

**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:**

Unite the Union

and

XPO Logistics

**Introduction**

1. Unite the Union (the Union) submitted an application to the CAC on 29 March 2017 that it should be recognised for collective bargaining by XPO Logistics (the Employer) for a bargaining unit comprising the "Drivers" based at the Employer's site at Needham Road, Stowmarket, Suffolk. The CAC gave both parties notice of receipt of the application on 30 March 2017. The Employer submitted a response to the CAC dated 5 April 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 Professor Lynette Harris, Chairman of the Panel, and, as Members, Mr Rod Hastie and Mr Michael Leahy OBE. The Case Manager appointed to support the Panel was Nigel Cookson.

## **Issues**

3. 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.

## **The Union's application**

4. In its application the Union said that it had written to the Employer making a formal request for recognition on 13 March 2017 and that the next contact from the Employer was a conversation with the depot manager on 28 March 2017. The depot manager was positive in respect of the application but could not make a firm commitment and so accepted that the Union would go forward with the statutory process. A copy of the Union's letter of 13 March 2017 was enclosed with the application.

5. According to the Union, there was a total of 150 workers employed by the Employer with 48 of these falling within the proposed bargaining unit. The Union stated that it had 30 members within the proposed bargaining unit. Asked to provide evidence that a majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining, the Union said that it had met several times with a number of members on this issue and that of the 30 members currently in the proposed bargaining unit, the vast majority (63%) had joined in 2017 with the express intention of establishing a collective agreement.

6. When asked to give its reasons for selecting the proposed bargaining unit, the Union stated that it had been selected on the basis that a significant number of drivers had joined in a relatively short period of time with the express intention of securing a collective agreement. The Union confirmed that the bargaining unit had not been agreed with the Employer.

7. Finally, the Union said there had not been a previous application in respect of this or a similar bargaining unit and there was no existing recognition agreement that covered any of the workers in the proposed bargaining unit although the Union did add that warehouse operatives were covered by a collective agreement with the Union.

## **The Employer's response to the Union's application**

8. The Employer stated that it had received the Union's formal request for recognition on 13 March 2017. When asked what its response was, the Employer stated "XPO would consider the request".

9. When asked to give the date it received a copy of the application form directly from the Union, the Employer stated this was 29 March 2017. The Employer confirmed that it had not agreed the bargaining unit prior to having received a copy of the completed application form but when asked did it agree the bargaining unit, it answered "Yes".

10. The Employer stated that it employed 225 workers at the Stowmarket site. The Employer did not agree with the Union's figure as to the number of workers in the now agreed bargaining unit, explaining that there were currently 41 workers within the bargaining unit. It gave no reason for the difference in figures. When asked to give reasons for disagreeing with the Union's estimate of its membership in the agreed bargaining unit, the Employer answered "N/A". When asked to give reasons if it did not consider that a majority of the workers in the bargaining unit were likely to support recognition, the Employer again answered "N/A".

11. The Employer confirmed that there was no recognition agreement in place covering any of the workers in the agreed bargaining unit. When asked whether, following receipt of the Union's request, the Employer had proposed that Acas be requested to assist, the Employer answered "No".

12. Finally, when asked if it was aware of any previous application under the Schedule by the Union in respect of this or a similar bargaining unit the Employer answered "N/A".

13. Having considered the terms of the response the Panel asked the Employer to confirm whether or not it had issued a written reply to the Union's formal request letter of 13 March 2017 and if so, to provide a copy. In an email dated 5 April 2017 the Employer confirmed that its reply took the form of a verbal exchange between the site manager and the Union.

## **Considerations**

14. In determining whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 3 of this decision are satisfied. The Panel has considered all the evidence submitted by the parties in reaching its decision.

15. 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 and that it was made in accordance with paragraph 11(2) of the Schedule in that before the end of the first period of 10 working-days following the Employer's receipt of the request for recognition, the Employer failed to respond to the request<sup>1</sup>. The remaining issue for the Panel to address is whether the admissibility criteria set out in paragraph 36(1) of the Schedule are met.

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

16. In accordance with paragraph 36(1)(a) of the Schedule the Panel must determine whether members of the Union constitute at least 10% of the workers in the Union's proposed bargaining unit. In this case the Union, in its application, claimed a membership density of 62.5% based on bargaining unit of 48 workers whereas the Employer, in its response to the application, stated that there were only 41 workers in the agreed bargaining unit. However, when given the opportunity to do so, the Employer did not challenge the figure provided by the Union as to the number of members in the unit. Based on the lower figure of 41 workers in the agreed bargaining unit the membership density would be somewhat higher, at 73%. It is clear to the Panel that members of the Union constitute at least 10% of the workers in the agreed bargaining unit.

### **Paragraph 36(1)(b)**

17. The test in paragraph 36(1)(b) is whether 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. In its application the Union

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<sup>1</sup> The Employer having confirmed it responded verbally rather than in writing and the Union stating in its application that this exchange took place on 28 March 2017, which is outside of the first period of 10 working days.

stated that the vast majority had joined the Union in 2017 with the purpose of gaining recognition for collective bargaining purposes. The Employer, again given the opportunity of challenging the Union's assertion that a majority of the workers in the agreed bargaining unit would favour recognition of the Union, elected not to do so. As noted above, the number of union members is not disputed and union members constitute a majority of workers in the agreed bargaining unit.

18. In view of the above and in the absence of any evidence to the contrary, the Panel is of the view that the level of Union membership within the agreed bargaining unit provides a legitimate indicator as to the degree of likely support for recognition of the Union for collective bargaining.

19. For the reasons given, the Panel is satisfied that, on balance, a majority of the workers in the agreed bargaining unit would be likely to support recognition of the Union and the test set out in paragraph 36(1)(b) is therefore met.

### **Decision**

20. For the reasons given above, the Panel's decision is that the application is accepted by the CAC.

### **Panel**

Professor Lynette Harris, Chairman of the Panel

Mr Rod Hastie

Mr Michael Leahy OBE

18 April 2017