

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

**The Parties:**

Prospect  
and  
Babcock Mission Critical Services – Offshore Ltd

**Introduction**

1. Prospect (the Union) submitted an application to the CAC dated 1 March 2018 that it should be recognised for collective bargaining by Babcock Mission Critical Services – Offshore Ltd (the Employer) for a bargaining unit comprising “all staff working for Babcock Mission Services – Offshore at all operational locations and undertaking the role of Pilot at any grade or Search and Rescue flight crew at any grade”. The application was received by the CAC on 6 March 2018 and the CAC gave both parties notice of receipt of the application on the same day. The Employer submitted a response to the CAC on 16 March 2018 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 Chair established a Panel to deal with the case. The Panel consisted of Mr Rohan Pirani, Chair of the Panel, and, as Members, Mr Alistair Paton and Mr Paul Gates OBE who, for the purpose of this hearing, were replaced by Rob Lummis and Keith Sonnett. The Case Manager appointed to support the Panel was Linda Lehan.

3. By a decision dated 11 April 2018 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 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 May 2018 and the names of those who attended the hearing are appended to this decision.

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. In order to accommodate the hearing the Panel extended the period within which it must make its decision to 11 June 2018.

5. At the start of the hearing the parties confirmed that the sole dispute was whether the bargaining unit should include Managing Pilots. The Union proposed that the role of Managing Pilots should be included in the bargaining unit whereas the Employer's view was that to include the Managing Pilots was not compatible with effective management.

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

6. The Union submitted that its proposed bargaining unit was a well-defined group encompassing Operational Pilots and Flight Crews. The Union stated that it believed the following grades at all sites fell well within this:

- Managing Pilot (4)
- Pilot (113)
- SAR Pilot (12)
- SAR Airman (11)

7. As set out above, the dispute relates only to the Managing Pilots. The Union stated there were a number of similarities across the four grades, and there was already a recognition within the company which showed this was a functional group.

8. It was noted that in the Employer's response to their application it was contended the unit was incompatible with effective management, seemingly because there was already an Employee Consultation Forum. The Union did not see that as relevant when defining the unit, as the

Employee Consultation Forum is a consultative rather than a negotiating body and also had no locus for pay, an area of strong interest for their members.

9. It was also argued that the workers within their proposed unit shared key characteristics. Further, it was pointed out that the Managing Pilots were not just Managers, but also operational pilots undertaking similar duties to the other pilots for much of their time. They have similarities in terms of licensing and training requirements and were already recognised as part of the 'pilot grouping'.

10. It was the Union's understanding that the Managing Pilots, notionally at least, spend 50% of their time managing staff and 50% of their time flying, filling a half line on their operational roster. The Union argued that maintaining their flying licences is regarded as a vital part of the role of Managing Pilots so as to ensure credibility with both staff and customers. It was also said that Pilots, as a group, have a strong identity defined by their career.

11. According to the Union, their proposed bargaining unit was a cohesive group of workers spread across a number of sites (Aberdeen, Blackpool and Norwich) and that the Managing Pilots were similarly based at those locations working alongside other pilots.

12. When designing a pay system, the Union submitted that it was important that the rates of pay for managers are cognisant of the rates of the staff they managed, particularly in the case of groups like pilots where across a career an individual can expect to move up through the scales. Maintaining a clear differential between the Managing Pilots and the top of the grade below is regarded as an important element of the pay structure. The Union argues that this goal could be compromised if they were excluded from the bargaining unit.

13. The Union understood that currently two of the four Managing Pilots were on contracts which directly link their salary to the pilot rate. The other two had contracts giving them pay points in their own right.

14. During negotiations the Employer had argued that having managers within the bargaining unit might compromise them if they have access to confidential or commercially sensitive information. The Union refuted this and said it would not seek to pressure a member to disclose sensitive information as to do so would be potentially unlawful for the union, and a breach of

trust and confidence for the individual. The Union stated they would not ask someone to do something which would involve putting them in a position of compromising their employment. If necessary, the Union said Managing Pilots could be excluded from being part of the employee negotiating team. It was explained that the Union regularly negotiated on behalf of managers at all levels in other companies.

15. Finally, on behalf of the Union it was explained they had been in contact with the 4 Managing Pilots who had expressed a preference to be part of the proposed bargaining unit. The Managing Pilots explained they wanted to be part of a transparent pay structure and wished for their union to be involved in those negotiations. According to the Union, as a small group they would not sit neatly anywhere elsewhere and the unit proposed was a viable and appropriate one which they could easily make work.

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

16. By way of background information the Employer explained that it provided helicopter transport services for passengers, provisions and materials for the offshore rigs in the oil and gas industry. As part of this service, the Respondent provides crew-change operations out of bases in Aberdeen, Sumburgh, Norwich and Blackpool. It transports over 215,000 passengers to oil and gas platforms annually. The Employer also provides a Search & Rescue capability, out of the Aberdeen base, providing emergency response services in the North Sea.

17. The Employer, also gave an explanation of the role of the Managing Pilot. A Pilot would join the company as a Co-Pilot and after approximately 7 years flying experience would be considered for promotion to a Pilot. The role of the Captain grade within the pilot category was to sign off the aircraft to fly and had oversight of the Co-Pilot when they were flying the aircraft. An employee could remain a Pilot for the whole of their career if they wished to otherwise natural progression would be for them to apply for a Managing Pilot role. The Managing Pilot reports directly to Director of Flight Operations. It was agreed that their job involved roughly 50% flying time and 50% managing and carrying out essential safety monitoring of their services. To maintain their pilot proficiency a Managing Pilot was required to fly regularly and at least 191 hours per year.

18. The Employer explained that if a Pilot were to lose their licence, for example on medical grounds, it was highly likely that the Pilot would lose their job whereas in similar circumstances a Managing Pilot would be able to continue in their role. It was emphasised that the main responsibility of a Managing Pilot is staff management and supervision within all levels of the pilot population. They are the line manager responsible for safe and efficient flying operations at each base, including but not limited to performance monitoring, disciplinary, customer facing duties, strategic planning and most importantly monitoring safety.

19. The Employer says it is intended that Managing Pilots will be a key part of the management negotiating team with the union when negotiations in relation to pay and other terms and conditions take place. Because of this, the Employer believes that Managing Pilots would be placed in a position of conflict as those negotiations would directly affect their own pay and terms and conditions. Further, Managing Pilots would be party to confidential strategic information which would not be available to employees and union representatives, such as budgets, financial forecasts and other information which would significantly hamper the Employer's ability to negotiate effectively if such information was available to members of the bargaining unit in advance of discussions.

20. A further point made by the Employer was that as Managing Pilots were responsible for performance managing employees they may find themselves in a conflicting position when conducting disciplinary and other such meetings when dealing with the Union.

21. It was also argued that the distinctiveness of Managing Pilots when compared to the rest of the Pilot population was reflected in the fact that the two most recent appointments to the role had been employed on a specific Managing Pilot contract on a distinct pay structure. They also had a different working pattern, 40 hours per week, Monday to Friday with some degree of flexibility required. The other two Managing Pilots were on legacy contracts and they received a basic salary with additional allowance for responsibility and additional allowance for the extra cover days they worked.

22. During the hearing it was explained that when the Managing Pilots were absent there were two Deputy Managing Pilots who covered and received an allowance. Nonetheless, the Employer confirmed that they were content for the two Deputy Managing Pilots to be in the bargaining unit.

23. The Employer explained that currently they have a Leadership Team dealing with pay and hours etc. and the Director of Flight Operations was a member of that team. It was also confirmed that they did not have a staff handbook.

24. A further argument advanced by the Employer was that in an existing bargaining arrangement for Licensed Engineers and Mechanics, the Maintenance Managers were excluded. It was submitted that the Maintenance Managers were an equivalent role to the Managing Pilot, as they were primarily in a management position that also undertook some active engineering work.

25. Finally, the Employer believed that its proposed bargaining unit (the same as Union's proposed bargaining unit excluding the Managing Pilots) would be cohesive. It did not believe that its proposals would create any risk of fragmentation within its collective bargaining arrangements.

### **Considerations**

26. 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. 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 so, to decide in accordance with paragraph 19(3) a bargaining unit which is appropriate. Paragraph 19B(1) and (2) state 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."

27. The Panel is first tasked with determining whether the bargaining unit proposed by the Union is appropriate. The Panel should not reject the Union's proposed bargaining unit because it feels that a different unit would be more appropriate nor, in considering whether it is compatible with effective management, should it consider whether it is the most effective or desirable unit in that context. 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. However, we note that paragraph 2(3) of the Schedule states that "References to the proposed bargaining unit are to the bargaining unit proposed in the request for recognition". It is the bargaining unit set out in the union's request that we must first assess.

28. The views of the Employer and the Union, as described earlier in this decision, have been fully considered. They are in agreement, save that the Employer does not consider Managing Pilots should be included in the bargaining unit.

29. There is considerable overlap between the duties of a Pilot and those of Managing Pilots. Also of relevance is the fact that the Pilot grade also comprises Deputy Managing Pilots.

30. The Panel has noted the Employer's concerns that the inclusion of the Managing Pilots in the bargaining unit would create conflict between their interests as managers and their interests as employees. We also took account of the related concerns about possible breaches of confidence arising from Managing Pilots if included in the bargaining unit. However, the Panel does not consider that the establishment of a single bargaining unit would change the existing relationships of staff within it or lead Managing Pilots to act unprofessionally by disclosing information entrusted to them in confidence. The Panel's experience of similar circumstances elsewhere strongly suggests that shared membership of a bargaining unit does not lead to breaches of confidence. The Panel's view is that it is not uncommon for bargaining units in both the public and the private sectors to include both managers and those whom they manage, and the Panel does not believe that a single bargaining unit including Managing Pilots would create any conflict of interest and thereby be incompatible with effective management. We accept the union's assurances relating to breach of confidence. Specific issues affecting

managers exclusively could, if necessary, be discussed in separate meetings. We also note the Union's intention that initially, at least, collective bargaining is likely to be undertaken by officers of the union. In any event, ultimately, in this case decisions relating to terms and conditions are taken by the leadership team of the company, which does not include Managing Pilots.

31. The Panel does not consider that there are any existing national or local bargaining arrangements in this case. The Union's proposed bargaining unit would avoid small fragmented bargaining units within the undertaking. As far as the characteristics of workers are concerned, the Panel notes the differences in roles and responsibilities between Managing Pilots and other staff and does not consider that these differences are sufficient to prevent their co-existence within a single bargaining unit in this case.

32. The Panel has no reason to disbelieve what we were told about Managing Pilots wanting to be in the bargaining unit as this was not contested by the Employer.

33. The Panel has concluded that a bargaining unit composed of workers as set out in the Union's application does not conflict with the object of encouraging and promoting fair and efficient practices and arrangements in the workplace. The Panel is satisfied that its decision is consistent with the object set out in paragraph 171 of the Schedule.

## **Decision**

34. We have decided that the appropriate bargaining unit is that proposed by the Union namely "For all staff working for Babcock Mission Services – Offshore at all operational locations and undertaking the role of Pilot at any grade or Search and Rescue flight crew at any grade".

## **Panel**

Mr Rohan Pirani, Chair of the Panel

Mr Rob Lummis

Mr Keith Sonnett



**11 June 2018**

## **Appendix**

Names of those who attended the hearing:

### **For the Union**

David Avery - Prospect – Negotiations Officer

### **For the Employer**

Simon Meakins - Director of Flight Operations

Kenneth Dargo - Human Resources Business Partner

Isabel Howson - Human Resources Director