

**CENTRAL ARBITRATION COMMITTEE**  
**TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992**  
**SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION**  
**DECLARATION OF RECOGNITION WITHOUT A BALLOT**

**The Parties:**

UNISON

and

Belle Vue (Manchester) Ltd

**Introduction**

1. UNISON (the Union) submitted an application dated 27 February 2017 to the CAC that it should be recognised for collective bargaining purposes by Belle Vue (Manchester) Ltd (the Employer) for a bargaining unit comprising “School Bus/Coach Drivers and Cleaners”. The location of the bargaining unit was given as The Travel Centre, Discovery Park, Crossley Road, Stockport SK4 5DZ. The application was received by the CAC on 1 March 2017 and the CAC gave both parties notice of receipt of the application on 2 March 2017. The Employer submitted a response to the CAC dated 7 March 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 Gillian Morris, Panel Chair, and, as Members, Mr David Crowe and Mr Gerry Veart. The Case Manager appointed to support the Panel was Linda Lehan.

3. By a decision dated 21 March 2017 the Panel accepted the Union's application. Although the parties had not agreed the bargaining unit prior to the Union's application, in its response to the application the Employer stated that it agreed with the proposed bargaining unit in as much as the description of the staff within it as School Bus/Coach Drivers was correct. The Employer stated that it was the principle of recognition that was in dispute.

### **Issues to be determined**

4. Paragraph 22 of Schedule A1 to the Act (the Schedule) provides that if the CAC is satisfied that a majority of the workers constituting the bargaining unit are members of the union, it must issue a declaration of recognition under paragraph 22(2) unless any of the three qualifying conditions specified in paragraph 22(4) applies. Paragraph 22(3) requires the CAC to hold a ballot even where it has found that a majority of workers constituting the bargaining unit are members of the union if any of these qualifying conditions is fulfilled. The three qualifying conditions are:

- a) the CAC is satisfied that a ballot should be held in the interests of good industrial relations;
- b) the CAC has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union (or unions) to conduct collective bargaining on their behalf;
- c) membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of union members within the bargaining unit want the union to conduct collective bargaining on their behalf.

### **The Union's claim of majority membership and submission it should be recognised without a ballot**

5. In a letter dated 21 March 2017 the Union was asked by the CAC whether it claimed majority membership within the bargaining unit and, if so, whether it submitted that it should be granted recognition without a ballot. The Union, in a letter to the CAC dated 21 March 2017, confirmed that it had a clear majority of members within the bargaining group and therefore

submitted that it should be granted recognition without recourse to a ballot. The Union stated that evidence to support the above had been submitted to the CAC as part of its original application dated 27 February 2017.

**Summary of the Employer's response to the Union's claim and submission it should be recognised without a ballot**

6. On 24 March 2017 the CAC copied the Union's letter to the Employer and invited it to make submissions of the Union's claim that it had majority membership within the bargaining unit and on the three qualifying conditions specified in paragraph 22(4) of the Schedule.

7. In an email dated 31 March 2017 the Employer stated that, in its opinion, the Union did not have the majority of members, having only 22 members out of a bargaining unit of 58 staff. The Employer stated that, of the 36 members on the list provided by the Union, two staff had left, and of the remaining 34 members, 12 had made statements to the Employer saying that they did not wish to be represented by the Union. The Employer stated that this meant that only 38% of the workers in the bargaining unit were members of the Union. The Employer stated that the number of people who had signed a statement to one of its team stating that they did not wish to be part of the Union or to have the Union recognized was nothing to do with company tactics as the Union would like the CAC to feel. The Employer stated that the Union or some of their representatives at the Employer had used bullying or intimidating tactics to recruit members and described in detail the activities of a specified driver on Facebook and elsewhere. The Employer stated that 62% of the bargaining unit not only did not want to be represented by the Union but did not wish to work in the company under circumstances of bullying and intimidation. The Employer suggested that the CAC should consider this evidence and forget any application by the Union. The Employer stated that if the Panel had any doubts they could carry out a secret ballot in which people could vote fairly without pressure.

8. The Employer attached to its email a statement from an employee complaining and reporting that he had felt intimidated and bullied by Union members into joining the Union and an extract from a Facebook page by the driver referred to in paragraph 7 above. The Employer also attached 18 printed forms signed by individual staff. Each form was on the Employer's headed paper and read as follows:

**WITHOUT PREJUDICE**

**I the undersigned do not agree/support the proposed bargaining unit or recognition of Unison the Union at my workplace Belle Vue (Manchester) Limited.**

**I previously signed a support petition in support of this matter without fully understanding the concept behind the proposal and wish my signature to be removed from this document forthwith.**

**Signed .....**

**Name (Print) .....**

**Date .....**

**Witnessed by: .....**

**Signed: .....**

15 of these statements were dated 8 March 2017; the remainder were dated 13 March 2017. 16 of the 18 were witnessed by one of the Employer's Directors.

**Summary of the Union's comments on the Employer's response**

9. On 31 March 2017 the CAC copied the Employer's email to the Union and invited it to comment on the points made by the Employer. In a letter dated 3 April 2017 the Union stated that the Employer had failed to clearly identify which, if any, of the qualifying criteria was fulfilled. The Union stated that the numbers quoted by the Employer regarding union membership and those staff who had signed the Union's petition appeared to have been misinterpreted and the Employer had confused the petition and the Union's membership density. The Union stated that, even based on the numbers quoted by the Employer, membership of the employees within the bargaining unit remained a clear majority. The Union noted that the Employer had claimed that there were 58 within the bargaining unit, a figure which the Union believed to be too high as it included ad hoc staff and managers with driving

competencies. The Union stated that the Employer had identified that two members of staff within the bargaining unit had left the business, reducing that number to 56, and of the two staff mentioned who had left one was a Union member. The Union stated that it currently had 40 members within the bargaining unit of 56 which was over 70% of employees within the bargaining unit.

10. The Union stated that as an organisation it did not tolerate or condone bullying and intimidation of any kind and worked hard to challenge and stop this kind of behaviour within workplaces and wider society. The Union stated that it was very concerned about the behaviour exhibited by the company since its original application had been submitted to the CAC. The Union stated that the counter - petitions referred to in paragraph 8 above were very concerning and that it was worried about the forceful pressure applied to staff to sign those documents. The Union stated that the 'witnessing' of those documents supported its concerns about the hostile environment in which they were obtained, as did the close proximity of dates on which they were signed, which clearly demonstrated a pattern of individual staff members being spoken to one by one and coerced into signing. The Union stated that this confirmed the anecdotal evidence supplied by its members. The Union stated that it noted that the statement from an employee complaining of intimidation and bullying by Union members referred to in paragraph 8 above was from the brother of the Employer's Managing Director.

### **Summary of the Employer's additional comments**

11. On 4 April 2017 the CAC copied the Union's letter to the Employer. The Employer, in an email dated 4 April 2017, acknowledged that the statement from an individual employee referred to in paragraph 8 above was made by a relative of the Transport Director but that a former Union representative had expressed the same sentiments and that a number of its team were prepared to make private statements if required. On 4 April 2017 the CAC copied the Employer's email to the Union and informed both parties that it did not wish to receive any further comments or submissions from either party at that stage.

### **The Membership Check**

12. In order to be satisfied that a majority of the workers constituting the bargaining unit were members of the Union the Panel proposed a check to be undertaken by the Case Manager of

the level of union membership within the bargaining unit. It was agreed with the parties that the Employer would supply to the Case Manager a list of the names, dates of birth and job titles of workers within the bargaining unit, and that the Union would supply to the Case Manager a list of the names and dates of birth of its paid up members within that unit. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists would not be copied to the other party. These arrangements were confirmed in a letter dated 7 April 2017 from the Case Manager to both parties. The information from the Union was received on 7 April 2017 and from the Employer on 7 April 2017. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

13. The list of workers supplied by the Employer contained 60 names. The list of members supplied by the Union contained 38 names. According to the Case Manager's report, the number of Union members in the bargaining unit was 37, a membership level of 61.67%.

14. The report of the result of the membership check was circulated to the Panel and the parties on 10 April 2017.

### **The Hearing**

15. In order to assist the Panel to determine the issues specified in paragraph 4 above the Panel decided to hold a hearing. The parties were invited to supply the Panel with, and to exchange, written submissions prior to the hearing. The hearing was held in Manchester on 3 May 2017 and the names of those who attended the hearing are annexed to this decision

### **Matters clarified at the beginning of the hearing**

16. At the beginning of the hearing the Panel Chair said that the Panel had noted that the Employer had stated in its written submissions that specified individuals within the bargaining unit had resigned and asked the Employer to confirm whether they had, in fact, now left the company. The Employer confirmed that three workers within the bargaining unit had left its employment since the membership check referred to in paragraph 12 and 13 above had been conducted.

## **Summary of the Employer's submissions**

17. The Employer submitted that for good industrial relations a secret ballot of the staff in the bargaining unit should be held as it believed that this was the only true way to have the staff view of whether the Union was their choice of representation.

18. The Employer explained that it had been in business for 20 years and had 70 vehicles, 50 of which were school buses, the remainder being used for corporate and tourist activities and special events such as weddings. The Employer stated that it had more than 40 contracts for schools in the Greater Manchester area. The Employer said that over the last five years the business had grown considerably. The Employer said that it had an excellent team of drivers and a fleet which was maintained above industry standards. The Employer said that it had invested heavily in its fleet and in driver training and that it instituted audits designed to identify where its business could be improved. The Employer said that pay rises for drivers were based on individual performance. The Employer said that some drivers who had not met its timekeeping and performance standards had been dismissed or given warnings but that three or four people who had previously been dismissed had been re-employed and given additional training as the Employer appreciated that there may have been personal reasons for poor performance. The Employer said that all its drivers were on first-name terms with managers and that it had excellent lines of communication with staff. The Employer said that a driver had approached it a while ago to suggest having a driver representative to represent the drivers and that a Facebook page had been started but that this idea had fallen by the wayside. The Employer said that it had been surprised to receive the Union's request for recognition.

19. The Employer stated that after weeks of discussion with its driver team, it appeared that the majority of the team were misled by some of the staff who wished to be a union representative. The Employer stated that the team believed that the Union would represent them in terms of pay and hours but after meetings and discussions believed that there was a hidden agenda to discredit the company and cause friction between the people in the bargaining unit and the management. The Employer said that individuals who challenged this view were bullied and intimidated and that people had left the company because of the intimidation, with others set to leave in the coming weeks. The Employer said that it had numerous people going on record saying that they had been constantly bullied who wished to remain anonymous, and even people signing paperwork stating they did not wish the Union to be recognized as a

bargaining unit. The Employer said that some employees may like the idea of being part of a union but they had categorically stated that they did not wish the Union to be recognized as a bargaining unit on their pay and hours. The Employer contended that one of the Union's own representatives had told senior management that recognition was not needed and that the two other Union representatives at the company had a different agenda including strikes. The Employer gave a breakdown of its staff dated 25 April 2017 and submitted that if there were people on the list who still held a union membership, it was not because they wanted Unison to be recognized as a bargaining unit and that this was why a secret ballot should be held.

20. The Employer stated that of the 59 workers in the bargaining unit as of 25 April 2017, 34 were Union members of whom 13 had expressed a desire to 'sign out'/ leave. The Employer summarized the position in its view as follows:

- Some drivers wish for recognition of the Union
- Some drivers originally wanted recognition but now do not
- Some drivers wish to join a union but don't want recognition as a bargaining unit
- Some drivers have experienced intimidation and still do today
- Some drivers have left and/or are leaving due to intimidation from colleagues
- The Employer had 82 staff of 25 April 2017, of whom 59 were in the bargaining unit of drivers and valeters.
- 34 staff originally joined the Union and wanted the Union recognized as a bargaining unit.
- 13 staff have signed to come out of the Union being recognized. The documentation for this had been submitted previously on two occasions.
- This leaves 21 staff in our opinion who want recognition out of 59
- This leaves only 36% who want the Union recognized.
- The Union may have claims to 58% membership but this includes staff who want a union membership but not recognition and staff who want nothing to do with the union but fear signing out over intimidation from colleagues.

21. The Panel questioned the Employer about the circumstances in which the printed forms referred to in paragraph 8 above had been drafted and completed. The Employer stated that one of its directors had drafted the printed form in response to individual workers asking how they could make it clear that, even if they had signed the Union's petition in favour of recognition, they did not in fact support recognition of the Union. The Employer stated that other workers had then followed in signing these forms without any pressure from management.



22. The Employer said that it wanted what was best for the business. The Employer said that it was currently receiving mixed messages from workers and that the only way of resolving the matter was by a secret postal ballot.

### **Summary of the Union's submissions**

23. The Union submitted that the initiation of a ballot to establish recognition at this stage would further deteriorate current industrial relations with the Employer. The Union stated that it had consistently raised its concerns with the CAC regarding the increasing pattern of bullying and victimisation towards trade union members and representatives by senior management within the Employer. The Union stated that intimidation and coercion began immediately after its membership details were shared with the employer following the CAC application, had been exacerbated since that date, and was progressively getting worse, and that to prolong the process through a ballot period would only leave members susceptible to further actions of bullying, intimidating and coercive behaviour from the Employer. The Union alleged that its members had been subjected to threats and ad hoc disciplinary procedures based upon their trade union membership as well as coercive and intimidating pressure to leave the Union and publically renounce the Union's recognition application. The Union stated that those interviews often took place in a hostile and aggressive atmosphere, contributing to some members signing counter - petitions under severe duress. The Union stated that the 'witnessing' of those documents supported their concerns about the antagonistic environment in which they were obtained, as did the close proximity of dates on which they were signed, which clearly demonstrated a pattern of individual staff members being spoken to one by one and coerced into signing. The Union stated that this confirmed the anecdotal evidence supplied by their members. In its written submission the Union specified continuing acts of victimisation and detriment to which it alleged its representatives within the Employer had been subject. At the hearing, however, the Union said that it wanted to establish industrial relations with the Employer and did not wish to reignite the flames by repeating these allegations in this context.

24. The Union stated that it believed that the Employer's accusations of bullying and intimidation by its representatives were baseless and without foundation and that, to date, no firm evidence had been provided to support those assertions other than a statement written by a brother of one of the Directors. The Union stated that if the Employer were able to produce any evidence of that nature, the Union would investigate and act upon it. The Union stated that

it did not tolerate or condone bullying or intimidation of any kind and indeed worked hard to challenge and stop that kind of behaviour within workplaces and wider society.

25. The Union submitted that there was no credible evidence of union members within the Employer not supporting the Union conducting collective bargaining on their behalf and that all its members at the Employer were in favour of both individual and collective representation and recognition. The Union stated that, as outlined in paragraph 23 above, it had serious concerns over the integrity and credibility of the counter – petition constructed by management and the hostile and coercive environment in which management forced staff to sign the documents in question. The Union noted that union membership within the bargaining group had remained robust and stable, as demonstrated in the evidence from their membership system provided to the CAC in their original application to the CAC and again on April 7 2017 for the purposes of the membership check (see paragraphs 12 and 13 above). The Union pointed out that, even on the basis of the Employer’s figures for the bargaining group (which the Union disputed), it still had 61.67% in membership, a figure significantly over the threshold required to achieve recognition.

26. The Union stated that no issues had been raised regarding the circumstances in which its members within the Employer had joined the Union and that this was evidenced in the significant majority retaining their membership through a period of sustained coercion and pressure to withdraw by the Employer. The Union stated that there were no issues concerning the length of time for which their members had been members.

27. The Union stated that if a ballot were to be held it would favour a postal ballot as the method which would ensure confidentiality, privacy and integrity of the process, but the Union contended that recognition without a ballot would be in the best interests of both parties.

## **Considerations**

28. The Act requires the Panel to consider whether it is satisfied that the majority of the workers constituting the bargaining unit are members of the Union. If the Panel is satisfied that the majority of the workers constituting the bargaining unit are members of the Union, it must then decide if any of the three conditions in paragraph 22(4) is fulfilled. If the Panel considers that any of them is fulfilled it must give notice to the parties that it intends to arrange for the

holding of a secret ballot.

29. The membership check issued by the Case Manager on 10 April 2010, described in paragraphs 12 and 13 above, showed that 61.67% of the workers in the bargaining unit were members of the Union. The Panel is satisfied that this check was conducted properly and impartially. The Employer confirmed at the hearing that three employees had left the company since that check was conducted. The Panel is satisfied that this reduction in the number of workers in the bargaining unit does not substantially affect the result of the check and is satisfied that the majority of the workers in the bargaining unit are members of the Union.

30. The Panel has given detailed consideration to each of the qualifying conditions laid down in paragraph 22(4) of the Schedule.

31. The first condition is that the Panel is satisfied that a ballot should be held in the interests of good industrial relations. The Panel considered carefully the arguments put forward by both parties and came to the view that it was not satisfied that a ballot should be held in the interests of good industrial relations. The Panel is therefore satisfied that this condition does not apply.

32. The second condition is that the CAC has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the Union to conduct collective bargaining on their behalf. On 31 March 2017 the Employer submitted 18 printed forms to the CAC with the following text:

**WITHOUT PREJUDICE**

**I the undersigned do not agree/support the proposed bargaining unit or recognition of Unison the Union at my workplace Belle Vue (Manchester) Limited.**

**I previously signed a support petition in support of this matter without fully understanding the concept behind the proposal and wish my signature to be removed from this document forthwith.**

**Signed .....**

**Name (Print)** .....

**Date** .....

**Witnessed by:** .....

**Signed:** .....

15 of these forms, dated 8 March 2017, had been submitted previously by the Employer in response to a petition in favour of recognition attached by the Union to its application to the CAC. At the time of the Panel's decision on whether the application should be accepted 12 of the 15 workers who signed these forms appeared on the list of members supplied by the Union. An additional three statements, dated 13 March 2017, were included in the 18 submitted by the Employer to the CAC on 31 March 2017.

33. The Panel considers that it has evidence from a "significant number of the union members within the bargaining unit that they do not want the union to conduct collective bargaining on their behalf". The remaining issue for the Panel to determine is whether it considers this evidence to be "credible".

34. In its response to the Union's application the Employer alleged that there had been numerous reports of intimidation and bullying of staff members by a small minority of Union members working within the bargaining unit. The Employer said that this led it to submit that there was not the level of support for recognition suggested by the Union's petition and that support for recognition had not been freely given. The Employer said that the 15 printed forms dated 8 March 2017 had been signed by individual staff who the Employer said had requested to be withdrawn from anything to do with the Union. For its part the Union denied that coercion or intimidation had taken place in obtaining signatures for its petitions and said that members had been coerced by senior managers within the Employer into signing a counter-petition with implied threats and duress. The Panel was not, in the event, required to make any finding as to the reliability of either the Union's petition or the documents submitted by the Employer withdrawing support for recognition at the acceptance stage of this application.<sup>1</sup>

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<sup>1</sup> TURI/998/2017, decision of 21 March 2017, paragraphs 23-26.

35. At the hearing on 3 May 2017 the Employer stated that one of its directors had drafted the printed form in response to individual workers asking how they could make clear that, even if they had signed the Union's petition, they did not, in fact, support recognition of the Union. The Employer said that other workers had then followed in signing these forms without any pressure from management. The Union repeated its contention that individuals had been coerced into signing these forms by the Employer. There are, therefore, conflicting accounts before the Panel as to the circumstances in which the signatures to these printed forms were obtained. However it is undisputed that the printed forms appear on the Employer's notepaper; that the text is identical in every case; and that all but two were witnessed by one of the Employer's directors. After careful consideration the Panel has concluded that, on the balance of probabilities, the Panel does not consider the evidence provided by the Employer to be as credible as paragraph 22(4)(b) requires.

36. The third qualifying condition is that membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the Union to conduct collective bargaining on their behalf. No such evidence has been produced, and this condition does not apply.

### **Declaration of recognition**

37. The Panel is satisfied in accordance with paragraph 22(1)(b) of the Schedule that the majority of the workers in the bargaining unit are members of the Union. The Panel is satisfied that none of the conditions in paragraph 22(4) of the Schedule are met. Pursuant to paragraph 22(2) of the Schedule, the CAC must issue a declaration that the Union is recognised as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit. The CAC accordingly declares that the Union is recognised by the Employer as entitled to conduct collective bargaining on behalf of the bargaining unit comprising "School Bus/Coach Drivers and Cleaners".

### **Panel**

Professor Gillian Morris, Panel Chair

Mr David Crowe

Mr Gerry Veart

12 May 2017

## **Appendix**

List of those attending on behalf of each of the Parties

### **UNISON**

Mr Vic Walsh - UNISON Regional Organiser

Mr Michael Booth - UNISON Regional Organiser

### **Belle Vue (Manchester) Ltd**

Mr Ian Bragg - Director

Mr Philip Hitchen - Director