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 (paragraph 45(b)), the Panel proposed an independent check of the level of union membership within the agreed bargaining unit. The Employer agreed to supply to the Case Manager a list of the names, dates of birth, job titles and addresses of the workers in the agreed

² The Union agreed to the period being extended until 10 April 2015.

bargaining unit and the Union agreed to supply to the Case Manager list of the names, dates of birth and dates of joining of its paid up members within that unit. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists would not be copied to the other party and that agreement was confirmed in a letter from the Case Manager to both parties dated 17 April 2015. The information from both parties was received by the CAC on 21 April 2015. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

6. The list provided by the Employer indicated that there were 149 workers in the agreed bargaining unit. The list of members supplied by the Union contained 98 names. According to the Case Manager's report, the number of Union members in the agreed bargaining unit was 88, a membership level of 59.06%.

7. A report of the result of the membership check was circulated to the Panel and the parties on 23 April 2015 and the parties were invited to comment on these results and the further validity tests set out in the Schedule by noon on 28 April 2015.

Union's comments

8. In a letter received by the CAC on 27 April 2015 the Union submitted that the membership check showed 88 members in the agreed bargaining unit consisting in total of 149 employees, giving the Union 59.06% membership in this bargaining unit. The Union stated that all its members had joined the Union during a campaign which had the purpose of achieving Union recognition for collective bargaining at the workplace. The Union stated that at each meeting and discussion with workers it had been expressed that this was to gain collective bargaining rights and that all its members had joined for this purpose. The Union stated that the membership check had demonstrated that the Union had majority membership in the bargaining unit and submitted that the Panel should award the Union automatic recognition for collective bargaining.

Employer's letter of 29 April 2015

9. No comments were received from the Employer by noon on 28 April 2015. However, in a letter dated 29 April 2015 sent by e-mail that day, the Employer informed the CAC of a change in circumstances. The Employer stated that, with effect from 1 May 2015, Go West Travel ('GWT') would be managed as a division of Stagecoach East Ltd. On that date the Managing Director of Stagecoach East, Andy Campbell, would be appointed as Managing Director of GWT and in due course, GWT would be wound up as a separate company and staff and assets would be transferred to Stagecoach East. The Employer stated that Stagecoach East had a long standing recognition agreement with Unite the Union ('Unite') and the Employer had received a request from Unite for recognition for GWT. The Employer stated that in circumstances where King's Lynn staff would become employees of Stagecoach East Ltd in the future, it seemed sensible to extend the current recognition arrangements with Unite and so the Employer had accepted Unite's request. The Employer attached to its letter of 29 April 2015 a copy of the letter from Unite dated 14 April 2015 and the Employer's response to that letter dated 17 April 2015.

10. Unite's letter of 14 April 2015, from Bobby Morton, Unite's National Officer for Passenger Transport, to Andy Campbell read as follows:

Dear Andy,

As you are aware, from 1st May 2015, the Go West Travel Ltd. depot comes under the control of Stagecoach East. As you may also know Unite the Union has a sole recognition agreement with each individual company within the area, granted on a voluntary basis, without recourse to legislation via the Central Arbitration Committee.

It is with this in mind that I write to you on behalf of Unite requesting a recognition agreement with Go West Travel Ltd for the purpose of collective bargaining and representation.

I look forward to your reply.

11. The Employer's letter of 17 April 2015, from Andy Campbell to Bobby Morton, read as follows:

Dear Bobby,

I write in response to your letter of 14th April 2015 requesting a recognition agreement with Go West Travel Ltd.

As Stagecoast East already has a sole recognition agreement with Unite the Union. (Sic) It would seem logical to include Go West Travel Ltd (trading as Norfolk Green) from the 1st May 2015 when they become part of Stagecoast East.

I therefore confirm recognition of Go West Travel Ltd (sic) for the purpose of collective bargaining and representation from 1st May 2015.

Subsequent correspondence relating to the Employer's letter of 29 April 2015

12. In a letter dated 30 April 2015 the Case Manager asked the Union to comment on the contents of the Employer's letter of 29 April 2015 by noon on 6 May 2015. The letter drew the Union's attention to paragraph 44(1) of the Schedule, which states that "[t]he application in question is invalid if the CAC is satisfied that there is already in force a collective agreement under which a union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of any workers falling within the relevant bargaining unit". In an e-mail to the Case Manager dated 1 May 2015 the Union stated that the CAC's letter to the parties dated 23 April 2015 was specific in stating that comments on the membership check and the further tests were to be submitted by noon on 28 April 2015. The Union submitted that the documents submitted by the Employer should not be considered by the Panel as they were not submitted by the required deadline.

13. On 5 May 2015 the Case Manager wrote to the Employer asking for a copy of the recognition agreement with Unite in respect of GWT. The Employer responded on 5 May 2015 by sending a copy of a three-page document signed on 21 July 2011 headed "Agreement between Stagecoach East and Unite the Union" followed on 6 May 2015 by an unsigned version

of this document to which were appended further details of the machinery for consultation and negotiation; the grievance and disputes procedure; the absence policy and other matters.

14. In an e-mail dated 6 May 2015 the Union asked the Case Manager to explain why the Employer's submission was considered by the Panel despite having being entered late when previously the Panel had decided it was inappropriate to consider a late submission from the Union.³ The Union also submitted its comments on the Employer's letter of 29 April 2015 and enclosures. The Union said that it was clear from Unite's letter of 14 April 2015 that Unite did not have a recognition agreement in respect of Stagecoach East that included GWT and that the Employer's letters of 17 April 2015 and 29 April 2015 did not say that there was an existing recognition agreement in force at the Employer. The Union submitted that a stated intent to agree recognition with another union not party to the recognition claim at this stage could not constitute an existing agreement that was already in force.

15. The Union stated that when the parties met to agree the bargaining unit on 9 April 2015 Mr Campbell, the Managing Director of Stagecoach East, and Mr Dyer, the then Managing Director of GWT, had both been party to that agreement. The Union said that at that meeting the practicalities of recognition of the Union were discussed and how it would work when Stagecoach East officially took over GWT on 1 May 2015. The Union stated that neither Mr Campbell nor Mr Dyer had attempted to claim that an existing recognition agreement was in force which would prevent Union recognition at the Employer after 1 May 2015. The Union stated that no collective bargaining with a trade union had ever been in force or taken place at GWT. The Union submitted that after agreeing a bargaining unit with a union, an employer cannot afterwards claim there is an existing recognition agreement in force for that bargaining unit on the basis of claiming an intention of signing a subsequent agreement with a trade union that is not a party to the claim. The Union submitted that if the Panel were to find that a recognition agreement was already in force in these circumstances it would set a damaging precedent; subvert the intention of the Schedule; and deny a group of workers recognition for the union of their choice. The Union further submitted that to find a recognition agreement was in force would breach section 171 of the Schedule, which provides that "[i]n exercising functions

³ See acceptance decision of 23 February 2015, paragraph 23.

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.” The Union submitted that, rather than promoting fairness in the workplace, finding a recognition agreement was in force would do the opposite by preventing workers in the bargaining unit having the union of their choice recognised and would potentially create strife.

16. On 7 May 2015 the Panel directed the Case Manager to write to the Union saying that it noted that the Employer's letter of 29 April 2015 and accompanying documents had been received by the CAC after noon on 28 April 2015 but that they were received before the Panel had made its decision and constituted evidence which the Panel was obliged to consider. The Case Manager enclosed with this letter the documents referred to in paragraph 13 above sent by the Employer and informed the Union that if it wished to make any further comments about this stage of the process it should do so by noon on 12 May 2015.

17. In a letter dated 11 May 2015 the Union submitted that the agreement between Stagecoach East and Unite was not a collective agreement in force that recognised a trade union for collective bargaining purposes on behalf of any workers falling within the agreed bargaining unit. The Union said that it had seen no correspondence from the Employer claiming that this was the case. The Union said that the agreement was signed by the two parties on 21 July 2011; referred to Stagecoach East as it was structured at that time; and applied to only four, separate, bargaining units, which were: Cambridge, Peterborough, Fenstanton and Bedford. The Union stated that Stagecoach East had taken over GWT in December 2013. This takeover had not resulted in the inclusion of the workers at the King's Lynn depot in the 2011 agreement; rather the bargaining unit consisting of hourly paid staff based at King's Lynn remained a separate bargaining unit within Stagecoach East, not covered by the 2011 agreement. The Union stated that none of the workers at King's Lynn had been informed that the 2011 agreement existed or that it applied to King's Lynn and the Union submitted two statements from workers on this issue. The Union stated that in the Employer's letter of 29 April 2015 to the CAC it made clear when talking of “extending current recognition arrangements” to include King's Lynn that these recognition arrangements were not in force for staff at the King's Lynn depot. The Union stated

that Unite's letter of 14 April 2015 requesting recognition for this bargaining unit also demonstrated that the 2011 agreement did not include workers at Kings Lynn; had it done so Unite would not have had to request recognition.

The hearing

18. Having considered the correspondence received from the parties the Panel decided to hold a hearing to assist it to decide if the application was valid following the change in the definition of the bargaining unit. The parties were invited to supply the Panel with, and to exchange, written submissions relating to the question whether there was already in force a collective agreement under which a union was recognised as entitled to conduct collective bargaining on behalf of any workers falling within the agreed bargaining unit. The Panel also decided that Unite should be invited to enter submissions on this question and invited to attend the hearing. A hearing was held on 10 June 2015 and the names of those who attended the hearing are appended to this decision.

Document supplied to the parties at the commencement of the hearing

19. The Panel noted that neither party had referred in its written submissions to the Court of Appeal decision in *R (on the application of the National Union of Journalists) v Central Arbitration Committee and others* [2005] EWCA Civ 1309 ('the NUJ case'). A copy of this judgment was supplied to the parties and the hearing was adjourned for approximately 30 minutes to allow the parties to consider the implications of the judgment for their submissions.

Summary of the Union's submissions

20. The Union explained that it had been contacted in September 2014 by workers at the Employer's bus depot in King's Lynn who wished to organise themselves and to gain recognition for collective bargaining at their workplace for the Union. The Union said that the workers had made clear that it was their union of choice and that they did not want Unite to be recognised by the company. The Union said that the Employer was aware that workers were joining the Union but did not at any time attempt to claim that there was an agreement in force

with any other union that covered King's Lynn workers. The Union said that it had contacted both the TUC and Unite before proceeding to help the workers at King's Lynn to organise in order to establish that no recognition agreement existed and that Unite, in particular, had no interest in organising for recognition within this Employer. The Union attached correspondence relating to these contacts. The Union also said that its Regional Organiser had contacted the relevant Unite National Officer, Mr Morton, by telephone in early January 2015 and that he had confirmed that Unite had no agreement with or interest in Norfolk Green. The Union submitted that there was no collective bargaining agreement in force then and there was none now in force. The Union said that the Employer, when responding to its request for voluntary recognition, had replied that "the company consults and negotiates with local staff representatives" and had not claimed, in its response to the Union's application to the CAC for recognition, that there was an existing recognition agreement in force. The Union referred to its meeting with the Employer on 9 April 2015, discussed in paragraph 15 above, and reiterated that at no point during that meeting had the Employer claimed that there was an existing recognition agreement.

21. The Union reiterated the point made in earlier correspondence that the Employer's letter of 29 April 2015 and accompanying documents had been sent after the deadline for receipt of comments and without a request for an extension. The Union submitted that the Panel should have been consistent and should have treated the Employer in the same way as the Union had been treated when its comments on a membership check conducted to assist in determining whether the application should be accepted had been submitted late and were therefore not considered. The Union submitted that the Panel's decision to consider the employer's letter and documents in this instance was inconsistent and unfair towards the Union. The Union also submitted that Unite was not a party to the claim and should not have been invited to participate in the hearing. The Union said that it had raised a complaint with the Unite General Secretary about the actions of the National Officer, Mr Morton, which the Union considered breached TUC Disputes Principles 2 and 3.

22. The Union submitted that the Employer's letter of 29 April 2015 was, in any case, irrelevant as far as consideration of its application was concerned. The Union submitted that the Employer did not claim in that letter that there was an existing agreement in force with Unite that

already covered the agreed bargaining unit; rather, the employer merely informed the CAC on 29 April 2015 of its supposed intention to enter into a recognition agreement with Unite as from 1 May 2015. The Union reiterated the points made in earlier correspondence that the letters of 14, 17 and 29 April 2015 showed that there was no agreement in force with Unite covering any workers within the agreed bargaining unit.

23. The Union said that the present circumstances differed from those in the NUJ case (see paragraph 19 above) in that there was no signed agreement between Unite and GWT. The Union stated that the 2011 agreement between Stagecoach East and Unite covered four depots but made no reference to GWT or Norfolk Green and nothing had happened to extend its operation to Norfolk Green. The Union said that there had been no meetings between Unite and the Employer or, if there had been, the workers had not been informed of any such meetings. The Union said that the exchange of letters of 14 and 17 April 2015 set out what the parties would do but did not amount to a collective agreement. The Union said that, even if there had been a collective agreement between the Employer and Unite, it would be contrary to the intention of the legislation, once the parties to an application for recognition under the Schedule had agreed a bargaining unit, to allow a subsequent recognition agreement with another union to bar that application. The Union submitted that the appropriate time to assess whether there was an existing recognition agreement was the time at which the bargaining unit was agreed between the parties.

Summary of the Employer's submissions

24. The Employer's written submission consisted of a witness statement from Andy Campbell, the Managing Director of Stagecoach East. Mr Campbell explained that when he had joined Stagecoach East in January 2004 there had been no formal written trade union agreements. He had negotiated an agreement with the Transport and General Workers' Union and that document formed the basis of the 2011 agreement referred to in paragraph 13 above. Initially the agreement covered the Cambridge and Peterborough depots as these were the only two main depots within the company at that time but in 2008 a new business had been purchased by Stagecoach and the agreement was modified through negotiations with Unite to take account

of this.⁴ The agreement was further amended in 2011, following negotiations with Unite, when the Bedford depot became part of the company. All these agreements recognised Unite as the sole union entitled to carry out collective bargaining and representation.

25. Mr Campbell further explained that when GWT trading as Norfolk Green was sold to Stagecoach in December 2013 it was initially decided that Norfolk Green should continue to operate under its own identity to maintain its local image and successful brand and Mr Dyer, the Managing Director of Stagecoach South and a founder director of GWT took responsibility for GWT. The pre-existing arrangements of determining pay and conditions through a staff association also continued. In March 2015 Mr Dyer announced his forthcoming retirement and Stagecoach UK Bus then decided to integrate Norfolk Green fully into Stagecoach. The closest operating company was Stagecoach East and the change took place with effect from 1 May 2015. Mr Campbell said that during a handover meeting Mr Dyer had informed him that the Union had submitted a statutory application for recognition to the CAC. On the same day, he and others had attended a pre-arranged meeting with Acas where they had had discussions about the constitution of the bargaining unit.

26. Mr Campbell said that on 16 April 2015 he had received the letter from Mr Morton set out in paragraph 10 above, to which he had replied on 17 April 2015 (see paragraph 11 above). He explained at the hearing that, given that Stagecoach East had had a long-standing recognition agreement with Unite, he had taken the view that the collective agreement with Stagecoach East should extend to Norfolk Green once it became part of Stagecoach East. Mr Campbell acknowledged that the 2011 agreement did not yet cover Norfolk Green but said that it was his intention that it should be extended to it. He explained that the 2011 agreement constituted an ‘umbrella’ agreement’ and that pay, hours and holidays were negotiated separately for each depot. He confirmed that the previous practice when extending the ‘umbrella’ agreement had been to discuss with Unite how it should apply to the new business in question but said that he had taken no such steps in relation to Norfolk Green pending the outcome of the decision of the CAC. In his witness statement Mr Campbell contended that there was an agreement on the part of the Employer to recognise Unite for the purposes of collective bargaining and representation

⁴ The Transport and General Workers’ Union and Amicus merged to form Unite the Union in May 2007.

of the weekly paid workforce at Norfolk Green. However in evidence at the hearing he acknowledged that there was no recognition agreement currently in place.

27. The Employer said that its agreement with the Union on the appropriate bargaining unit did not constitute an agreement to recognise the Union.

Summary of Unite's submissions

28. In a letter to the Case Manager dated 22 May 2015 Mr Morton, the Unite National Officer Passenger Transport, stated that he had learned in February 2014 that the Employer's operation had been acquired by the Stagecoach Group and on 1 April 2014 he had written to the HR Manager of UK- Bus, Stagecoach Services Ltd, asking if Stagecoach would recognise Unite at Norfolk Green for the purposes of collective bargaining. This request had been declined but it was agreed that the Employer would give controlled access to union representatives to speak to staff and give them information about membership and recruitment. Mr Morton said that in April 2015 he had become aware that Norfolk Green was from 1 May 2015 to come under the control of Stagecoach East and he had written formally to Mr Campbell on 14 April 2015 to request a recognition agreement with GWT to which Mr Campbell had replied on 17 April 2015 (see paragraphs 10 and 11 above for the text of these letters). Copies of the relevant correspondence were attached to Mr Morton's letter. Unite did not attend the hearing.

Considerations

29. The Panel is required to decide whether the Union's application is invalid within the terms of paragraphs 43 to 50 of the Schedule. In reaching its decision the Panel has considered carefully the submissions of the parties and all the other evidence before it. On the evidence available the Panel is satisfied that there is no competing application from another union and that there has been no previous application in respect of the agreed bargaining unit. The remaining issues for the Panel to decide are whether the application is invalid under paragraphs 44 or 45 of the Schedule.

Paragraph 44

30. Under paragraph 44 of the Schedule the application is invalid if the CAC is satisfied that there is already in force a collective agreement under which a union is recognised as entitled to conduct collective bargaining on behalf of any workers falling within the agreed bargaining unit. The Panel has examined the collective agreement signed in 2011 between Stagecoach East and Unite. This agreement covers four depots, which do not include Norfolk Green, and it was common ground between the parties that there was no recognition agreement in force at Norfolk Green prior to the Employer's letter to Unite of 17 April 2015 (see paragraph 11 above). The Panel has examined the Employer's letter, and the letter of 14 April 2015 from Unite which preceded it. The Panel notes that in this letter Mr Campbell confirms recognition of Unite⁵ but does not consider that this letter of itself constitutes a "collective agreement". The Panel has considered whether there is any other evidence to indicate that there is "already in force a collective agreement under which a union is recognised as entitled to conduct collective bargaining on behalf of any workers falling within the agreed bargaining unit" and has concluded that there is no such evidence. Mr Campbell explained that it was the practice, when expanding the scope of the 2011 agreement to include an additional business, to discuss appropriate amendments to that agreement with Unite to take account of the change in circumstances. This process had not been started in relation to Norfolk Green and Mr Campbell acknowledged in his evidence at the hearing that there was no recognition agreement currently in place.

31. On the basis of the evidence before it the Panel is not satisfied that there is already in force a collective agreement under which a union is recognised as entitled to conduct collective bargaining on behalf of any workers falling within the agreed bargaining unit. The Panel is also satisfied that this decision is consistent with paragraph 171 of the Schedule which provides that "[i]n 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."

⁵ The letter in fact refers to 'recognition of Go West Travel Ltd' but the intention to recognise Unite is clear from the context.

32. The Panel notes the Union's submissions that the Employer's letter of 29 April 2015 and accompanying documents should not have been considered by the Panel because they were received by the CAC after the deadline for receipt of comments by the parties on the validity tests. The Panel understands the comparison made by the Union with the approach taken by the Panel to the late receipt of the Union's comments on the membership check conducted for the purposes of its decision on acceptance. However the Panel reminds the parties that, although the submissions of the parties are important, the Panel is required to be independently satisfied that the statutory criteria have been met and must consider any material evidence it receives prior to making its decision. In this respect there may, depending on the circumstances, be a contrast to be drawn between comments or other documents which do not contain material new evidence and those which do. The Panel also notes that it may obtain evidence from sources other than the parties and may seek such evidence from a third party, including from another union, where it considers that this may assist its determination of the statutory criteria.

33. The Union specifically requested that the Panel should comment on its submission that, where the parties to an application for recognition had agreed a bargaining unit, the CAC should consider whether there was an existing recognition agreement in force at the time that agreement was made and should not take account for the purposes of paragraphs 35 or 44 of any agreement with another union that may be made at a later stage (see paragraph 23 above). The Panel appreciates the force of this submission. However the Panel notes that there is nothing in the Schedule which provides for this approach to be taken. Previous CAC Panels have concluded that they should take account of all the evidence which exists at the time that a decision is made⁶ and the Panel in this case does not disagree with this conclusion.

Paragraph 45

Paragraph 45(a)

34. Under paragraph 45(a) of the Schedule an application is invalid unless the Panel decides

⁶ See, for example, *NUJ and Sports Division MGN Ltd* (TURI/307/2003), para 37; *T and GWU and Securicor Aviation Ltd* (TURI/451/2005), para 19(4).

that members of the union constitute at least 10% of the workers in the agreed bargaining unit.

35. The membership check conducted by the Case Manager (described in paragraphs 5-6 above) showed that 59.06% of the workers in the agreed bargaining unit were members of the Union. As stated in paragraph 5 above, the Panel is satisfied that the check was conducted properly and 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 agreed bargaining unit as required by paragraph 45(a) of the Schedule.

Paragraph 45(b)

36. Under paragraph 45(b) of the Schedule, an application is invalid unless the Panel decides that 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. For the reasons given in the previous paragraph the level of union membership is 59.06%. The Panel considers that, in the absence of evidence to the contrary, union membership provides a legitimate indicator of the views of the workers in the agreed bargaining unit as to whether they would be likely to favour recognition of the Union. No such evidence to the contrary was received in this case. It is the experience of the Panel that there will also be some workers who have not joined the Union but who are likely to favour recognition of the Union.

37. 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 agreed 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 45(b) of the Schedule.

Decision

38. For the reasons given in paragraphs 29-37 above, the Panel's decision is that the application is not invalid and that the CAC is proceeding with the application.

The Panel

Professor Gillian Morris, Chairman of the Panel

Mr Michael Leahy OBE

Mr Arthur Lodge

12 June 2015

Appendix

Names of those who attended the hearing on 10 June 2015:

For the Union

Dave Marshall - RMT Organising Unit
Brian Whitehead - RMT Regional Organiser
Dave Peplow - RMT rep, Norfolk Green

For the Employer

Andy Campbell - Managing Director Stagecoach East
Zoe Paget - Operations Director, Stagecoach East
Bob Dennison - Engineering Director, Stagecoach East
June Ashton - HR Manager, Stagecoach Group's UK division
Gary Nolan - Regional Director North UK Bus