

**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:**

GMB  
and  
M & A Pharmachem Ltd

**Introduction**

1. GMB (the Union) submitted an application to the CAC dated 21 July 2017 that it should be recognised for collective bargaining by M & A Pharmachem Ltd (the Employer) for a bargaining unit comprising “All those engaged in production and packaging up to but not including first line managers at M & A Pharmachem Ltd, Wigan Road, Westhoughton, Bolton, BL5 2AL”. The CAC gave both parties notice of receipt of the application on 24 July 2017. The Employer submitted a response to the CAC dated 28 July 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, chairing the Panel, and, as Members, Mrs Susan Jordan and Mr David Coats. The Case Manager appointed to support the Panel was Miss Sharmin Khan but for the purposes of this decision was replaced with Linda Lehan.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 4 August 2017. The acceptance period was extended to 21 August and subsequently to 1 September 2017 in order to allow time for a membership and support

check to be carried out, the parties to comment on the results of a membership check and for the Panel to consider these comments before arriving at a decision.

## **Issues**

4. 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**

5. The Union stated that it had sent its formal request for recognition to the Employer on 6 July 2017 and that no response to their letter was received. A copy of the Union's request letter was attached to the application.

6. The Union stated that it did not know the number of workers employed by the Employer but in the proposed bargaining unit there were approximately 66 workers, of whom 24 were members of the Union. When 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 stated that they were willing to provide membership details to the CAC Case Manager on a confidential basis to enable a statistical check to be carried out in the usual way. The Union also said they were prepared to provide petition evidence to the CAC Case Manager on a confidential basis.

7. The Union stated that the reason for selecting the proposed bargaining unit was because it was a traditional bargaining unit comprising of hourly paid workers below the level of first line managers and believed it made sense and was compatible with effective management.

8. The Union stated that the bargaining unit had not been agreed with the Employer and that it was not aware of any other existing recognition agreement which covered any of the workers in the bargaining unit. The Union confirmed that it held a current certificate of independence. The Union stated that it had copied the application made to the CAC, and supporting documents, to the Employer on 21 July 2017.

9. On the 28 July 2017 a letter was received from the Union, which was copied to the Employer, confirming that they had in their possession 6 pages of petition support with some 56 names and signatures. The Union also confirmed that as previously indicated it was willing to submit the evidence to the CAC on a strictly confidential basis.

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

10. The Employer confirmed that it had received the Union's written request letter on 10 July 2017. In answer to what was their response to the request and if they responded in writing to please enclose a copy of the letter the Employer stated "N/A".

11. The Employer confirmed that it had received a copy of the application form by email from the Union on 24 July 2017.

12. The Employer stated that, before receiving a copy of the application form from the Union, it had not agreed the bargaining unit with the Union. The Employer stated that it did not agree the proposed bargaining and that the bargaining unit required refinement.

13. The Employer stated that it employed "149 – Other Industries (Pharmaceutical Manufacture)". The Employer stated that it did not agree with the number of workers in the bargaining unit, as defined in the Union's application, and that there were 86 in the Union's proposed bargaining unit.

14. The Employer stated that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit.

15. In answer to the question whether it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer said there were 86 full and part time staff below the grade of manager employed in manufacturing and packaging for M&A Pharmachem Limited.

16. As to whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer stated:

“The Company is aware that various members of staff, including a manager that has since left the Company have been encouraging other staff to join the Union. This process has been ongoing for some months, possibly as long as six months. The company believes that all staff who would wish to be represented by the Union have now signed up, for the following reasons:

- (1) The length of time the Union have had to solicit support without anything approaching 50% of the proposed bargaining unit becoming members;
- (2) The active hostility of a significant proportion of staff to attempts by the Union to encourage them to sign-up, which have included acts of a pressurised and intimidatory nature;
- (3) The good state of industrial relations and communications between staff and management despite the loss-making nature of the manufacturing side of the Company’s business, and the Company’s recent £6m investment in capital machinery to attempt to restore profitability and preserve the jobs of those in the proposed bargaining unit. At present a related company is cross-subsidising the activities carried on in the proposed bargaining unit.

Regrettably the Union have been actively soliciting support outside the Company’s site. The Company has received complaints from staff that the Union are adopting a high-pressure approach, acting in an intimidatory manner, and blocking exits from the car park onto the busy main road, causing a health and safety issue. The Company anticipates that Union membership may, in fact, decline rather than increase.

Fundamentally in the Company’s view well over half of the workers in the bargaining unit would be actively opposed to recognition and collective bargaining involving the Union; they should not be forced into such a situation against their will.”

### **The membership and support check**

17. To assist the determination of two of the admissibility criteria specified in the Schedule, namely, whether 10% of the workers in the proposed bargaining unit are members of the union (paragraph 36(1)(a)) and whether a majority of the workers in the proposed bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit (paragraph 36(1)(b)), the Panel proposed an independent check of the level of union membership and support within the proposed bargaining unit. It was agreed with the parties that the Employer would supply to the Case Manager a list of the names, addresses and job titles of workers within the proposed bargaining unit, and that the Union would supply to the Case Manager a list of its paid up members within that unit (including their name and address) and a copy of their petition. It

was explicitly agreed with both parties that to preserve confidentiality the respective lists and petition would not be copied to the other party. These arrangements were confirmed in a letter dated 11 August 2017 from the Case Manager to both parties. The information from the Employer was received by the CAC on 14 and 16 August 2017 and from the Union on 9 August 2017. The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

18. On 14 August 2017, the Employer provided the names addresses for 77 workers on an Excel spread sheet which was split into 3 lists named: “Packing”; “Manufacturing” and “Packing & Manufacturing”. On 16 August the Employer provided another spreadsheet with the names and addresses of a further 9 workers. The categories of worker on this list was not provided.

19. The combined lists supplied by the Employer showed that there were 86 workers in the proposed bargaining unit. The list of members supplied by the Union contained 25 names. According to the Case Manager’s report, the number of Union members in the agreed bargaining unit was 19, a membership level of 22.09%.

20. The Union also provided a copy of a petition which was seven A4 pages in length. each page was headed with the following statement:

*“GMB Trade Union is asking your Employer to recognise it for collective bargaining. We have to show the Central Arbitration Committee that a majority of workers in the “bargaining unit” support our application. If you do support us, please sign the petition.*

*I support recognition of the GMB Trade Union as entitled to conduct collective bargaining on pay, hours and holidays on behalf of “**all those engaged in production and packaging up to but not including first line managers at M & A Pharmachem Ltd, Wigan Road, Westhoughton, Bolton BL5 2AL**”*

21. Beneath the statement on each page was a table with 2 columns headed: “Name in Block Capitals” and “Signature”. Underneath the table on each page was the following statement:

**“This petition is for Central Arbitration Committee purposes only and will not be divulged to your Employer”.**

22. The comparison of the Union's petition with the Employer's list of workers revealed that a total of 46 workers (1 name/signature being unreadable/duplicate and 10 not appearing on the Employer's list) had indicated that they wanted the Union to be recognised which corresponded to 53.49% of the bargaining unit. 16 of the 46 were union members (18.60%) and 30 were non-members (34.89%).

23. A report of the result of the membership and support check was circulated to the Panel and the parties on 18 August 2017 and the parties were invited to comment on the results and to bear in mind the two admissibility tests set out in paragraph 36 (1)(a) and paragraph 36 (1)(b) in so doing.

### **Comments from the Union on the result of the membership and support check**

24. The Union in a letter dated 23 August stated that it had observed that the detailed analysis indicated that GMB membership was, at least, 22.09% of the lists supplied by the Employer. In respect of the likelihood of the majority of the proposed bargaining unit supporting recognition of GMB the Union stated that it had read that the CAC had calculated that to be, at least, 53.49% of the lists supplied by the Employer and therefore the tests had been adequately satisfied.

25. The Union stated that, insofar as the numbers on the Employer's lists were concerned, they wished to place on record their puzzlement with regard to those statistics for the following reasons;

1. The initial lists that the Employer submitted to the CAC Case Manager (of 14<sup>th</sup> August) appeared to have approximately 7 more workers than GMB would have anticipated.
2. The subsequent list (of 16<sup>th</sup> August), which then inflated the bargaining unit size by another 9 workers, and didn't even have a category of worker, takes the Employer's stated size of the proposed bargaining unit beyond anything that GMB recognised.

26. The Union stated that therefore, going forward, it reserved the right to make representations to the CAC in connection with the Employer's lists. The Union said that if

the application was accepted by the CAC, they would look forward to receiving the usual information from the Employer regarding categories, workplaces, and the number the Employer reasonably believed to be in each as provided for by Paragraph 18A (2) of Schedule A1.

27. No comments were received from the Employer.

### **Considerations**

28. In determining whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 4 above are satisfied. The Panel has considered carefully the submissions of both parties and all the evidence in reaching its decision.

29. The Panel is satisfied that the Union made a valid request to the Employer within the terms of paragraphs 5 to 9 of the Schedule and that its application was made in accordance with paragraph 11. Furthermore, 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 of the Schedule. The remaining issues for the Panel to decide are whether the admissibility criteria contained in paragraph 36(1)(a) and paragraph 36(1)(b) are met.

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

30. Under paragraph 36(1)(a) of the Schedule an application is not admissible unless the Panel decides that members of the union constitute at least 10% of the workers in the proposed bargaining unit.

31. The membership check conducted by the Case Manager showed that 22.09% of the workers in the proposed bargaining unit were members of the Union which the Employer did not contest. As stated in paragraph 17 above, the Panel is satisfied that this check was conducted properly and impartially and in accordance with the arrangements agreed with the parties. The Panel has, therefore, concluded that members of the union constitute at least 10% of the workers in the proposed bargaining unit as required by paragraph 36(1)(a) of the Schedule.

*Paragraph 36(1)(b)*

32. Under paragraph 36(1)(b) of the Schedule, an application is not admissible unless the Panel decides that a majority of the workers constituting the proposed bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit.

33. The Case Manager's check of the Union's petition against the list of 86 workers provided by the Employer indicated that 46 of the 57 petition signatories were identifiable as workers within the bargaining unit, a support level of 53.49%. The petition signed by these workers was clearly worded and the Employer has not disputed their validity in any respect. 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 proposed 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 36(1)(b) of the Schedule.

**Decision**

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

**Panel**

Professor Lynette Harris, chairing the Panel,

Mrs Susan Jordan

Mr David Coats

30 August 2017