

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

**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 14 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 subsequently replaced by Professor Kenny Miller and, as Members, Mr David Bower subsequently replaced by Mrs Maureen Chambers and Ms Virginia Branney. The Case Manager appointed to support the Panel was Linda Lehan.

3. By a decision dated 11 January 2016 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. As 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 matter. The hearing was held in Newcastle on 4 March 2016 and the names of those who attended the hearing are appended to this decision.

4. The Panel is required, by paragraph 19(2) of the Schedule to the Act (the Schedule), 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. In order to accommodate the hearing the Panel extended the period within which it must make its decision to 18 March 2016.

### **Background**

5. The Employer explained that the Borghi Group was established in 1960 in Bologna and today consists of five companies: Borghi Impianti Oleodinamici, T-Erre, For, Borghi USA and Metallink. Metallink is the only UK company and has been present in the UK since 1997 with its current plant located in Crook. The company manufacture hydraulic tubes, both high and low pressure for OEM machines. The tube is cut to length, bent, end fittings are then welded to the tube and eventually the parts are painted. The whole process flows through the production plant to the warehousing facility where products are packed for delivery.

6. The Employer produced an organisation chart which showed that at the Crook site there were three Managers being Finance, Production and Logistics who all report to Luca Stella, Works Manager (Borghi Group) who in turn reports to Paola Borghi, President (Borghi Group). Under the Finance Manager there was an Accounts Assistant, under the Logistics Manager there were two Logistic Officers and under the Production Manager there were 6 Team Leaders (each leading a team of Operatives) and a Quality Technician.

7. The Employer also produced two contracts for the Panel and the Union to look at, one for a Manufacturing Operative and the other being for the Accounts Assistant.

### **Summary of the submission made by the Union**

8. The Union stated that their proposed bargaining unit was based on the grounds of where their membership was and where the desire for trade union recognition was within the business. They explained that office staff had never shown an interest in becoming Union members and all GMB members were Production Operatives working on the “shop floor” in manual roles.

9. The Union stated that they had organised a number of “gate jobs” where the Union had been outside the factory handing all employees entering information on GMB membership and recognition. During their first gate job office/administration staff took the information but on subsequent “gate jobs” information was declined by them. The Union stated that Office Staff were easily identified as all Production Operatives wore a Metallink uniform.

10. The Union said that they had held off-site meetings and all meetings had been attended by Production Operatives only, with a mixture of members and non-members.

11. The Union believed there were significant differences in both working practices and terms and conditions between the Production and Administrative staff which showed it would not be effective to include both sections of the workforce in the bargaining unit. The Union believed Metallink differentiated between the two sections both in their management and terms and conditions of employment. The Union stated that there was a difference in their hours as the office staff worked core business hours whereas the Production Operatives worked shifts and received a shift allowance.

12. The Union stated that their application was based upon management reporting lines and that Office Staff were managed by different Managers to that of the Production Operatives.

13. In response to a question from the Panel, the Union stated that if the office staff had wished to join the Union and wanted trade union recognition then they would possibly have looked at two different bargaining units due to the difference in terms and conditions.

14. Finally the Union stated that it felt that the structure of the company supported their bargaining unit and it was compatible with effective management.

### **Summary of the submission made by the Employer**

15. The Employer stated that it had been prepared to accept the proposed bargaining unit but subsequently office staff had requested to also be included and the Employer believed it to be discriminatory to exclude them.

16. The Employer stated that not everyone knew about the meetings held by the Union off site and the Accounts Assistant confirmed that had she been aware of them she would have liked to have attended to listen to what the Union had to say.

17. The Employer explained that even though the Accounts Assistant and the Logistic Officers were under a different reporting Manager there was interaction between them at all times and meetings were held everyday with the Team Leaders to discuss the day's work and the orders that had come in. The Employer explained that the Logistic Officers were in regular contact with the Team Leaders during the day taking orders for the jobs and ordering all the parts required. The Employer stated that when they were busy it was "all hands on deck" so to speak and as an example of this said that the Accounts Assistant the previous day had covered for the delivery driver and made a delivery. The Employer stated that the apart from the welding jobs, which were only carried out by the qualified Welders, all the production team covered for each other when busy.

18. In response to questions from the Panel, the Employer explained that the Team Leaders and the Operatives worked shift patterns and received a shift allowance and the office staff worked set hours and for any hours worked above this they were paid overtime. The Employer stated that all staff were paid monthly. The Employer stated that the Team Leaders and Office Staff, after having had 12 months continuous service with the Company, received a different Company sickness benefit in that the Team Leaders and Office Staff received 15 days in any 12 month rolling period whereas the Operatives received 10 days. The Employer stated that the termination clause for the Office Staff and Team Leaders was also longer than for the Operatives and the Team

Leaders and Office Staff had to sign a confidentiality clause whereas the Operatives were not required to.

19. The Employer stated the President, Paola Borghi, regularly came over for meetings with the three Managers to discuss any issues and when the last wage increase was given met with all employees and told them what it proposed. The Employer stated that all employees are treated as one team and that all members of staff, including the Managers, receive the same wage percentage increase.

20. Finally the Employer stated that the proposed bargaining unit put forward by the Union created an artificial divide in a small business which was contrary to effective management. The Employer stated that it could see no logical reason for the Accounts Assistant and two Logistic Officers to be left out of the bargaining unit as apart from their hours, their terms and conditions were identical to those of the Team Leaders who were members of the Union's proposed bargaining unit. The Employer stated that it could see why the Managers had been excluded from the bargaining unit as put forward by the Union but not why the other three people had been excluded as they were part of an integrated workforce and all worked closely together.

21. The Employer put forward as their alternative bargaining unit "All employees excluding Management".

### **Considerations**

22. The Panel is required, by paragraph 19(2) of the Schedule to the Act, to decide whether the 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 "[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." The Panel's decision has been taken after a full and detailed consideration of the views of both parties as expressed in their written submissions and amplified at the hearing.

23. The Panel's first responsibility is to decide whether the Union's proposed bargaining unit is appropriate. The Union put forward a bargaining unit which they felt consisted of a distinct and identifiable group of workers who come under the control of the Production Manager.

24. The Union relied upon the division between manual and non-manual employees and its objective was to represent the employees that were involved with the manual work which was in response to a demand for such representation. The Panel reached the view that, as far as the characteristics of the workers are concerned, the Union's proposed bargaining unit consists of an identifiable group of workers although as explained at the hearing by the Employer, notwithstanding all employees have specific tasks there is interaction on a daily basis between the Team Leaders, who are in the proposed bargaining unit, and the Accounts Assistant and the two Logistic Officers.

25. However, there are a number of issues which suggested to the Panel that the union's proposed bargaining unit was not an appropriate one. The Panel noted the physical set up of the employer's premises which enabled all staff to interact with one another on a daily basis. There was no part of the premises which was off limits to any of the workers. This coupled with the fact that all staff – production and administrative – worked closely together to ensure that orders were completed to specification and on time would suggest that the Employer regards all of its workers – with the exception of managers – as being part of the same group of workers. All staff receive the same

percentage pay increases and, if anything, the terms and conditions of the Team Leaders - who are members of the Union's proposed bargaining unit - with the exception of hours of work are the same as those of the administrative staff rather than the Production Operatives. The Panel is also concerned that were the three office and logistics staff to be excluded from the bargaining unit this would leave a very small and fragmented group outside of collective bargaining arrangements. For these reasons, the Panel has taken the view that the Union's proposed bargaining unit is not an appropriate one.

26. The Panel then considered the alternative bargaining unit put forward by the Employer being "all employees excluding management". As already indicated, the Panel noted that all employees are treated as a team i.e. the percentage wage increase is the same across the board. There are contractual differences between the Team Leaders and the Operatives and apart from the hours of work the Team Leaders are on the same contractual terms as the office staff which supports including the office workers in the bargaining unit. As previously stated the Panel feels that there is regular and significant interaction between the office staff and the Operatives and everyone helps out when necessary - an example of this was demonstrated when the Accounts Assistant helped out by making deliveries.

27. The Panel has taken into account in reaching its decision the matters listed in paragraph 19(3) of the Schedule so far as they do not conflict with the need for the bargaining unit to be compatible with effective management, in particular, the desirability of avoiding small fragmented bargaining units within the undertaking. The Panel has also taken into account all the views of the parties as summarised in this decision.

### **Decision**

28. We determine that the appropriate bargaining unit is 'All employees excluding management'.

29. As the Appropriate bargaining unit differs from the proposed bargaining unit, the Panel will proceed under paragraph 20(2) of the Schedule to decide if the application is

invalid within the terms of paragraphs 43 to 50 of the Schedule.

**Panel**

Professor Kenny Miller, Chairman of the Panel,

Mrs Maureen Chambers

Ms Virginia Branney

**17 March 2016**



## **Appendix**

Names of those who attended the hearing:

### **For the Union**

Ms Suzanne Reid - GMB Organiser

### **For the Employer**

Mr Jon Black - Production Manager

Ms Gail Ewington - Accounts Assistant