

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

**The Parties:**

Unite the Union  
and  
Wheelbase Engineering Limited

**Introduction**

1. Unite the Union (the Union) submitted an application to the CAC dated 30 March 2017 that it should be recognised for collective bargaining by Wheelbase Engineering Limited (the Employer) for a bargaining unit comprising “All shop floor workers excluding 2 foremen”. The CAC gave both parties notice of receipt of the application on 3 April 2017. The Employer submitted a response to the CAC dated 7 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 Kenneth Miller, Chairman of the Panel, and, as Members, Mr David Bower and Ms Virginia Branney. The Case Manager appointed to support the Panel was Kate Norgate.
  
3. By a decision dated 8 May 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. At the end of this period the Union, in an e-mail dated 5 July 2017, explained that the parties wished to meet to discuss voluntary recognition and in view of this requested

that the statutory procedure be stayed until 30 June 2017. By e-mail dated 6 June 2017 the Employer also requested a stay in the process. In line with the CAC policy of helping parties, where possible, reach voluntary agreements outside the statutory process the Panel was happy to accede to the Union's request and gave notice, by way of a letter dated 6 June 2017 that proceedings would be stayed until 30 June 2017. On 5 July 2017 the Union informed the CAC that the discussions had broken down and the parties had been unable to reach a voluntary agreement. The stay was therefore lifted and the statutory process resumed.

4. As the parties were also unable to reach agreement on the appropriate bargaining unit, 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 25 August 2017 and the names of those who attended the hearing are appended to this decision.

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 8 September 2017.

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

6. The Panel Chairman opened the hearing by asking the Union to clarify its proposed bargaining unit, and specifically whether Foremen were excluded as the Union's application had referred to "All shop floor workers excluding 2 foremen" whereas the Union's submissions referred to "All shop floor workers excluding foremen". The Employer, in its written submissions, had also stated that there were three Foremen at the site and questioned why the Union would exclude two of the Foremen but include the third Foreman? The Union stated that at the time of submitting its application it believed there were only two Foremen at the site hence its reason for specifying the number of Foremen within its description. The Union did not know the current number of Foremen at the site, but clarified that its proposed bargaining unit excluded all Foremen.

7. The Panel also sought clarification from the Employer as to whether the workers within the proposed bargaining unit would be required to work at its recently acquired site in

Chesterfield. The Employer confirmed that its new site in Chesterfield was a separate business that was run under a different name.

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

8. The Union explained that in January 2017 it was approached by 5-6 members from the shop floor who enquired about recognition of the Union. The Union informed those members that they should decide who is in the proposed bargaining unit and then notify the Union. It also informed those members that the Union would aim for 50% membership within the proposed bargaining unit. The Union stated that the members drive for recognition was prompted by health and safety concerns on the site, an unfair wages structure, and lack of equality in regard to the sick pay scheme.

9. The Union stated that its proposed bargaining unit includes all shop floor workers excluding foremen. The Union considered that this accords with the management structure within the company and it was a sensible and coherent group. All other employees within the company were management or office staff.

10. The Union submitted that if the bargaining unit was extended to include all employees within the company, it would include both management and directors and would lead to conflicts of interest, both in terms of negotiating terms and conditions and in representing members individually and collectively. The Union therefore believed it would be inappropriate to extend the bargaining group beyond those employees already identified by the Union as forming part of the bargaining unit.

11. The Union stated that it believed there were no existing local bargaining arrangements within the company.

12. The Union submitted that its proposed bargaining unit encompassed all shop floor workers, who, whilst they carried out different roles, were all part of the shop floor process. The Union stated that no manual workers had been excluded from its proposed bargaining, and the only exclusions in respect of the company organisation were office staff and management. In response to concerns raised by the Employer with regards to feedback it had received from the shop floor that Unite would negotiate the same rate of pay for all workers, the Union

assured the Employer that it would inform the workforce that it is about fairness and not pay parity for all workers. The Union also informed the Employer that it could also assist with any health and safety matters.

13. The Union stated that all workers in the proposed bargaining unit were based on a single site.

14. Finally, the Union explained that it had attempted to discuss a voluntary agreement with the company but the employer had refused this offer. The Union stated that despite this it still wished to pursue the voluntary route again should the Employer wish to engage in further talks.

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

15. By way of background the Employer explained that Wheelbase Engineering Limited was a long established family owned business that in the early days modified or re-engineered the wheelbases of truck chassis. The Employer explained how the business had evolved to ensure compliance with legislation and meet the increasing demands and subsequently the company was now capable of offering the same service levels to more demanding customers, purchasing chassis from a world market dominated by Europe and the Far East.

16. The Employer explained that due to the industry and client demand it had developed its operations to suit the market place offering a wider portfolio of products within the transport industry, and this included its recent purchase of Abel Systems Ltd in Chesterfield. The Employer explained that the company now offered a total service which it considered to be unique within the market place and all its disciplines were carried out under one roof. This had created a dynamic and multi-skilled team and included shop floor workers and office workers who all interact with one another.

17. The Employer proposed an alternative bargaining unit that comprised “All shop floor workers and office based workers including three Foremen”. The Employer explained that it employed approximately 64 workers of whom 49 were in the Union’s proposed bargaining unit. The Employer stated that those workers outside of the Union’s proposed bargaining unit consisted of the following roles: 3 Foremen, 1 Accountant (also responsible for Payroll and HR), 1 Administrator, 1 Receptionist, 4 Engineers (excluding the Director), 2 Purchasers, 1

Sales (Director). There were 2 Managing Directors within the company.

18. The Employer referred to examples of the Terms and Conditions of Employment for shop floor and foremen, administration and office staff, copies of which it enclosed with its submissions. The Employer submitted that there were minor differences in the terms and conditions of employees throughout the company. For example, office staff are paid monthly and receive 1 week sick pay. Shop floor staff are paid weekly, receive overtime rates of pay after their normal weekly hours had been worked and they are also eligible to receive an attendance bonus. The sick pay entitlement for shop floor staff is statutory sick pay for the period of illness. Both shop floor and office staff also have minor differences in their working hours and notice provisions. The Employer stated that all staff were in The People's Pension scheme.

19. The Employer submitted that the bargaining unit proposed by the Union represents a smaller number of employees and creates an artificial divide within the business and it believed this was contrary to effective management. As the other members of staff are on the same terms and conditions with small exceptions, in order to deal with collective decisions, the bargaining unit would present a divide between shop floor and office employees, which would be detrimental to the company. The Employer stated that as it was a small business there were no formal consultative arrangements in place and if information needs to be shared, discussions would take place on a daily basis. The Employer stated that if the shop floor wanted something done in a certain way that was safety related or to industry standards, it believed collective bargaining would bring in an additional level of discussion.

20. The Employer explained that the wages structure was based on skill level as it needed to attract individuals with expertise to the business. The Employer referred to the "Employee Appraisal" document, a copy enclosed with its submissions. This document set out performance targets for assessment on areas such as attendance and punctuality, team working and volume of work etc. The Employer stated that the appraisal was the same process and standard for both shop floor and office staff. The Employer believed that some employees, who were asked to join the Union, were wrongly informed that the Union would represent them in terms of everyone having the same pay grade. The Employer also responded to a point made by the Union that five to six of its members had notified the Union that there were a number of safety issues on the site. The Employer stated that a recent health and safety inspection had

taken place during which it received three improvement notices, and that in each case appropriate remedial action had now been put in place.

21. The Employer explained that the business operated with a flat-line management structure whereby all employees are involved in the running of the business. Due to its technical nature it cannot operate without the integration of all staff. The Employer stated that there were however a number of Key Workers within the business who received a higher rate of pay. A shop floor worker would approach a Key Worker as their point of contact for advice before going to the Foreman.

22. It was the Employer's view that due to the technical nature of the business it required full and constant interaction between the shop floor and those departments outside the Union's proposed bargaining unit.

23. The Employer stated that it did not understand why the workers who had requested the Union's representation had chosen to exclude the workers in administrative roles, drawing office, and reception roles, all of which contribute to the effective running of the company.

### **Considerations**

24. 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 appropriate, to decide in accordance with paragraph 19(3) a bargaining unit which is appropriate. Paragraph 19B(1) and (2) states 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 he 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.” 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.

25. 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. 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. The Panel considers that in this case the Union’s proposed bargaining unit is compatible with effective management and therefore appropriate. The Panel has not been persuaded by the arguments put forward by the Employer that the Union’s proposed bargaining unit would be incompatible with effective management of the business and that (were the Union to be recognised) collective bargaining on pay, hours and holidays would impact detrimentally on health and safety and other legal standards, product quality, and team working. . The proposed bargaining unit consists of a distinct and identifiable group of workers, who are engaged in manual work. Those outside the Union’s proposed bargaining unit are non-manual workers. The nature of the work undertaken by the workers alone highlights the difference between them as a group and the Foremen and office staff that the Employer seeks to include. The workers inside the proposed bargaining unit share the same terms and conditions of employment. They are paid weekly, receive overtime payments and are eligible for receipt of attendance bonus and are covered by different sick pay provisions compared to those outside the bargaining unit.

26. The Panel has 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. The views of the Employer and the Union, as described earlier in this decision, have been fully considered. There are no existing national and local bargaining arrangements within the company. The bargaining unit does not to give rise to fragmentation. The Panel has taken into account the characteristics of the workers and, all of the workers are employed at one location. The Panel is satisfied that its decision is consistent with the object set out in paragraph 171 of the Schedule.

## **Decision**

27. The Panel's decision is that the appropriate bargaining unit is that specified by the Union in its application, namely "All shop floor workers excluding foremen".

## **Panel**

Professor Kenneth Miller, Chairman of the Panel

Ms Virginia Branney

Mr David Bower

**08 September 2017**



## **Appendix**

Names of those who attended the hearing:

### **For the Union**

Mr Terry Burns - Unite the Union Regional Organiser

### **For the Employer**

Mr Simon Pickles - Managing Director

Mr Lee Nuttall - Design Engineer

Mr Alan Dickinson - Foreman