

**CENTRAL ARBITRATION COMMITTEE**  
**TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992**  
**SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION**  
**DECLARATION THAT THE UNION IS NOT ENTITLED TO BE RECOGNISED**

**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, 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 the Panel, Mr Talbot identified a possible conflict of interest and was replaced by Ms Judy McKnight CBE. Mr Wyatt retired from the CAC on 31 March 2017 and the CAC Chairman appointed Mr David Crowe as Mr Wyatt's replacement on the Panel. The Case Manager appointed to support the

Panel was Nigel Cookson.

3. By a decision dated 6 April 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 relating to the question of the determination of the appropriate bargaining unit. A hearing was held in London on 11 May 2016 and, in a decision dated 25 May 2016, the Panel determined that the bargaining unit proposed by the Union, as described in paragraph 1 above, was appropriate.

4. On 27 May 2016 the Union confirmed that it did not claim majority membership within the bargaining unit. In a letter dated 27 May 2016 the Case Manager informed the parties, in accordance with paragraph 23(2) of Schedule A1 to the 1992 Act (the Schedule), that the Panel intended to arrange for a secret ballot to be held in which the workers in the bargaining unit would be asked whether they wanted the Union to conduct collective bargaining on their behalf. The parties were also informed that, as specified in paragraph 24 of the Schedule, the Panel would wait until the end of the notification period of 10 working days before arranging a secret ballot. The parties were invited to make representations to the Panel about their preferred form of ballot and both parties did so.

5. Before the Panel had determined the form of the ballot the Employer issued proceedings for judicial review of the Panel's decision of 25 May 2016 that the Union's proposed bargaining unit was appropriate. By a judgment handed down on 10 August 2016 the claim for judicial review was dismissed by the Administrative Court.<sup>1</sup> Arden LJ granted permission for the Employer to appeal to the Court of Appeal against the Administrative Court's decision. In a decision dated 4 May 2017 that appeal was dismissed by the Court of Appeal.<sup>2</sup>

6. The CAC had been ordered by the Administrative Court to take no further steps to appoint an independent person to conduct a ballot until the matter had been determined by the Court of Appeal. Following the Court of Appeal decision this Order was discharged. The Panel noted that it had been nearly a year since the parties had given their views on the form

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<sup>1</sup> [2016] EWHC 2040 Admin.

<sup>2</sup> [2017] EWCA Civ 328.

of the ballot and asked the Case Manager to give them a further opportunity to make representations. Both parties stated their preference for a workplace ballot. The Panel, having considered the parties' views, decided that the ballot should be a workplace ballot with a postal element for those workers known in advance to be absent from the workplace on the days of the ballot in accordance with paragraph 25(4)(a) and (6A) of the Schedule. The parties were informed of this decision accordingly.

## **The Ballot**

7. Popularis Ltd was appointed as the Qualified Independent Person (QIP) to conduct the ballot. The QIP was formally appointed on 21 July 2017 and the parties were notified accordingly in a letter of the same date. The parties were informed that the postal ballot papers would be dispatched on 7 August 2017 to be returned to the QIP by no later than 13:30 hrs on 18 August 2017. The workplace ballot was scheduled to take place on 17 August 2017 between the hours of 11:30 to 13:30 and 19:00 to 21:45 and on 18 August 2017 between the hours of 06:00 to 08:00 and 11:30 to 13:30.

8. On 4 August 2017 the Employer notified the CAC that 12 workers who were due to receive a postal ballot paper would be on holiday overseas for the entire duration of the ballot period and asked if the QIP could issue the ballot papers that day instead of on 7 August 2017 as originally planned. The Panel noted the problem raised by the Employer and decided to extend the deadline for all postal votes until the close of business on 24 August 2017 and the parties were duly informed.

9. The QIP reported to the CAC on 25 August 2017 that out of 231 workers in the bargaining unit, 198 had voted in the ballot. This represented 85.71% of the eligible vote. Of those who had voted in the ballot, 56 workers (28.28% of those voting) had voted in support of the proposal that the Union should be recognised by the Employer for the purposes of collective bargaining, and 141 workers (71.21 % of those voting) had voted to reject the proposal. There was one spoilt ballot paper. The number of votes supporting the proposal that the Union should be recognised as a percentage of the bargaining unit was 24.24%.

## **Declaration that the Union is not entitled to be recognised**

10. In accordance with paragraph 29(2) of the Schedule the CAC informed both parties, on 29 August 2017, of the result of the ballot.

11. The ballot establishes that recognition of the Union is not supported by a majority of the workers voting and so, in accordance with paragraph 29(4) of the Schedule, the CAC declares that the Union is not recognised as entitled to conduct collective bargaining on behalf of the bargaining unit.

### **Panel**

Professor Gillian Morris, Panel Chair

Mr David Crowe

Ms Judy McKnight CBE

31 August 2017