

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

The Parties:

RMT

and

Profile Security Services Ltd

Introduction

1. RMT (the Union) submitted an application to the CAC dated 30 August 2017 and received by the CAC on 1 September 2017 that it should be recognised for collective bargaining by Profile Security Services Limited (the Employer) for a bargaining unit comprising “Security Officers employed by Profile Security Services Ltd, which include mobile supervisors, box officers and gate officers” and the location for which was “Harwich International Port”. The CAC gave both parties notice of receipt of the application on 1 September 2017. The Employer submitted a response dated 8 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 Professor Linda Dickens MBE as chair of the Panel, and, as Members, Miss Mary Canavan and Mr Keith Sonnet. The Case Manager appointed to support the Panel was Miss Sharmin Khan.

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 a hearing that would be held to assist the Panel with its duty to determine the appropriate bargaining unit. The parties' written submissions were provided and exchanged in advance of the hearing date. In this case the Panel accepted a request for the initial hearing date of 7 December 2017 to be postponed. The hearing was held on 15 January 2018 and the names of those who attended the hearing are appended to this decision. The Panel has extended the determination period to allow time for the Panel to hold the hearing, consider all the evidence provided by the parties before arriving at a decision and to finalise its written decision. The initial determination period expired on 6 December 2017 and the final extension ended the determination period on 16 February 2018.

Issues for consideration by the Panel

4. 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. 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 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."

5. Summaries of the views of each party relating to the above provisions as expressed in their written submissions and as amplified at the hearing follow.

Summary of the Union's Submission

6. The Union's proposed bargaining unit set out in its application was: Security Officers employed by Profile Security Services Ltd at Harwich International Port, including mobile supervisors, box officers and gate officers. After acceptance of the application, in its e-mail to the Union and the CAC dated 21 November 2017, the Employer provided the specified information, relating to the workers in the Union's proposed bargaining unit as required by paragraph 18(A) of the Schedule. The e-mail informed that there were 4 Duty Managers, 4 Mobile Supervisors and 31 Security Officers in the proposed bargaining unit. The Union argued that its proposed bargaining unit was not a small fragmented one.

7. For the benefit of the Panel, the Union explained that the request for recognition was as a result of an approach by about 8 or 9 or so of the security workers in the proposed bargaining unit. It had not been organising on site. Discussions took place at that time to help the Union understand what might be an appropriate bargaining unit and what the issues were. It was agreed that the Union would request recognition on behalf of the Security Staff, the Mobile Supervisors and the Duty manager and a petition was filled out.

8. The Union contended that the workers covered by its proposed bargaining unit formed a distinct and cohesive team of Profile workers within the Harwich Port location. Harwich International Port was a busy multi-purpose port providing services for passenger and freight travel, the main user of which was Stena Line ferry services. The proposed group of workers had a specific set of characteristics and were an identifiable, specific group of employees who worked as a closely knit team.

9. The Security Officers included front line security staff who were located at various positions on the port premises, carrying out manned guarding roles. Mobile Supervisors made regular visits to liaise with Security Officers at each location. Mobile Supervisors were expected to take over Security Officers' duties or assist as and when the situation required.

10. The Duty Managers organised and co-ordinated the activities of Security Officers and Mobile Supervisors. The Duty Managers also physically attended any location as and when Security Officers and Mobile Supervisors needed their assistance.

11. The workers in the proposed bargaining unit worked a variety of shift patterns to cover all the hours the port was in operation. The Security Officers organised and carried out the following licensable front line security duties:

- Controlling and directing port traffic
- Inspecting and searching vehicles
- Inspecting and searching freight and luggage
- Inspecting and searching drivers and passengers

12. The Union did not believe that it would be appropriate to include other grades of staff in the bargaining unit for collective bargaining purposes because the nature and requirements of these duties. Most significantly was the security guarding duties that could not be undertaken without specialist training and licensing. It was a requirement for them to hold front line security licences authorised by the Security Industry Authority under the provisions of the Private Security Industry Act 2001. They were required to have their licenses with them at all times when carrying out their duties. They could not undertake their duties without having the licence in their possession. Licenced Security Officers had to abide by SIA conditions. Contravening these licence conditions was a criminal offence under Section 9 of the Private Security Industry Act 2001. Prosecution for breaches of licensing conditions could potentially result in a custodial sentence or a fine of up to £5000. In order to gain an SIA licence, Security Officers had to take a week long training course to achieve a security qualification recognised by the SIA. Security Officers then had to apply for a SIA front line licence. If accepted, after the relevant checks (such as a CRB check) were completed, an SIA front line security license could be awarded to them. Licensed Security Officers had to pay £220 for the licence which had to be renewed every three years. The costs were paid by the Security Officers themselves, not by the Employer. The fact that Security Officers had to be licensed in this way distinguished them from other workers in the organization.

13. Security Officers were also trained to operate the x-ray inspection equipment, used to inspect all passengers for forbidden items before granting access to the passenger lounge. No other employees operated this equipment. Security Officers could also, when necessary, refuse individuals or vehicles access to areas of the Port. They were also required to attend regular briefings with security experts from government organisations such as Special Branch and Border Force. The briefings updated Security Officers on terrorist threats and the best way to detect and prevent terrorist actions. Only licensed security staff were required to attend these briefings. The Security Officer team performed an extremely important and challenging role in making sure Harwich International Port was a safe and secure environment. It was not appropriate to include other types of workers in the bargaining unit.

14. To include Customer Service Assistants (CSAs) in the bargaining unit, as proposed by the Employer, would create practical difficulties. It would mean subsuming a small group of workers who did not possess specialist training and qualifications into a much larger group of workers who did possess these qualifications. CSAs were not required to undergo specialist training or achieve any industry recognised qualification or licence. When conducting collective bargaining it would be difficult to ensure fair outcomes for the smaller group. The characteristics and duties of the CSAs were fundamentally different to the workers in the proposed bargaining unit. Security Officers were employed to inspect and challenge passengers and inevitably dealt with confrontational situations. CSAs were employed to provide assistance such as giving passengers information like directions and times of sailings. CSAs were described as “the friendly face” of the organisation whose job it was to make the passengers’ visit to the port and their journey, as pleasant as possible. CSAs employed by Profile Security Services Limited worked with and carried out the same duties as the CSAs employed by Stena Line. The Employer’s CSAs were rostered and teamed with the CSAs employed by Stena Line. They did not work in teams with Security Officers employed by Profile. CSAs were only located at two places in the Port, in the ferry roll on, roll off area to direct traffic and in the passenger lounge to assist passengers, unlike the Security Officers who were positioned at different locations on the port.

15. With regard to pay, Security Officers and Customer Service Assistants were all paid the minimum government “living wage” rates with no shift or overtime enhancements. These rates of pay were agreed between Profile Security Services Ltd and Harwich Port as part of the contractual arrangements by which the Employer took over the Harwich Port contract under

the TUPE regulations. The wage rates had not been set as a result of negotiation with workers nor through any serious assessment of the actual duties performed, or the importance and worth of the work carried out by the respective groups of workers.

16. The Administrator, also proposed by the Employer to be included in the bargaining unit, carried out office based clerical duties which were completely different from the duties performed by the workers in the bargaining unit. The Administrator did not work shift patterns or interact in any way with passengers in the port. In the Union's view, it would be highly unusual and potentially unfair to include one office based administrator in a bargaining unit which would otherwise consist solely of front line operational staff. The inclusion of the Administrator in the bargaining unit would not be to the benefit of that individual.

17. The Employer also proposed that the Site Manager should be included in the proposed bargaining unit but the Union disagreed that this would be appropriate. The Site Manager was responsible for managing the activities of all the other Profile Security Services Ltd employees at Harwich Port and worked set daytime hours, Monday to Friday not shift patterns. Among other managerial duties, the Site Manager was responsible for deciding which rostered shifts other staff would work. It would be very unusual to include a Site Manager who was responsible for the day to day running of operations, in the same collective bargaining unit as the workers he or she managed. This would present a real potential for conflicts of interests to arise. The Union did not believe that the inclusion of this worker in the bargaining unit would be to the benefit of that individual either.

18. In conclusion, the Union stated that workers in the proposed bargaining unit were a distinct group of workers with similar characteristics. They carried out functions fundamentally different to all other employees which in its view meant they should be treated as a distinct group for any collective bargaining purposes. The proposed bargaining unit was an appropriate bargaining unit, meeting the requirements of paragraph 19B of Schedule A1. There was no evidence that its proposed bargaining unit was not fully compatible with effective management.

Summary of the Employer's submission

19. The Employer's submissions relied on the written statement and oral evidence of Mr Colin Martin, the Employer's National Key Accounts Director and the case put by the Employer's barrister. Mr Martin explained that the company provided a wide range of security services nationwide. It had a number of national accounts including a large number of ports across Great Britain. In his role he had overall responsibility for all the national security accounts as well as the contracts covering its security operations in the South division of the company including the contract with Hutchinsons at the Harwich Port and where the workers in question were located. The contract included processing passengers, vehicles, visitors, contractors, deliveries and freight through agreed security procedures at the Port. It provided general security services including mobile security services, gate security and customer services to ensure the smooth transition of passengers and workers through the various security checks. Modern day security was very much focused on customer service and a smooth transition of passengers through the port and the whole team at Harwich port worked towards this goal. The Employer currently had 51 workers at Harwich Port: 4 Duty Managers, 4 mobile Supervisors, 31 Security Officers, 10 Customer Service Assistants and an Administrator. The Union's proposed bargaining unit was only 39 out of 51 workers at the site.

20. The Employer proposed that in addition to the job functions the Union proposed the appropriate bargaining unit should also include the Site Manager, the Customer Service Assistants and the Administrator. The Employer contended that the Union's proposed bargaining unit was not compatible with effective management and therefore was not "appropriate". It argued that this case before the Panel was not like most cases for three reasons. First, workers that the Union wanted to exclude shared the same terms and conditions as the workers the Union wanted to include. The Customer Service Assistants were on the same hourly rate of pay and received the same benefits as the Security Officers.

21. Secondly, the Union's definition of the appropriate bargaining unit was not compatible with the Employer's 'one workforce' approach to pay. Pay was reflected not only in the setting of pay in terms and conditions, but also in obtaining the monies for paying benefits through the tendering process.

22. Thirdly, a point on which the Employer placed much emphasis, was its view that the Union's proposed bargaining unit could lead to indirect sex discrimination. In its view, adopting the Union's proposed bargaining unit would split pay bargaining into one predominantly male group, represented by the union in its application and one predominantly female group, the group left outside of the Union's proposed bargaining unit but within the Employer's proposal for an appropriate bargaining unit. The Employer accepted that the gender imbalance was normal in the industry. Currently both groups received the same hourly rate of pay. The Union's proposal would create a pressure for the Employer to pay the represented group differently from the unrepresented group. Either the Employer would need to automatically change the unrepresented group's pay to be in line with whatever it bargained with the

Union or the Employer incurred the risk of indirect sex discrimination pay claims, as well as losing the collegiate and motivational benefits of having one workforce on one remuneration package.

23. In respect of the provisions set out in Paragraph 19B of the Schedule, Employer made the following points:

24. ***Location of Workers*** - Workers in the Union's proposed bargaining unit were all based at Harwich International Port ("Harwich Port") as were all the workers that the Employer proposed should be included.

25. ***Existing National and Local Bargaining Arrangements*** - The Employer recognised the GMB for collective bargaining on behalf of the security team at Southampton Port where pay increases agreed with the client was approved by the GMB Union and were applied to all of the Employer's workers at Southampton Port.

26. ***The characteristics of workers falling within the bargaining unit under consideration and of any other employees of the employer whom the CAC considers relevant*** - The Employer stated that the Union had not addressed the fact that all of the workers covered by the Employer's proposed bargaining unit were currently on the same terms and conditions and that the Union had not provided any real reason as to why this was not suitable. The Site Manager carried a security licence in the same way as the workers in the Union's proposed bargaining unit and also carried out front line security services but was also responsible for overseeing the whole security team. However the Site Manager had no involvement in, or influence over the negotiation of terms and conditions of employment or any commercial matters. Neither Duty Managers nor Mobile Supervisors were involved in any formal disciplinary or grievance matters. The CSAs worked directly alongside the Security officers to meet and greet passengers and ensure smooth transition through the security checks. If they did have the licence they could carry out the same duties as the Security Officers. The Administrator was responsible for processing uniform requests, holidays, applications to work and supporting the security and customer service function. As far as the general public was concerned it was highly unlikely that they would be able to distinguish between a Security Officer and a CSA. They all wore the same uniform and had they had the same focus of the safe passage of people through the port. They performed slightly different functions but their approach was the same and were on the same Terms and Conditions albeit that some of them were contractually obliged to hold licence whether a clean driving licence or security licence.

27. ***The Desirability of Avoiding Small Fragmented Bargaining Units within an Undertaking*** - All negotiations with the Employer's clients covered the whole of the team on the contract and did not differentiate between roles. Across-the-board pay increases were built into the tender/renewal contract ('the tender').

28. The facts of this case were different to the more common situation in which different roles had different rates of pay, and often entirely separate pay scales between roles. A bargaining unit which related to one or more pay scales could be agreed without the same fragmenting impact that would occur if the Union's bargaining unit was adopted here. It would create a completely new fracture within the workforce for the purpose of bargaining pay and hours and holiday. It would create a new division in the workforce, for the first time introducing the conflict of interest between the groups of workers within the bargaining unit and those excluded from it. This was likely to be bad for motivation and workforce cohesion, and thus contrary to effective management. These reasons were quite distinct from the usual Employer concerns about management time spent on dealing with union recognition per se. The Employer explained that its margins were fixed but it always tried to secure the best possible wage for its employees, but any increase had to be agreed by the client given the low profit margin within which the Employer operated. The Security Officers and CSA's performed jobs of equal value. All increases secured by the Employer were usually shared/applied across the roles. The Union's proposed bargaining unit would give rise to a "them and us" feeling between the two groups of workers which it had worked to avoid. Disharmony and division would be created. It would also increase the administrative burden and cost if it had to negotiate separately on pay.

29. The Employer argued that to adopt its proposed bargaining unit would not prevent the Union from advancing specific arguments in relation to one group within the bargaining unit as opposed to another. If the Union believed that there were arguments in favour of giving a pay recognition for particular qualifications or work attributes, they would be free to seek to persuade the Employer that its established view that both Customer Service Assistants and Security Officers carried out work of equal value was wrong, and bargain pay setting criteria following the approach adopted in (equal pay) job evaluation schemes.

30. The benefit of having the predominantly female group, as well as the predominantly male group within the same bargaining unit would mean that the Union (following *GMB v Allen* [2008] EWCA Civ 810 and other case law) would join the Employer in having to take into account the need to avoid unjustified pay discrimination on grounds of pay or any other protected characteristic.

31. Finally the Employer referred the Panel to a previous CAC decision, *Unite and Kettle Foods Ltd* (TUR11/557/07), in which the CAC had recognised that if an employer did genuinely operate a "one workforce"/"one company" ethos, then a divisive bargaining unit may well be incompatible with effective management. The Employer believed that this case was the same as the *Kettle Foods* case in the most material factors such as having uniform compensation and reward structures. The Union's proposed bargaining unit would be incompatible with effective management because it was incompatible with the "single status" of the workers, as reasoned in the *Kettle Foods* case. The Employer believed that the inclusion of the differing roles of Customer Service Assistant and

Administrative staff with the Security Officers was analogous to the inclusion of sales department staff with the food production operatives in *Kettle Foods*. In *Kettle Foods* the team leaders who were not involved in determining pay hours and holidays could also be included. The team leaders in question here did not even have disciplinary powers, so were even more apt for inclusion than those in the *Kettle Foods* case. The Employer argued that the logic of the *Kettle Foods* decision could be applied to its case. The Employer brought to the attention of the Panel that Standard terms and conditions of employment were also a feature in another previous decision of the CAC, *Unite the Union and The College of Law (TUR1/563/2007)*.

32. Having said this, in *Kettle Foods* and similar cases, the CAC did not have to grapple with the obvious risk as was in this case, of moving from one single group and single status group, to the possible creation of (on the union's proposal) a bifurcated workforce of which one side was predominantly male and the other predominantly female. However the CAC's use, in *Kettle Foods*, of the phrase 'single status' (borrowed from the job evaluation and equal pay experience of public sector pay bargaining) signalled the benefits, both under the Equality Act 2010, and as the imperatives of that Act are manifest in the CAC's general duty under paragraph 171 of the Schedule. It was therefore submitted that, by analogy with the CAC's approach in *Kettle Foods*, the Union's proposed bargaining unit was not appropriate. It was submitted that the Employer's proposed bargaining unit is an appropriate bargaining unit, and should be the bargaining unit that the CAC decides on, pursuant to paragraph 19(3) of the Schedule.

Union's comments on Employer's Submissions and response to Panel

33. The Union felt that there was no evidence, other than the Mr Martin's assertion, that the Employer took a "One Workforce" approach. This was in contrast to the *Kettle Foods* case the Employer was using where the employer provided meticulous detail about its approach to the work force. There was no comparison as it was also business in a completely different industry. The fact that the people at Harwich received the same pay was driven by the fact they were on minimum wage rates, not by a 'one workforce' philosophy.

The Union opposed the argument put by the Employer that this case raised an issue of indirect sex discrimination. In its view, the issues that were key to deciding an appropriate bargaining unit surrounded skills, training, and the job functions of the workers and not on possible future outcomes and whether or not collective bargaining would occur. The Union stated that it was the Employer's responsibility to ensure all of its workers were paid fairly and should work on a review of equal pay within the organisation in or out of the context of collective bargaining. Whether or not the Panel

accepted its proposed bargaining unit the Union would address issues relating to sex discrimination and unfair pay if it was recognised for collective bargaining by the Employer.

34. In summing up the Union stated it was the Panel's duty to decide if the Union's proposed bargaining unit was appropriate and only if it found it not to be should it go further. The Employer had not demonstrated that the Union's proposed bargaining unit was not appropriate. The Union was required to demonstrate that the proposed bargaining unit was compatible with effective management not that it was the "best".

Employer's response to the Union and clarifications for the Panel

35. At the request of the Panel the Employer clarified and expanded on a number of points. When asked by the Panel how pay was driven since the TUPE transfer of the contract over to Profile Security Services Limited, the Employer answered that it was only through contract renewal and changes in legislation. In the industry the only tangible asset was the workers so as a company it sought the best terms and conditions in order prevent a high staff turnover. However in this highly competitive industry pay remained at the national minimum standard and it was usually the "going rate" that was paid. The current rate for Security Officers and CSAs was £7.50 per hour. The Duty Managers were on a higher rate. The Mobile Supervisors were on a 20p increment above the £7.50. The Administrator was also on £7.50. All were paid by the flat hourly rate which was only enhanced when bank holidays were worked. Holiday pay was the same for Security Officers and CSAs. It was within the remit of the Contract Manager (based outside the Site) and not the Site Manager to manage pay. There was a rotating shift pattern with workers on a mixture of zero hour contracts and permanent contracts.

36. The Employer had inherited the Contract. In its view jobs were all equal except for the Security Licence matter. In response to the Union's point, it remained unclear to the Employer how the issue of potentially being criminally prosecuted under the Security Licensing Law was a significant one as any worker required to have a driving licence for instance faced the same responsibility of abiding by licensing laws.

37. The Employer confirmed that it was only the Security Officers that carried out the inspecting and searching duties and confirmed that only they operated x-ray machinery. However it was generally the Site Manager who met with Border Force and he then briefed the Security Officers as a group.

38. When asked by the Panel how the ethos of having "one workforce" was promoted and demonstrated the Employer pointed to its Newsletter for all of its sites which helped with cohesion and give the workers the sense that they were employed by Profile Security Services Ltd and not the Site they were located at. Other than the licensing distinguishing factor, all its workers at Harwich were all

engaged in the same work. A “one team” approach was the only way it could provide a good service. Aside from the newsletter it was mainly through pay. If there was a percentage increase received from the client, this would be evenly applied across all workers on the site.

39. The Employer expanded on the role of the Site Manager. The Site Manager was concerned with the services and that the guidelines were being followed. He was able to flag up any performance issues, as could the Deputy Manager. If CSAs and Security Officers had issues these were dealt with by the Site Manager. The Contracts Manager and Regional Manager who were based outside the Site handled any formal discipline and grievance matters.

40. The Employer did not recognise trade unions at any sites other than Southampton where the arrangement with the GMB had been inherited under Transfer of Undertakings.

Considerations

41. The Panel is required, by paragraph 19(2) of the Schedule to the Act, 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.

42. 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 it considers would be appropriate.

43. 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.”

44. The Panel’s decision has been taken after full and detailed consideration of the evidence and the views of both parties as expressed in their written submissions and amplified at the hearing.

45. Our first responsibility is to decide, in accordance with paragraph 19(2) of the Schedule, whether the Union’s proposed bargaining unit is appropriate. We are not required to judge what might be the ‘best’ bargaining unit or which of the bargaining units proposed by the Union and the Employer is ‘better’ or ‘more appropriate’.

46. We have considered the Employer’s preferred bargaining unit for the purpose of deciding whether the Union’s proposed bargaining unit (PBU) is appropriate.

47. Those included in the PBU and those excluded from it are all based at the same location. There are no existing national or local bargaining arrangements.

48. In terms of characteristics of the workers, those in the PBU form an identifiable and distinct group of workers. They can be distinguished from those outside the proposed bargaining unit in terms of the nature of their jobs performing front line security duties and the related contractual requirement that they hold a security licence.

49. It was agreed that only those in the proposed bargaining unit carry out the inspecting and searching of vehicles and of freight, luggage and drivers and passengers. Only they operate x-ray inspection equipment. Although Customer Service Assistants form part of the overall team of Profile workers at the Port and have the same uniforms as security officers, their jobs are different, namely ‘meeting and greeting’ passengers and helping direct them through the Port. As their job title indicates their role is focused on customer service rather than front line security. The Administrator, as the title indicates, performs an administrative role.

50. Those in the proposed bargaining unit are contractually required to hold a security licence but in other respects the pay and conditions of employment of security officers and CSAs are the same. The Employer argued that this demonstrated a ‘one team’ approach and

that the Union's proposed bargaining unit was incompatible with effective management because it is incompatible with this single status approach. We are not persuaded, however, that the fact of common terms arises from a single status company ethos, nor that it results from any systematic assessment of the relative value of the work being done. Rather it was clear in the evidence that the Employer operates the Harwich Port as a national living wage site and the common employment terms are driven not by a particular HR philosophy but by the competitive nature of what is a generally low paying industry with low profit margins. We have considered fully the Employer's argument that the decision in *Unite* and *Kettle Foods* should guide us here (although the decision of one CAC panel is not binding on other panels) but we consider that the facts of this case are significantly different.

51. The Employer's barrister noted that the legal hurdle for a Union in terms of whether its proposed bargaining unit is appropriate is not a high one, but placed stress on what was presented as potentially a new issue in this particular legal context - the risk of indirect sex discrimination if the Union's proposed bargaining unit were to be accepted.

52. The Panel accepts that there is an uneven balance between the distribution of men and women in that those in the PBU are predominantly (but not all) men and those outside the PBU are mainly women. We are not convinced, however, by the argument forwarded that adopting the Union PBU is likely to result in unfair gender pay discrimination and thus would run counter both to equality legislation and the general duty of the CAC under para 171 of the Schedule. This seems to be a stretch too far. Although the Employer stated it regarded the job roles of the security officers (within the PBU) and of the CSAs (outside it) as entailing work of equal value this was simply a matter of opinion. There has been no systematic assessment of the kind required in determining issues of equal value work; no job evaluation has been undertaken. Even if these different jobs were found objectively to be of equal value, with no material factor difference, this of itself does not dictate that they need to be within a single bargaining unit. Nor does having men and women doing different jobs within a single bargaining unit of itself guarantee that gender pay discrimination does not occur.

53. In addition to the arguments about single status and the risk of sex discrimination claims considered above, the Employer argued the proposed bargaining unit was incompatible with effective management because of a risk of a fragmenting impact. The Union's proposed bargaining unit is not of itself a small fragmented unit. However the Employer argued that it

would introduce a new division in the workforce likely to undermine ‘one team’ collegiality, motivation, and cohesion, introducing disharmony and division. These were however merely assertions not supported by any evidence. Such consequences do not flow automatically from recognition of a Union for part (the majority in this case) of a workforce. The Employer also contended that adoption of the proposed bargaining unit would increase the administrative burden and cost to Profile. This possibly may be so but it is not clear that this would be any less the case if a bargaining unit other than that proposed by the Union were to be adopted. No substantive evidence was provided to lead us to the conclusion that the proposed bargaining unit was incompatible with effective management.

54. The Panel considers that the Union's proposed bargaining unit is appropriate. In reaching this conclusion the Panel has taken 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.

Decision

55. The Panel's decision is that the appropriate bargaining unit is that specified by the Union in its application which was stated as:

“Security Officers employed by Profile Security Services Ltd, which include mobile supervisors, box officers and gate officers” and the specific categories of worker that were covered by the Union’s proposed bargaining unit, as declared by the Employer, namely: “Duty Managers, Mobile Supervisors and Security Officers”.

Panel

Professor Linda Dickens MBE

Miss Mary Canavan

Mr Keith Sonnet

Appendix

Names of those who attended the hearing:

For RMT

Mr Kevin Hall - RMT Organiser

Mr Dave Marshall - RMT Organiser

For the Employer

Ms Georgina Hirsch - Barrister, Devereux Chambers

Martin McGowan-Scanlon - Managing Director Profile Security Services Ltd

Mr Colin Martin - Divisional Director, Profile Security Services Ltd