

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

**The Parties:**

BFAWU  
and  
Wealmoor Limited

**Introduction**

1. BFAWU (the Union) submitted an application to the CAC dated 7 September 2017 that it should be recognised for collective bargaining by Wealmoor Ltd (the Employer) for a bargaining unit comprising: “All hourly paid employees who are retained on non-seasonal full-time or part-time contracts. We do not seek recognition in respect of seasonal workers; workers on contracts of less than 6 months duration; line leaders; supervisors or managers”. The bargaining unit was stated to be at the company’s site at the Industrial Estate, Atherstone on Stour, Stratford-upon-Avon, Warwickshire CV37 8BJ. The application was received by the CAC on 11 September 2017 and the CAC gave both parties notice of receipt of the application on the same day. The Employer submitted a response to the CAC dated 14 September 2017 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 James Tayler, Chairman of the Panel, and, as Members, Rod Hastie and Paul Gates OBE. The Case Manager appointed to support the Panel was Linda Lehan.

3. By a decision dated 17 October 2017 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 on 3 January 2018 and the names of those who attended the hearing are appended to this decision.

4. Ahead of the hearing on 3 January 2018 a letter was received from the Union's solicitor dated 14 December 2017 confirming that there had been a constructive dialogue between the parties and the issues had been narrowed down significantly. The Union's proposed bargaining unit in respect of the Atherstone site remained 'All hourly paid employees who are retained on non-seasonal full time or part-time contracts. We do not seek recognition in respect of seasonal workers; workers on contracts of less than 6 months duration; line leaders; supervisors; or managers'. The Solicitor stated that the Employer had indicated that all elements of that definition could be agreed except for whether line leaders should be included or not. The Employer believed that they should be included, and the Union believed that they should not. The Solicitor stated that it was therefore their joint intention that that was the only aspect which the parties would argue before the CAC at the hearing. In an email of the same date the Employer confirmed they had made progress on the definition of the bargaining unit and agreed with the wording of the letter received from the Union's Solicitor.

5. 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 19 January 2018.

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

6. The Union submitted that its proposed bargaining unit was appropriate. The Union stated that it wished to exclude Line Leaders (of which it believed there were approximately 41) as it considered that they were a tier of management and they did not seek recognition for management.

7. In support of their assessment the Union stated that Line Leaders had a role in the Employer's proceedings on disciplinary matters as they reported incidents to more senior management. Other managerial roles the Union believed Line Leaders perform included return to work interviews and monitoring of shop floor staff. The Union also stated that although Line Leaders would help on the lines their role was essentially to manage the line. The Union believed there to be approximately 18 lines and about 30 people on each line. At the hearing the Union accepted that Line Leaders did not perform return to work interviews.

8. The Union said that Line Leaders were incentivised to report shop floor staff to more senior management by virtue of a points system. Those reports related to 'workplace wrongdoing' such as eating whilst on the shop floor and other breaches of discipline. At the hearing the Union accepted that there was not a formal points system, but continued to contend that Line Leaders have a significant role in reporting "workplace wrongdoing".

9. The Union stated that a significant proportion of Line Leaders were related by marriage or birth to Supervisors as there was a practice within Wealmoor of hiring within families. The Union felt that that in itself built in a barrier (and thus a distinction) between shop floor staff and Line Leaders. Shop floor staff knew that a Line Leader's loyalties were to their families and managers, and also that management would support Line Leaders in disputes with staff.

10. The Union stated that their proposed bargaining unit included jobs other than shop floor workers on the National Living Wage, e.g. Quality Assistants and Forklift Drivers. Although on a slightly higher grade these workers did not supervise other employees. They report to Line Leaders directly as do shop floor workers. The Union stated that although Line Leaders were hourly paid they were on a slightly higher rate than shop floor workers. The Union said they had been advised by the workers that there was a discretionary bonus applicable to both shop floor workers and Line Leaders, however, in practice the discretionary bonus had not been awarded to shop floor workers.

11. The Union stated that their members had reported that there was a feeling of 'them and us' between Line Leaders and the shop floor staff and that the distinction between Line Leaders and shop floor workers both in terms of reality, and in the perception of the shop floor staff, was such that if Line Leaders were included in the bargaining unit it would adversely affect the Union's ability to collectively bargain for the whole.

12. The Union stated that currently there were no existing bargaining arrangements with staff and that terms and conditions were unilaterally set by management.

13. In respect of the desirability of avoiding small fragmented bargaining units within an undertaking the Union referred to **R (Cable & Wireless Services UK Ltd) v CAC** [2008] IRLR 425, where the CAC panel accepted the CWU's proposed bargaining unit of 370 field service employees (around 7% of the workforce), saying that fragmentation was not measured numerically as a proportion of the workforce but in terms of whether a bargaining unit "would divide up the workforce into numerous groups prone to compete with each other". The High Court agreed that this factor was concerned to avoid only bargaining units that were both small and fragmented: "...it is important to see whether such a unit is self-contained. Fragmentation carried with it the notion that there was no identifiable boundary to the unit in question so that it would leave the opportunity for other such units to exist and that would be detrimental to effective management."

14. The Union also referred to **Lidl Ltd v CAC** [2017] IRLR 646, where the Court of Appeal held that as a matter of ordinary English, the word "fragmented" connotes a whole which had been broken into parts and implied plurality. It has long been seen as undesirable for an employer to have to negotiate in more than one forum in respect of parts of their workforce that were not essentially different. However, paragraph 19B(3)(c) was intended to avoid fragmentation of collective bargaining, rather than prevent a situation where a union was recognised in respect of only a small pool of employees and no union was recognised in respect of the remainder. This was the case at Lidl. Lidl's concerns that only a very small proportion of staff at the same grade and location were in the bargaining unit fell instead to be considered under the more general requirement to take into account the need for the proposed bargaining unit to be compatible with effective management (paragraph 19B(2)(a)).

15. The Union submitted that there were no other workplace bargaining arrangements, and no evidence of any other applications being made or anticipated either under the Trade Union and Labour Relations (Consolidation) Act 1992 or the Information and Consultation of Employees Regulations 2004. There were therefore no issues of fragmentation.

16. The Union stated that the shop floor staff were hourly paid and on minimum wage. The site worked 24/7 although the majority of staff were on day shift which ran from 7am until the work was completed (typically 10-12 hours later). A typical shift pattern was 4 days on and 3 days off with overtime available on a day off. The shop floor workers packed vegetables and exotic fruit into punnets for retail by third parties (usually supermarkets).

17. The Union stated that the shop floor workers tended to share many commonalities in terms of workplace role, skills, national origin, language, hours, English skills, job mobility and prospects. This provided a clear boundary for the bargaining unit.

18. The Union stated that the bargaining unit proposed by the Union consisted of a coherent group of people with a common description who were presently excluded from any collective bargaining structure. The Union stated that the argument raised by the Employer that Line Leaders should be excluded from the bargaining unit was not a compelling argument as it appeared to rely simply on the fact that they were hourly paid, and took no account of their role or function within the Employer's structure.

19. The Union submitted that the workers in their proposed bargaining unit were a distinct group with specific responsibilities, work location and that the bargaining unit proposed by them was appropriate.

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

20. The Employer, at the request of the Panel, provided some background information on the Company explaining that they were importers and distributors of high quality exotic fruit and speciality vegetables. The Company supplied a diverse range of customers including the UK's leading multiple retailers, wholesale markets and the catering trade. The Company had two sites one at Atherstone and the other at Greenford in London. The products go down various lines and are sorted, weighed, quality checked, packaged, labelled, put onto pallets, dispatched and distributed. Teams are overseen by Supervisors and Line Leaders who supervise the lines and carry out regular checks. The Employer emphasised that they operate to very stringent standards.

21. The Employer stated that Line Leaders do not perform return to work interviews and that monitoring shop floor staff was “a normal function of any manager”. The Employer explained that other weekly paid employees within the bargaining unit also performed those roles:

Dispatch Team Leader (4)

Intake Team Leader (3)

Packaging Team Leader (2)

Hygiene Team Leader (1)

The Employer stated that they had 12 vacancies for Line Leaders and Team Leaders.

22. The Employer submitted that as far as they were aware no Line Leader was either married or related to any Supervisor, however, many Line Leaders had family connections either through marriage or birth with operatives.

23. The Employer said that as stated previously there were employees who performed supervisory roles who were included in the bargaining unit: i.e. Team Leaders. The Employer stated that shop floor workers include Team Leaders, Line leaders, QCs, Print room administrators and ripening technicians.

24. The Employer did not agree with the Union’s claim that only “shop floor” workers shared many commonalities. The Employer stated that there was not a clear boundary that separated the bargaining unit from Line and Team Leaders and such a segregation would be, in their opinion, hugely divisive and could lead to unhappiness amongst the workforce, which was not aligned to effective management.

25. The Employer contended that Line Leaders worked side-by-side with operatives and QCs who were all part of the same team (usually a team of 7 or more). Line leaders often helped pack and work on the lines alongside the team performing the same role on a daily basis. The Employer clarified that Team Leaders also worked alongside operatives. The Employer asserted that the Union’s suggestion of “them and us” was incorrect. Furthermore, the Employer contended that negotiating and collective bargaining with some but not all employees, working side-by-side would have a negative impact on employee relations and lead to an increase in disciplinary and grievance issues as had been seen time and time again in other organisations. The Employer stated that the divide would cause negative feeling and lead to low morale and made the bargaining unit incompatible with effective management.

26. The Employer stated that terms and conditions were based on practical and business factors and that they were engaging with employees. The Employer stated that the Union's statement that all operatives were on minimum wage was incorrect and salaries varied depending on a number of factors, as they would in any organisation. At the hearing the Employer accepted that line operatives were on National Living Wage but stated that other operatives, such as Quality Control etc, were on higher rates.

27. The Employer said that they were also rolling out a performance management process across the business that started before the Union's application. The Employer explained that the system was performance based and would eventually apply to all employees and that collective bargaining for some employees would undermine the ability to fairly reward individuals based on their performance, but instead be based on collective bargaining for fragmented areas.

28. The Employer said that for the bargaining unit to be compatible with effective management it should include all weekly paid employees at the Atherstone site. The Union's suggestion to omit over 30 Line Leaders from that unit would undermine the company's ability to manage employees who worked side-by-side in an effective way. The notion of fragmenting a bargaining unit related to not having a clear and identifiable boundary with no room for doubt as to who should fall into it. The Employer said that segregating Line Leaders from the bargaining unit would result in fragmentation and blur a clear and identifiable boundary.

29. The Employer stated that the Union had been quick to discount Supervisors on the basis that they are monthly salaried employees. The Union's main argument for that exclusion was that being monthly salaried was a clear identifiable boundary for employees to fall outside of the bargaining unit. The Employer said that that rationale should not then be used in reverse to discount weekly paid Line Leaders.

30. The Employer sought to rely on the employer's argument in *R (Bombardier Transportation UK Ltd) v Unite The Union* TUR1 957 (2016) where it was submitted that: "To have a different system for a small group of managers who worked alongside 36 other managers (and who had multiple interactions with other managers at other sites also) would lead to potential unhappiness amongst the managers and would likely lead to complaints and possibly grievances against the unequal treatment." We considered this was an example of the type of argument that the Employer wanted to put forward. The decision of the CAC was not a precedent as to how we should consider the case before us.

31. The Employer stated that Line and Team Leaders shared the same terms and conditions as their colleagues in the proposed bargaining unit.

**Union's clarification of their proposed bargaining unit.**

32. The Union stated that Team Leaders, as identified by the Employer consisting of Dispatch Team Leaders (4), Intake Team Leaders (3), Packaging Team Leaders (2) and Hygiene Team Leader (1) were included in their definition of 41 Line Leaders and were therefore excluded from their proposed bargaining unit.

**Consideration**

33. 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. 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 so, 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 it 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."

34. The Panel's first responsibility is to decide, in accordance with paragraph 19(2) of the Schedule, whether the Union's proposed bargaining unit is appropriate. The Panel should not reject the Union's proposed bargaining unit because it feels that a different unit would be more



appropriate nor, in considering whether it is compatible with effective management, should it consider whether it is the most effective or desirable unit in that context. There is no requirement on the Panel to seek to identify a more appropriate bargaining unit if it finds that the union's proposed bargaining unit is appropriate. However, we note that paragraph 2(3) of the Schedule states that "References to the proposed bargaining unit are to the bargaining unit proposed in the request for recognition". It is the bargaining unit set out in the union's request that we must first assess.

35. The views of the Employer and the Union, as described earlier in this decision, have been fully considered. They are in agreement save that the Employer does not consider that Line or Team Leaders should be excluded from the bargaining unit.

36. The Panel was persuaded that there are supervisory roles other than Line Leaders which share key characteristics with them through the supervision of operatives, including reporting to management any failure to work in accordance with the Employer's rules. These posts are not expressly excluded from the Union's proposed bargaining unit. The posts are Dispatch Team Leader, Intake Team Leader, Packaging Team Leader and Hygiene Line Leader. The Employer argued that it is incompatible with effective management to exclude them from the bargaining unit. The Union contended that the titles of Line Leader and Team Leader are interchangeable and that these posts were included within their definition of Line Leaders; which accounted for the difference in the number of Line Leaders that they relied on, 41 as opposed to the Employer stating that there were 31 Line Leaders and 10 Team Leaders. The issue of the Team Leaders not being excluded from the proposed bargaining unit was not raised by the Employer until their submission at the hearing. However, we accept that there are separate roles of Team and Line Leaders. Our view is that it would not be compatible with effective management to include Team Leaders in the bargaining unit if Line Leaders are excluded. Indeed, that was not the Union's intention. We conclude that the bargaining unit as set out in the Union's application is not appropriate.

37. Having decided that the Union's proposed bargaining unit is not appropriate the Panel's next responsibility is to decide a bargaining unit which is appropriate.

38. We focussed on the bargaining unit proposed by the Union with the addition of the Team Leader posts (i.e. the bargaining unit that the Union had meant to put forward) in comparison

with that proposed by the Employer (i.e. all weekly paid staff). That allowed us to focus on the real dispute between the Employer and Union; although we appreciate it would be open to us to fix some alternative bargaining unit.

39. The Panel considered the matters listed in paragraph 19B(3) of the Schedule, so far as they do not conflict with the need for the unit to be compatible with effective management.

40. There are no existing national or local bargaining arrangements within the company.

41. The bargaining unit would be the sole existing bargaining unit within the Employer's undertaking and there is no evidence of any demand for the creation of any further bargaining units within it. We do not accept that there is any evidence that Line Leaders and Team Leaders would wish to form a bargaining unit for the purposes of collective bargaining. The Employer's oral contention at the hearing that this might be the case was supposition and was not supported by evidence. We do not consider that there is a likelihood of creating small fragmented bargaining units within the undertaking.

42. The workers are employed at one location. We consider that the Employer's concession that staff at the Greenford site can be excluded was properly made due to their geographical separation and the lack of any evidence that they will seek to create a separate bargaining unit.

43. The Panel has taken into account the characteristics of the workers. We consider that there is a clear boundary between operatives (including Line Operatives, Quality Control, Ripening Technicians, Print Room Operatives/Print Administrator, Dispatch Operatives and Forklift drivers) as opposed to Line and Team Leaders. It is only the latter that have a supervisory function. In its written submission produced at the hearing the Employer said of Line and Team Leaders "Monitoring shop floor staff is a normal function of any manager." While the use of the word "manager" was not apt; it is consistent with the view that has been expressed by operatives to the Union that Line and Team Leaders are considered to be aligned with the interests of management. We reject the suggestions that there is some particular family connection between many Line and Team Leaders and the supervisors and, in any event, do not consider their family background or origin relevant to our deliberation. The Union accepted that Line and Team Leaders do not perform return to work interviews. The Union accepted that there is no formal points system whereby Line and Team Leaders are incentivised to report shop floor staff to more

senior management. However, we accept that their supervisory role includes monitoring and reporting any workplace wrongdoing or failure to comply with the Employer's standards. The nature of the Line and Team Leader roles is such that they are often called to give evidence when disciplinary proceedings are brought against operatives who do not fully comply with the Employer's rules. We accept that the operatives have expressed a wish to the Union that Line and Team Leaders should not be within the bargaining unit because of their supervisory role and perceived alignment with management. We accept that the operatives work alongside the Line and Team Leaders and both groups are weekly paid staff with pay calculated at an hourly rate on essentially the same terms and conditions, save as to pay. We note that the Quality Control staff report directly to the supervisors rather than to a Line or Team Leader. However, they do not have a supervisory role. Despite the fact that operatives work alongside Line and Team Leaders and the similarity of terms and conditions, save as to pay, we consider the supervisory aspect of the Line and Team Leader roles and their alignment to management has the consequence that it is appropriate to exclude them from the bargaining unit; and that to do so is compatible with effective management. While the members of the bargaining unit may be able to negotiate improvements to their pay hour and holiday it will be within management's prerogative to decide how best to incentivise Line and Team Leaders, as it currently does. It may choose to offer any improved terms and conditions of employment to Line and Team Leaders if it feels it is appropriate. We accept that the Union's bargaining unit amended to expressly exclude Team Leaders is the appropriate bargaining unit and is consistent with effective management.

44. The Panel is satisfied that its decision is consistent with the object set out in paragraph 171 of the Schedule as it will involve fair and efficient practices and arrangements in the workplace.

### **Decision**

45. We have decided that the appropriate bargaining unit is "all hourly paid employees who are retained on non-seasonal full-time or part-time contracts excluding seasonal workers; workers on contracts of less than 6 months duration; line and team leaders; supervisors or managers at the Industrial Estate, Atherstone on Stour, Stratford-upon-Avon, Warwickshire, CV37 8BJ".

46. 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 with

the terms of paragraphs 43 to 50.

Panel

Mr James Tayler, Chairman of the Panel

Mr Rod Hastie

Mr Paul Gates OBE

**12 January 2018**

## **Appendix**

Names of those who attended the hearing:

### **For the Union**

Kate Lea	-	Thompsons Solicitors
George Atwall	-	BFAWU - Trade Union Regional Officer
Lukasz Bemka	-	BFAWU – Organising Regional Secretary

### **For the Employer**

Chadi Moussa	-	Director of HR & Talent
Kishor Umarekar	-	Head of Operations
Kuldeep Chehal	-	HR Consultant