

**CENTRAL ARBITRATION COMMITTEE**

**TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992**

**SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION**

**DECISION ON WHETHER TO ARRANGE FOR THE HOLDING OF A SECRET  
BALLOT**

**The Parties:**

NUJ

and

BuzzFeed (UK) Limited

**Introduction**

1. The National Union of Journalists (the Union) submitted an application to the CAC dated 14 March 2017 that it should be recognised for collective bargaining by BuzzFeed (UK) Limited (the Employer) for a bargaining unit comprising "Editorial staff currently working at BuzzFeed UK Limited at 40 Argyll Street, 2<sup>nd</sup> Floor, London, W1F 7EB excluding senior management defined as those who manage managers". The CAC gave both parties notice of receipt of the application on 14 March 2017. The Employer submitted a response to the CAC dated 21 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 Lynette Harris, Chair of the Panel, and, as Members, Ms Lesley Mercer and Mr Roger Roberts. The Case Manager appointed to support the Panel was Kate Norgate. For the purposes of this decision, and any subsequent stages of the application, Professor Harris was replaced as Panel Chair by Professor Gillian Morris owing to Professor Harris' retirement from the CAC on 31 March 2018.

3. By a decision dated 3 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. No agreement was reached on the appropriate bargaining unit and a hearing to determine the issue was held in London on 6 October 2017. The Panel decided that the appropriate bargaining unit was "Editorial staff working in News and Buzz and staff supporting editorial work on the service desks at BuzzFeed UK Ltd, 40 Argyll Street, 2<sup>nd</sup> floor, London, W1F 7EB who have U.K. contracts and U.K. reporting lines but exclude senior management (defined as those who manage managers) and editorial staff who have UK contracts but US reporting lines."

4. As the appropriate bargaining unit determined by the Panel was different from that proposed by the Union in its application, the Panel was required by paragraph 20 of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992 (the Schedule) to determine whether the Union's application was invalid within the terms of paragraphs 43 to 50 of the Schedule. By a decision dated 5 February 2018 the Panel determined that the application was not invalid and that the CAC would proceed with the application.

### **Issues for the Panel**

5. Paragraph 22 of 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 the union members within the bargaining unit want the union (or unions) to conduct collective bargaining on their behalf.

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

6. In a letter dated 5 February 2018 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. In a letter dated 12 February 2018 the Union confirmed that it claimed majority membership within the bargaining unit and therefore should be granted recognition without a ballot. The Union referred to the report of the membership check circulated to the Panel and the parties by the Case Manager on 22 December 2017 which had assisted the Panel to decide whether the application was invalid (see paragraph 4 above).<sup>1</sup> The Union confirmed that a member whose subscription had been in arrears at the time of that check was now fully paid-up.<sup>2</sup> The Union noted the Employer's statement in earlier correspondence that there were now 35 individuals in the bargaining unit but said that, as the Employer had not specified the roles of these individuals, it was unable to comment on the number given.

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<sup>1</sup> TURI/1000/2017, 5 February 2018, paragraphs 9-12.

<sup>2</sup> See above, paragraphs 30 and 32.

## **Summary of the Employer's response to the Union's claim**

7. On 13 February 2018 the CAC invited the Employer to make submissions on both the Union's claim to majority membership within the bargaining unit and on the qualifying conditions specified in paragraph 22(4) of the Schedule (set out in paragraph 5 above). In a letter dated 23 February 2018 the Employer stated that the evidence relied upon by the Union to support its claim of majority membership consisted exclusively of the Case Manager's Report of 22 December 2017, which showed that 31 of the 57 workers in the bargaining unit were members of the Union. The Employer submitted that structural changes to its business had rendered this report out of date. The Employer stated that there were now only 35 employees in the bargaining unit and submitted that the CAC should conduct an updated membership check to ascertain the current level of union membership within that unit. The Employer also submitted that, notwithstanding its position that there was no evidence that a majority of workers in the bargaining unit were members of the Union, a majority of workers in that unit, including Union members, were not in favour of recognition. The Employer said that views expressed at open meetings held by members of its management team with employees in the bargaining unit cast serious doubt on whether the majority of employees supported recognition; that it had asked employees to write directly to the CAC to express their views and was aware that at least eight employees had done so; and that given the Union's (at most) marginal majority within the bargaining unit this should be sufficient to satisfy the Panel that there was sufficient doubt over the level of support within the unit and among Union members to order a ballot to be held. The Employer further submitted that a ballot should be held in the interests of good industrial relations. The Employer submitted that if recognition was ordered without a ballot there was a real risk that collective bargaining could be imposed on its employees against the wishes of the majority, a situation that the Employer wished to avoid. The Employer submitted that recognition would be perceived as lacking legitimacy within the workplace and would risk creating resentment both against the Union and the Employer's management team; a risk of lack of engagement between employees and the Union; and the perception by many members of the management team that the Union lacked a genuine mandate from staff. The Employer submitted that holding a fair ballot would give both parties the

opportunity to communicate with employees and to educate them as to the implications of union recognition. The Employer said that if a ballot demonstrated support for recognition it would respect the outcome; that the Union's presence within the Employer would gain legitimacy; and that this would pave the way for a constructive and positive relationship with the Union.

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

8. The CAC invited the Union to comment on the Employer's letter of 23 February 2018. In a letter to the CAC dated 7 March 2018 the Union said that it believed that the bargaining unit consisted of 33 employees not 35 as the Employer contended. The Union said that it presumed that the difference arose from the fact that the Employer was including the positions of Managing Editor and Assistant to the Editor-in Chief. The Union submitted that neither of these roles carried out an editorial function and therefore should not be included as the bargaining unit had been defined as covering "editorial staff working in News and Buzz".<sup>3</sup> The Union confirmed that, regardless of whether the bargaining unit consisted of 33 or 35 individuals, it had a majority in membership and offered to supply a list of members on a confidential basis should the Panel request this. The Union submitted that there was no credible evidence that a significant number of Union members did not want the Union to conduct collective bargaining on their behalf. The Union said that it could not comment on the submissions of the eight individuals whom the Employer had persuaded to submit e-mails opposing recognition but affirmed that no member had said anything to the Union or to any of its representatives in the Employer's workplace that they were in any way opposed to recognition. The Union also submitted that a ballot should not be held in the interests of good industrial relations. The Union contended that the Employer was implacably opposed to collective bargaining, as evidenced in the comments of its Chief Executive Officer in a communication to all employees the previous year. The Union submitted that, if a ballot were to be held, it would be accompanied by a further campaign by the Employer to avoid collective bargaining and that the outcome would not lessen the Employer's hostile attitude to trade unions and would not, therefore, improve industrial relations. The Union said that the

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<sup>3</sup> See, however, paragraph 19 below.

practical effect of a ballot would by its very nature engender an adversarial situation within the workplace and that pressure from the Employer on individual workers to oppose recognition would be likely to intensify. The Union submitted that it had demonstrated majority membership within the bargaining unit; that none of the qualifying conditions applied; and that the Union should be granted recognition with immediate effect.

**The membership check and check of the membership status of individuals who had written to the CAC**

9. In the light of the re-structuring which had occurred within the Employer's business since the membership check of 22 December 2017, and the correspondence summarized in paragraphs 6-8 above, the Panel proposed an independent check of the level of union membership within the bargaining unit and of the membership status of individuals who had e-mailed the CAC with their views on union recognition. It was explicitly agreed with both parties that, to preserve confidentiality, the lists provided by each party would not be copied to the other party and these arrangements were confirmed in a letter from the Case Manager to both parties dated 9 March 2018. The information from both parties was received by the CAC on 14 March 2018. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

10. The list supplied by the Employer was accompanied by a covering e-mail in which the Employer stated that both the Managing Editor and the Assistant to the Editor-in-Chief should be included in the bargaining unit as they carried out editorial functions and were not considered senior managers. The Employer stated that both these individuals had been included in the Employer's list of employees for the purposes of the previous membership check and that this had not been subject to comment. The Panel confirmed that the Managing Editor was included in the bargaining unit but the Assistant to the Editor-in-Chief was not and the latter was therefore removed by the Case Manager from the Employer's list for the purposes of the membership check.

11. The list supplied by the Employer<sup>4</sup> showed that there were 34 workers in the bargaining unit. The list of members supplied by the Union contained 18 names. According to the Case Manager's report the number of Union members in the bargaining unit was 18, a membership level of 52.9%.

12. 16 e-mails containing views on recognition at the Employer were received by the CAC in the period 16-23 February 2018. According to the Case Manager's report 15 of these e-mails came from workers appearing on the Employer's list. Of those 15, five were from workers who were Union members; 10 were from workers who were non-members.

13. Two of the e-mails of the five union members within the bargaining unit read as follows:

- a) "I'm writing about the current BuzzFeed union dispute .... I am an NUJ member but I – and I believe the majority of staff – have serious reservations about collective decision making". E-mail received 22 February 2018.
- b) "I'm an employee at BuzzFeed News in London and I'm told you're the Case Manager handling the dispute between BuzzFeed and the NUJ. I'm a member of the NUJ. I'm writing to you now because I believe there should be a ballot before you decide to recognize the union for collective bargaining". E-mail received 23 February 2018.

The remaining three e-mails from Union members expressed support for recognition. All 10 of the e-mails from non-members expressed support for a ballot; in two e-mails the writers also expressed doubt that a majority would favour recognition.

14. A report of the results of the membership check and the check of the membership status of individuals who had e-mailed the CAC with their views on union recognition was circulated to the Panel and the parties on 22 March 2018 and the parties were invited to make comments on the report.

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<sup>4</sup> Subject to the removal of the Assistant to the Editor-in-Chief: see paragraph 10 above.

### **Summary of the Union's comments on the report**

15. In a letter dated 29 March 2018 the Union noted that the report had concluded that the Union had majority membership in the bargaining unit and said that the normal consequence would be that the Union would be entitled to recognition without a ballot. The Union reiterated its view that it did not consider that any of the qualifying conditions in paragraph 22(4) of the Schedule were applicable although it accepted that this was a matter for the Panel to decide. The Union noted that there was only one Union member who was requesting a ballot. The Union stated that it did not understand what the Union member who appeared to have reservations about “collective decision making” meant by that so was unable to comment further on it. The Union also drew attention to the concerns expressed by the three Union members who had written to the CAC in support of recognition about the environment in which they worked and the recognition process as a whole. The Union contended that those non-members who had requested a ballot had been requested to make submissions of this nature by management and had been told to copy their submissions to an HR Manager. The Union concluded by submitting that a ballot would exacerbate the culture at the Employer rather than producing a positive change in approach but that whatever decision was taken by the Panel the Union would approach it in a constructive and determined way.

### **Summary of the Employer's comments on the report**

16. In a letter dated 29 March 2018 the Employer acknowledged that the majority of the workers constituting the bargaining unit were Union members but contended that, at 52.9%, this was a slim majority. The Employer submitted that within a bargaining unit of this size one employee effectively made the difference between a majority of Union members and an equal split. The Employer further submitted that the Assistant to the Editor-in-Chief should not have been excluded from the bargaining unit given that the appropriate bargaining unit determined by the Panel included staff supporting editorial work. The Employer stated that the (non-exhaustive) responsibilities of this role were administrative support for the UK editorial team and assistance on editorial projects;



managing newsdesk and curation rotas; commissioning and invoicing and booking travel and meetings for the editorial team; and employing editorial judgement on filtering and progressing pitches sent to the Editor-in-Chief. The Employer submitted that this role fell within News and Buzz and involved both editorial work and supporting editorial work carried out by other employees who fell within the bargaining unit. The Employer submitted that the bargaining unit consisted of 35 employees not the 34 included in the membership check.

17. The Employer submitted that the CAC had received credible evidence that a number of Union members within the bargaining unit were not in favour of collective bargaining. The Employer said that 11% of Union members had written to either express support for a secret ballot or opposition to recognition of the Union and submitted that this represented a significant proportion of the affected Union members. The Employer said that it believed that it was credible that these employees reflected the view held by a number of other Union members within the bargaining unit who had chosen not to write to the CAC. The Employer said that it had encouraged affected employees to communicate directly with the CAC if they would like a vote on a secret ballot but maintained that it had communicated with these employees in a respectful manner. The Employer also submitted that a ballot should be held in the interests of good industrial relations. The Employer contended that non-members of the Union should be presumed to be against recognition unless that presumption was rebutted. The Employer said that the report showed that a majority of employees within the bargaining unit were either in favour of a secret ballot or against collective bargaining and that if recognition were awarded automatically this would be against the wishes of the bargaining unit. The Employer reiterated the points it had made previously, summarized in paragraph 7 above, that Union involvement in the workplace without a ballot would lack any mandate or legitimacy so hampering the effectiveness of the Union's interaction with both employees and management and having a detrimental effect on industrial relations. The Employer also reiterated that if a secret ballot demonstrated majority support for recognition it would respect the outcome of the ballot and that this would pave the way for a constructive and positive working relationship with the Union.

## Considerations

18. 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 a majority of the workers constituting the bargaining unit are members of the Union, it must declare the Union recognised as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit unless it decides that any of the three qualifying conditions set out 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.

19. The report of the membership check issued by the Case Manager on 22 March 2018, described in paragraphs 9-11 above, showed that 18 workers in the bargaining unit were members of the Union. The Assistant to the Editor-in Chief was excluded from this check which showed, on that basis, that 52.9% of the workers in the bargaining unit were members of the Union. The Panel is satisfied that this check was conducted properly and impartially. In its comments on the membership check the Employer gave more detailed reasons for its submission that the Assistant to the Editor-in-Chief should not have been excluded from the bargaining unit (see paragraph 16 above). The Panel notes the Union's comment in its letter of 7 March 2018, set out in paragraph 8 above, that the holder of this post did not carry out an editorial function and should not, therefore, be included as the bargaining unit had been defined as covering "editorial staff working in News and Buzz". However the description of the bargaining unit determined as appropriate by the Panel in its decision of 1 December 2017 includes "staff supporting editorial work" in addition to editorial staff. In the light of the dispute between the parties the Panel is required to decide whether the post of Assistant to the Editor-in Chief falls within the term "staff supporting editorial work" as a matter of construction. Having reviewed the description by the Employer of the work carried out by the Assistant to the Editor-in-Chief, the Panel has determined that aspects of this role involve supporting editorial work and that it should, therefore, be included in the bargaining unit. On this basis the bargaining unit consists of 35 workers rather than the 34 on which the membership check was based, resulting in 51.4% of the workers in the bargaining unit being members of the

Union. In the absence of evidence to the contrary the Panel is satisfied that a majority of workers in the bargaining unit are members of the Union.

20. The Panel has considered carefully the submissions of both parties and all the evidence in reaching its decision as to whether any of the qualifying conditions laid down in paragraph 22(4) of the Schedule is fulfilled.

21. The first condition is that the Panel is satisfied that a ballot should be held in the interests of good industrial relations. The Panel has concluded that, on balance, this condition does apply. The Panel notes that under paragraph 22(2) of the Schedule, which requires the CAC to declare recognition where it is satisfied that a majority of the workers constituting the bargaining unit are members of the union, the size of that majority is immaterial. In this case, however, the Panel notes that the majority is constituted by a single worker and the Case Manager's report shows that two of the Union's 18 members oppose recognition without a ballot, one on the basis of "serious reservations about collective decision making", the other on the basis that a ballot should be held (see paragraph 13 above). The Panel considers that in these circumstances the interests of good industrial relations favour the holding of a ballot. The Panel appreciates the Union's concern that a ballot will engender an adversarial situation within the workplace and may lead to a worsening of relations between the Union and the Employer. The Panel hopes that the ballot can be conducted quickly in order to minimize any potential adverse effect on industrial relations and that the parties will seek to agree access arrangements expeditiously to assist this to be achieved.

22. In the light of its decision that a ballot should be held in the interests of good industrial relations it is not necessary for the Panel to decide whether the remaining qualifying conditions apply. However the Panel would like to place on record that it did not consider that it had 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. One Union member indicated that he or she had "serious reservations about collective decision making", another said that a ballot should be held (see paragraph 13 above). The Panel considers that the second e-mail

neither favours nor opposes collective bargaining and is irrelevant in this context. In relation to the first, the Panel does not consider a single individual constitutes a “significant number”.

### **Decision**

23. For the reasons given in paragraph 21 above, the CAC hereby gives notice, pursuant to paragraph 22(3) of the Schedule, that it intends to arrange for the holding of a secret ballot in which the workers constituting the bargaining unit will be asked whether they want the Union to conduct collective bargaining on their behalf.

### **Panel**

Professor Gillian Morris, Chairman of the Panel

Mrs Lesley Mercer

Mr Roger Roberts

11 April 2018