

16 January 2015

**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  
Aeroprofessional Ltd

**Introduction**

1. Unite the Union (the Union) submitted an application to the CAC that it should be recognised for collective bargaining by Aeroprofessional Ltd (the Employer) in respect of a bargaining unit comprising “Cabin crew community specifically employed by Aeroprofessional to carry out work on behalf of/for Norwegian Air Shuttle” based at London Gatwick. The application was received by the CAC on 10 December 2014. The CAC gave both parties notice of receipt of the application on 10 December 2014. The Employer submitted a response to the CAC dated 22 December 2014 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, chairing the Panel, and, as Members, Mr Bob Hill and Mr Keith Sonnet. The Case Manager appointed to support the Panel was Linda Lehan.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 24 December 2014. The acceptance period was extended to 16 January 2015 in order to allow time for a membership check to take place, for the parties to comment on the subsequent report and for the Panel to consider these comments before arriving at a decision.

## **Issues**

4. 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; and therefore should be accepted.

## **The Union's application**

5. The Union stated that it had submitted two formal request letters for recognition to the Employer one on 24 October 2014 and the other on 13 November 2014, copies of which were enclosed, and that no response to either letter was received from the Employer. The Union also enclosed a copy of a Royal Mail proof of delivery which showed that the letter of 13 November 2014 was delivered to the Employer on the 14 November 2014.

6. The Union stated, as an agency, it was unknown; difficult to determine how many workers were employed by the Employer. The Union stated that there were 220 workers in the proposed bargaining unit of which 130 were members of the Union. When asked to provide evidence that a majority of the workers in the bargaining unit were likely to support recognition for collective bargaining, the Union stated that it could prove a substantial increase in membership as well as a petition of workforce showing support. The Union stated that due to concerns of victimisation this information would not be shared at present and would only be done so as detailed in the CAC guidance on confidentiality.

7. The Union stated that the reason for selecting the proposed bargaining unit was that it represented the flying community across many UK airlines and that the group of workers included all cabin crew up to and including the in-charge cabin crew members on board the aircraft.

8. The Union stated that the bargaining unit has not been agreed with the Employer and confirmed that it held a current certificate of independence.

9. The Union confirmed that it had not made a previous application for workers in the proposed bargaining unit or a similar unit and that it was not aware of any existing agreement which covered any of the workers in the proposed bargaining unit.

### **The Employer's response**

10. The Employer stated that it had received the Union's written request letter on 14 November 2014 and that it wrote back to the Union declining their request for recognition. The Employer enclosed a copy of its response which was a letter dated 18 November 2014 stating that it had no reason to believe that their crew would require union recognition as it had forums established for 2 way communication and crew representatives in place.

11. The Employer confirmed that it had received a copy of the application from the Union on 10 December 2014.

12. The Employer stated that it had not agreed the bargaining unit but felt that there could potentially be more than one bargaining unit due to different job roles of some employees, as this could influence their collective interests. The Employer stated that the different job roles were:

- Cabin crew specifically employed by Aeroprofessional at LGW to carry out work on behalf of Norwegian Air Shuttle and
- Senior cabin crew specifically employed by Aeroprofessional at LGW to carry out work on behalf of Norwegian Air Shuttle

13. The Employer stated that they employed 225 workers and that it did not agree with the number of workers in the bargaining unit and actual number of workers was to be confirmed.

14. The Employer stated that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit.

15. In answer to the question whether it disagreed with the Union's estimate of

membership in the proposed bargaining unit and reason for disagreeing, the Employer stated that many of their employees were not previously UK based prior to their employment with them and came from their other EU countries where Unite had no jurisdiction. The Employer stated that given that fact, combined with the short time they had been employed to date, it was very doubtful that the employees were members of any UK recognised union.

16. As to whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer stated that its current information and consultation forum (Crew Community Forum CCF) was in force and had been welcomed by their employees and had received positive feedback from employees to that effect. The Employer stated that it had already delivered positive change to employee working conditions via the forum and had an ongoing commitment for further improvement.

### **The Membership and support Check**

17. To assist the determination of two of the admissibility criteria specified in the Schedule, namely, whether 10% of the workers in the bargaining unit are members of the union (paragraph 36(1)(a)) and whether a majority of the workers in the bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit (paragraph 36(1)(b)), the Panel proposed independent checks of the level of union membership within the bargaining unit and of the petition. It was agreed with the parties that the Employer would supply to the Case Manager a list of the names, date of birth and job titles of workers within the bargaining unit, and that the Union would supply to the Case Manager a list of its paid up members within that unit (including their full name and date of birth) and a copy of the petition. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and petition would not be copied to the other party. These arrangements were confirmed in a letter dated 5 January 2015 from the Case Manager to both parties. The information from the Union and the Employer was received by the CAC on 8 January 2015. The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

18. The Union provided a list of 132 members and the Employer provided a list of 204 workers. The job titles given for the workers by the Employer were Cabin Crew Members and Senior Cabin Crew Members.

19. The Union's petition consisting of 12 signatories was set out as follows:

**Recognise UNITE the Union**

**November/December 2014**

We, the undersigned, being employed by Aeroprofessional on the Norwegian Air Shuttle contract, request that the company recognise the union of our choice, UNITE the Union, for collective bargaining purposes. We wish the union to at for us in respect of any negotiation on pay, holidays and terms and conditions.

<b>Name</b>	<b>Signature</b>	<b>Mobile Number</b>

20. The membership and support check established that there were 124 members of the Union within the bargaining unit; a membership level of 60.78%. The result of the comparison of the Union's petition with the Employer's list of workers revealed that a total of 12 workers had indicated that they wanted the Union to represent them, which corresponds to 5.88% of the bargaining unit. 10 of the 12 employees were union members (4.90%) and 2 were non-members (0.98%).

21. A report of the result of the membership and support check was circulated to the Panel and the parties on 9 January 2015 and the parties were invited to comment on the result.

**Union's comments on membership and support check**

22. A response was received from the Union dated 12 January 2015 stating that in respect of the evidence supplied via a petition, they found themselves unable to rely on that. The Union stated that having started petitioning the bargaining group, it immediately became clear that, despite assurances of confidentiality by them, the employees concerns about retribution from their employer affected their confidence in

putting their name to a document that they believed may end up in the Employer's possession.

23. The Union stated that as a result they were relying upon the level of existing membership which met or exceeded Paragraph 36 of the schedule as detailed in our letter in that far more than 10% of the workers in the bargaining unit are in membership and a significant majority of the bargaining unit are in fact in membership.

The Union stated that it believed the membership levels alone were more than sufficient for automatic recognition to be granted.

#### **Employer's comments on membership and support check**

24. A response was received from the Employer dated 12 January 2015 in which it stated it that it acknowledged the membership level was such that it satisfied 10% of the proposed bargaining unit as required.

25. The Employer stated that it was not convinced that the membership numbers actually reflected the overall attitude and desire of their employees and suggested a ballot be conducted of the bargaining unit to gauge the workers opinion of whether they wished to have union recognition. The Employer stated that its reasoning behind that was as follows:

It currently had a successful and effective method for consultation and information process (Crew Community Forum) in place which involved a group of employee selected volunteer representatives to benefit all of their employees and not just a select group of union members.

It was aware that the Union had conducted a recent petition campaign targeting the proposed bargaining unit which took place over a significant period of time and frequently noted the Union's petition leaflets in the staff crew room at the airport. It was a very poignant fact that the petition only elicited a very minor response which it felt showed that the overall attitude of the employees was that they were happy with the current consultation and information process and were not looking for a collective bargaining agreement.

Communication that it had to date with employees, who had voluntarily confirmed their union membership, had stressed that the motivation of their membership was one of 'insurance' purpose should they find themselves in a situation such as a disciplinary or grievance matter. Several union members had categorically stated that they would not want their union representing their interests when it came to negotiation of working terms and conditions.

All employees held previous flying roles performing the same duties for other airlines and it was felt likely that they would have brought their membership with them and that they had not signed up specifically for the purpose of their current employment and as such the numbers did not represent current feeling and attitude.

26. Finally the Employer stated that with the above in mind it did not feel that the membership numbers were a true representation of the opinion among their employees and the only way that that could be ascertained was through a ballot process.

#### **Employer's further comments**

27. A further e-mail was received from the Employer dated 14 January 2015 in which it challenged the Union's statement surrounding employee fears of retribution and asked for evidence to quantify the claim so they could investigate and take appropriate action. A copy of the e-mail was sent to the Union.

#### **Considerations**

28. In determining whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 4 above are satisfied. The Panel has considered carefully the submissions of both parties and all the evidence in reaching its decision.

29. The Panel is satisfied that the Union made a valid request to the Employer within the terms of paragraphs 5 to 9 of the Schedule and that its application was made in accordance with paragraph 11. Furthermore, the Panel is satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 35 and paragraphs 37 to 42 of the Schedule. The remaining issues for the Panel to decide are whether the admissibility criteria contained in paragraph 36(1)(a) and

paragraph 36(1)(b) are met.

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

30. Under paragraph 36(1)(a) of the Schedule an application is not admissible unless the Panel decides that members of the union constitute at least 10% of the workers in the proposed bargaining unit.

31. The membership check conducted by the Case Manager showed that 60.78% of the workers in the proposed bargaining unit are fully paid up members of the Union which the Employer, as stated in paragraph 24 above, did not dispute. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties. The Panel has therefore decided that members of the union constitute at least 10% of the workers in the proposed bargaining unit as required by paragraph 36(1)(a) of the Schedule.

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

32. The test in paragraph 36(1)(b) is whether a majority of the workers constituting the proposed bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit. This is not a test of actual support, rather a threshold requirement whereby the Panel must be satisfied that a majority of the workers in the bargaining unit would be likely to favour recognition.

33. The Panel noted the parties' comments in respect of the petition and that the Union were relying on its high density of union membership as evidence that there was majority support for collective bargaining. The Panel also noted that the Employer was not convinced that the membership numbers actually reflected the overall attitude and desire of their employees, as stated in paragraph 25 above, but no actual evidence to support this was provided.

34. The Panel is of the view that the level of membership within the proposed bargaining unit can be taken as a legitimate indicator of the strength of support for the

Union. With an apparent density of membership in the region of 60% in its proposed bargaining unit, the Panel has therefore decided that, on the balance of probabilities, a majority of the workers in the proposed bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit, as required by paragraph 36(1)(b) of the Schedule.

### **Decision**

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

### **Panel**

Professor Lynette Harris

Mr. Bob Hill

Mr. Keith Sonnet

16 January 2015