

**1 July 2014**

**CENTRAL ARBITRATION COMMITTEE**

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

**SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION**

**DECISION ON WHETHER TO ACCEPT THE APPLICATION**

**The Parties:**

**Unite the Union**

**and**

**Multimatic**

**Introduction**

1. Unite the Union (the Union) submitted an application to the CAC dated 1 May 2014 that they should be recognised for collective bargaining purposes by Multimatic (the Employer). The Union stated its proposed bargaining unit as "All hourly paid rates directly employed permanent production operatives, including assembly, CNC machine operators and press shop operatives to be included in the bargaining unit..." and "All professional grade workers in the tool room, maintenance and drivers, lead hand supervisor grades and above as well as office staff to be excluded from the bargaining unit. The stated location address was "Herald Avenue Coventry Business Park, Coventry, CV5 6UB". The CAC gave the parties notice of receipt of the application on 6 May 2014. The Employer submitted a response to the application on 12 May 2014.

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 John Purcell, CAC Deputy Chairman (Chairman of the Panel) and as Members, Mr Len Aspell and Mr Keith Sonnet. The Case Manager appointed to support the Panel was Miss Sharmin Khan.

## **Issues**

3. The Panel is required by paragraph 15 of Schedule A1 to the Act (the Schedule) to decide whether the Union's application to the CAC is valid within the terms of paragraphs 5 to 9; is made in accordance with paragraphs 11 or 12; is admissible within the terms of paragraphs 33 to 42 of the Schedule; and therefore should be accepted.

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

4. The Union provided a copy of: its certificate of independence; the exchange of correspondence it had with the Employer prior to its formal written request for recognition dated 14 April 2014, a copy of which was also attached. The Union stated that the Employer did not respond to its formal request letter.

5. The Union stated that there were 250 workers employed by the Employer and that there were 170 workers in the proposed bargaining unit of which 73 were Union members. The reasons for selecting the workers in the proposed bargaining unit were because they all shared common terms and conditions in the production "shop floor" area. They were all paid on the same basis, received the same sick and holiday entitlements and came under the same disciplinary and grievance procedure. Their work could be described as production operatives. They were not professional, admin, supervisory or in logistical roles. The bargaining unit had not been agreed by the Employer. The Union was not aware of any existing recognition agreement that covered any of the workers in its proposed bargaining unit and it had not made a previous application for workers in the proposed bargaining unit or a similar unit.

6. As evidence that the majority of workers in the proposed bargaining unit were likely to support recognition for collective bargaining, the Union stated that since a campaign to win

collective rights recognition in November 2013 membership across all shifts had increased steadily on a weekly basis. The Union believed this to be 43% of the proposed bargaining unit and that membership levels continued to grow. Also, workers had indicated their likelihood to vote yes during one to one and group meetings. The Membership details were available for independent verification if required.

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

7. The Employer submitted its response to the CAC on 12 May 2014. The Employer confirmed that it had received the Union's formal written request for recognition on 14 April 2014. The Employer explained that in a letter dated 11 April 2014 (of which a copy was attached), it had declined a request for voluntary recognition made by the Union in a letter dated 1 April 2014. The company's position remained unchanged so no further correspondence was sent to the Union.

8. The Employer briefly stated its reasons as to why it did not agree with the proposed bargaining unit and the need for it to be compatible with effective management. The matter of what constitutes an appropriate bargaining unit is not addressed here in this decision as this is a matter addressed at the next stage of the statutory process should the Union's application be accepted.

9. The Employer stated it employed 358 workers of which 186 workers were in the Union's proposed bargaining unit and not as estimated by the Union. It did not consider that a majority of the workers in the bargaining unit were likely to support recognition as the level of membership in the Union's proposed bargaining unit was below 40% and was possibly less than 20% in the Employer's proposed bargaining unit. Feed back at small group briefing sessions indicated that not all employees wanted collective bargaining rights including some trade union members.

10. Finally, the Employer confirmed that it had received a copy of the Union's application to the CAC, that it had not received any other application for statutory recognition under the Schedule in respect of any of the workers in the proposed bargaining unit and that there was no

existing agreement for recognition in force covering any of the workers in the proposed bargaining unit.

### **Initial membership and support check**

11. To assist the determination of two of the admissibility criteria specified in the Schedule, namely, whether 10% of the workers in the relevant bargaining unit are members of the Union (paragraph 36(1)(a)) and whether a majority of the workers in the relevant bargaining unit are likely to support recognition of the Union as entitled to conduct collective bargaining on behalf of the relevant bargaining unit (paragraph 36(1)(b)), the Panel proposed independent checks of the level of union membership in the proposed bargaining unit.

12. The arrangements for the membership and support check were confirmed in a letter from the CAC to the parties dated 15 May 2014. It was agreed that the Employer would supply to the Case Manager a list of names and job titles of workers in the proposed bargaining unit and that the Union would supply a list of the paid up members in the proposed bargaining unit. It was also explicitly agreed with both parties that the Case Manager would compare the Employer's information with the Union's information and to preserve confidentiality, the respective lists would not be copied to the other party.

13. The Case Manager's check established that there were 219 workers within the proposed bargaining unit of which 78 were members of the Union; a Union membership level of 32%. A full report and results of the membership check was issued to the parties for comment on 23 May 2014. In the parties' responding comments (on 3, 4 and 9 June 2014) it came to light that due to a misunderstanding, workers with the job title "material handlers" were included on the list of workers provided by the Employer for the check. However as these workers were fork lift truck drivers, they were excluded from the Union's proposed bargaining unit as stated in the application form and should not have been included in the check.

14. Both parties also informed the CAC that they now had petition evidence for the Panel's consideration. Subsequently, the Panel directed that the Case Manager conducted the membership check again, this time excluding the "material handlers" appearing on the Employer's

list and also to conduct an independent check to establish the number of workers in the proposed bargaining unit who had signed the parties' petitions. The previous agreement to preserve confidentiality was maintained by the Case Manager who did not copy to either party their respective petitions.

**The second membership and support check**

15. The second membership check established that there were 203 workers within the proposed bargaining unit of which 68 were members of the Union; a Union membership level of 34%.

16. The comparison of the Union's petition with the Employer's list of workers (excluding the material handlers) established that 76 (38%) of the workers in the proposed bargaining unit who signed the petition were in favour of recognition of the Union; 44 (22% of the proposed bargaining unit) were Union members and 32 (16% of the proposed bargaining unit) were not Union members.

17. The Union's petition was in the form of pledge (or post) cards on which one side signatories signed up to a statement that read:

"I.....employed by EU Multimatic in Coventry wish to state that Unite the Union is the Union of my choice and the Union that I would like to secure recognition for collective bargaining in my work place.

Date:.....

Signature:....."

18. The Polish and Punjabi translation of the statement also appeared on the pledge cards. On the other of the side of the pledge card was the Union's logo and Free Post address. 6 of the pledge cards either had an illegible signature with no printed name or an illegible signature with an illegible printed name. Each pledge card was dated. The earliest date was 17 April 2014 and the most recent date was 9 June 2014. The Union had provided the Case Manager with a scanned copy and the originals of the pledge cards for the check.

19. The comparison of the Employer's petition with the Employer's list of workers (excluding the material handlers) established that 12 (6%) of the workers in the proposed bargaining unit were not in favour of recognition of the Union, none of whom were Union members.

20. The Employer's petition was in the form of 5 A4 pages, each headed with a different handwritten statement. They read:

- "The names listed below do not want Union representation"
- "The names listed below do not want any Unite Union representation within EU-Matic. They are satisfied with the working conditions and facilities provided. Unite have pledged to donate £3 to the Labour Party for every new member that they register, so I guess that is why they are asking workers from different companies to join them."
- "I \*\*\*\*\* along with the names that are listed below wish to state that we do not wish for any outside Union representation from the Unite the union as we have been approached outside the factory gate by Unite officials requesting us to do so. At no point has any form of management from within EU-Matic advised the employees listed below to list our names on this paperwork"
- "The names listed above do not and would not seek Unite Union representation. Most companies usually solve the problem by creating "artificial unemployment". Reduced order books, rising costs etc..."
- "The names listed below do not seek Unite the Union representation."

21. Signatories either entered their full name and department or their name and signature. 2 signatures were dated 11 June 2014 and 4 signatures were dated 28 April 2014. The remaining entries were undated. The Employer provided the Case Manager with a scanned copy of its petition.

22. A full report of the second membership and support check including the above results was issued to the parties for comment on 19 June 2014. The parties responded in correspondence to the CAC dated 25, 26 and 27 June 2014. The parties' views, including any relevant points made in their submissions to the CAC on 3, 4 and 9 June 2014 in respect of the initial membership check are summarised below.

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

23. The test set out in paragraph 36(1)(a) of the Schedule, that the Union should have at least 10% membership within the proposed bargaining unit was met as established by the membership and support check.

24. There was specific and significant evidence of workers who had pledged to support collective bargaining. The total number of the Union's pledges of support (including the illegible entries and the few who were not employed in the bargaining unit) to date numbered 97 of which 32 were confirmed non-Union members. This was a clear 38% versus the Employer's 6% of non-support. The Employer's petition against collective bargaining was very limited, signed by non-Union members and employees outside the bargaining unit.

25. The membership and support check established that there was 34% Union membership in the proposed bargaining unit and that 16% of the proposed bargaining unit was non-members who pledged to vote yes for collective bargaining, bringing the total in support to 50% at this stage of an ongoing campaign. This was the strongest indication yet, that the majority of workers were likely to vote yes for collective bargaining.

26. It was unfortunate that the details on up to 10 of the Union's pledge cards were difficult to read but the intention of those employees, who had decided to submit their pledge card was clear. With these, the pledges of support would be over 50% of the proposed bargaining unit.

27. A significant number of employees (migrant workers) had stated in confidence that they were afraid to sign a petition / pledge for fear of victimisation, despite assurances, however they did state that they would be prepared to vote "yes" for collective bargaining in a secret ballot conducted by the independence of the CAC. There was considerable, specific and measurable evidence of this achieved through transparent and democratic free will within the spirit of the legislation. The pledge undertaking on the postcards was clearly written in both English and the mother tongue of most employees. The membership check stated that 68 members or 34% are in the proposed bargaining unit and that 32 or 16% non-members of the proposed bargaining unit

also pledged to vote yes. Both totaled 50%. It was wholly realistic from the report of the membership and support check that Unite would comfortably be successful at a vote.

28. On balance, it was clear there was a significant and unquestionable demand for collective bargaining and therefore the application should be accepted. The Union requested that the panel allow the democratic voice and pledged evidence of the growing 50% to be heard through the independent ballot box.

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

29. The Employer did not dispute that there was 10% Union membership within the proposed bargaining unit and that the test under paragraph 36(1)(a) of the Schedule was met.

30. However, the test as set out in paragraph 36(b) of the Schedule was not made out. In its view there was not in fact a majority in favour of union recognition. The level of Union membership in the proposed bargaining unit was well below a majority. The evidence presented did not show that a majority would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the proposed bargaining unit therefore the Panel should find that the application did not pass this test.

31. A significant number of employees had indicated both formally and informally that they would not support recognition of the trade union, in individual conversations and in the written expressions of dissatisfaction with the application for recognition (approximately 12). Also some Union members had stated that they would not favour trade union recognition for the purposes of collective bargaining (approximately 15). The Employer did not accept the Union's position that there were 97 pledges of support, as in its view, the Union had months to resolve the issue of any illegible pledges.

32. The Union's membership drive started in November 2013. Their activities included: leafleting at the gates of the Company; surgeries at a local pub and canvassing within the

Company by leafleting, flyers and canvassing by Union members and picketing at the gates with anti – racism banners. External activities at the gates of the Company took place between 18 February 2014 and 18 June 2014. Intensive campaigning by the Union only achieved 38% of support which was significantly less than the majority of the proposed bargaining unit.

33. Due to the nature of the Union’s campaign in its view it was unlikely that pledges of support were signed in circumstances where there was no pressure on the employee to sign. In contrast, without prompting or encouragement from the Company, a significant number of employees had expressed their non-support. The Employer did not agree with the Union that its petition was limited. The Union had failed to acknowledge that these were unsolicited expressions of opposition which must be taken into account in the same way as the Union’s pledges of support.

34. The Union could not after 6 months of vigorous campaigning, demonstrate the appropriate level of support though it had had the opportunity to demonstrate support (via its pledge cards) beyond the 50% required by the test in paragraph 36(1)(b) of the Schedule. The final report of the membership and support check showed 38% of workers in the proposed bargaining unit might favour recognition. On these grounds the Panel should dismiss the application.

### **Considerations**

35. In deciding whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 3 of this decision are satisfied. The Panel has considered all the evidence submitted by the parties in reaching its decision and is satisfied that the first and second membership and support check undertaken by the Case Manager was conducted appropriately.

36. The Panel is satisfied that the Union made a valid request to the Employer within the terms specified in paragraphs 5 to 9 of the Schedule to recognise them for collective bargaining in respect of the proposed bargaining unit as described in paragraph 1 of this decision. The Panel is

also satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 35 and 37 to 42 and that it was made in accordance with paragraph 11 of the Schedule.

37. The remaining issues for the Panel to address are whether the admissibility criteria set out in paragraph 36(1) of the Schedule are met.

#### **Paragraph 36(1)(a)**

38. In accordance with paragraph 36(1)(a) of the Schedule the Panel must determine whether or not members of the Union constitute at least 10% of the workers in the relevant bargaining unit. The result of the check carried out by the Case Manager established that 34% of the workers in the proposed bargaining unit were members of the Union. The Panel is satisfied that this test is met.

#### **Paragraph 36(1)(b)**

39. Paragraph 36(1)(b) of the Schedule provides that, for an application to be admissible, the CAC must be satisfied that a majority of the workers constituting the relevant bargaining unit would be *likely* to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit. At this stage, the Panel is tasked with determining likely, not actual, majority support for recognition of the Union.

40. The Case Manager's check of the information provided by the parties demonstrated that there was a membership level of 34% within the proposed bargaining unit. No evidence was provided to indicate that membership of the Union could not be taken as an indicator of support for the recognition of the Union other than the Employer's counter petition. However this petition constituted only 6% and was from workers who were neither Union members nor workers who had signed the Union's petition. The check further showed that 38% of the bargaining unit had expressed support for recognition of the Union for the purposes of collective bargaining by signing up to a clearly stated pledge of support. Just under half of those signing the

petition in favour of recognition, constituting 16% of the whole bargaining unit, were not members of the Union.

41. The Panel has noted the Union's point of view regarding the illegible pledge cards but cannot 'count' illegible names, nor consider assertions that some workers are afraid of signing the pledge cards. The same is of the Employer's comments on the type of campaigning that took place. What is relevant to the decision before the Panel is the actual evidence of support and non-support. Here, membership alone is not high enough but there is clear evidence of support by a sizable number of non-union employees for a ballot to be held, unless of course there is a voluntary settlement before the next stage.

42. The Panel accepts the Employer's point that its petition was achieved without a campaign but this fact does not amount to substantiated evidence that negates the Union's overall level of support achieved from its level of membership and non-member signatories within the proposed bargaining unit. It is not necessary for the Panel to establish that an actual majority is in favour of recognition of the Union as it would be at the later ballot stage of an application. At this stage the CAC has to be satisfied that it is likely that a majority would support it and on the evidence before it, the Panel is so satisfied.

43. From the membership and support check report the Panel can conclude that 50% would probably support recognition. Whether such support would be forthcoming could be tested in a ballot.

44. For the reasons provided above the Panel concludes that a majority of the relevant bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit and so the requirements of paragraph 36(1)(b) of the Schedule are met.

**Decision**

45. The Panel is satisfied that the application is valid within the terms of paragraphs 5 to 9, is made in accordance with paragraph 11(2) and is admissible within the terms of paragraphs 33 to 42 of the Schedule. The application is therefore accepted by the CAC.

**Panel**

Professor John Purcell - CAC Deputy Chairman

Mr Len Aspell

Mr Keith Sonnet

**1 July 2014**