

**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:**

GMB

and

London Linen Group

**Introduction**

1. GMB (the Union) submitted an application to the CAC dated 29 September 2015 that it should be recognised for collective bargaining by London Linen Group (the Employer) for a bargaining unit comprising “All hourly paid operatives in the London Linen Group (the three units in Southall) including Supervisors, Team Leaders, Cleaners, Security (Gate House) and Facilities but excluding drivers and office based staff”. The application was received by the CAC on 1 October 2015. The CAC gave both parties notice of receipt of the application on 1 October 2015. The Employer submitted a response to the CAC dated 7 October 2015 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 Mr. Chris Chapman, Chairman of the Panel, and, as Members, Ms Lesley Mercer and Mr. Roger Roberts. 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 15 October 2015. The acceptance period was extended to 6 November 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.

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

5. In its application the Union stated that it had sent its formal request for recognition to the Employer on 14 September 2015 a copy of which was attached. The Union stated that a voluntary agreement was sought with the Employer through the good Offices of ACAS for the purpose of membership verification.

6. The Union stated that there were 425 staff employed by the Employer (which they stated was the number taken from the published figures in 2010), of whom 330 were in the proposed bargaining unit. The Union stated that there were 161 members of the Union within the proposed bargaining unit. When asked to provide evidence that the majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining, the Union stated that it attached a list of GMB members that was used for verification with ACAS. The Union stated that in their view, despite the assistance from ACAS, the Employer appeared to be protracting these matters hence the reason for the application. The Union stated that the list of union members was inadvertently sent to the London Linen Group at the time the membership information was sent to ACAS and it was for that reason only that they enclosed the membership details with their application.

7. The Union stated that the reason for selecting the proposed bargaining unit was because the bargaining unit had been agreed with the Employer and ACAS for the purpose of membership verification. The Union stated that the bargaining unit had been agreed with the

Employer and that it was unaware of any existing recognition agreement which covered any workers in the bargaining unit.

8. The Union confirmed that it held a current certificate of independence. The Union stated that it had copied the application made to the CAC, and supporting documents, to the Employer on 25 September 2015.

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

9. In its response to the Union's application, the Employer stated that it had received the Union's written request for recognition by email on 14 September 2015 and that contact had been made with the Union to suggest recommencing discussions in early November 2015 after the current TUPE transfer consultation process had concluded. The Employer stated that it had received a copy of the application form from the Union by post on 30 September 2015.

10. The Employer stated that it had, before receiving a copy of the application from the Union, agreed the bargaining unit with the Union. In answer to the question: 'do you agree the proposed bargaining unit' the Employer answered 'no' stating following the result of the ACAS membership check it had hoped to continue discussions with the Union about the most suitable bargaining unit in line with discussions about voluntary recognition. The Employer stated that they operated three distinct business units and wished to consider each separately and believed that the membership of GMB was concentrated in one division only. The Employer confirmed that, following receipt of the Union's request, it did propose that ACAS be requested to assist and attended three meetings with ACAS and the GMB to discuss the parameter and details of a membership check. The Employer stated that a membership check was conducted by ACAS on 31 July 2015 and the result, confirmed in writing on 4 August 2015 was as follows:-

Number of Employees in the unit:	313
Number of members claimed by GMB:	161
Number of members verified by ACAS:	137 (44%)
Possible maximum (including queries):	147 (47%)

11. The Employer stated that as of 6 October 2015 the total number of employees of the

London Linen Group was 505 which fluctuated on a week-by-week basis due to joiners and leavers. The Employer stated that it did not agree with the number of workers in the proposed bargaining unit as defined in the Union's application and the number provided to ACAS in July 2015 was 313 (not 330). The Employer stated the number of workers in the proposed bargaining unit as of 6 October 2015 was 321.

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

13. In answer to the question whether it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer said that of the 161 members claimed by the Union, a total of 17 on the list were either ex-employees; not known to them; or were monthly paid managers who did not fall within the proposed bargaining unit, a summary of which they attached.

14. In answer to the question whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer stated that, based on anecdotal evidence they had gathered from employees across the group, although individuals were happy to maintain their membership of the GMB (for the added benefit membership bought such as accident cover and in the event they required the services of a local representation to support them at an internal process), in the main, their employees had indicated that they did not want a Trade Union to speak on their behalf or represent them. The Employer stated that they had a very open door arrangement in that employees had direct access to all members of the senior management team. The Employer stated that they held periodic meetings with Factory Supervisors and had a full Works Council Meeting three times a year to discuss any issues and concerns that existed.

15. The Employer stated that since 1 May 2015, the London Linen Group had been under new ownership which had resulted in significant investment in people, machinery and buildings. The Employer stated that in addition to ongoing improvements in the working environment, in the last three months, it had introduced free Life Assurance for all employees; a company-wide all expenses paid day trip for all employees and their families; employee discount cards; and a car discount scheme all of which had been received well.

16. The Employer stated that at the start of every meeting and telephone call with GMB organisers, they establish whether they had any concerns to raise on behalf of their members and since August 2014 the answer had been 'no' on every occasion.

### **Union's clarification of the estimate in membership**

17. In a letter from the CAC Case Manager to the Union dated 8 October 2015 the Employer's response was enclosed and the Union was asked to comment on the Employer's response to the question of whether it disagreed with the Union's estimate of membership in the proposed bargaining unit (see paragraph 13 above). In a letter to the CAC dated 12 October 2015 the Union attached a copy of an email sent from ACAS dated 4 August 2015 setting out the results of the membership check, also seeking clarification regarding 10 members who had the same surname along with 14 members who were not on the employer's list. The Union stated that details of all current GMB members compiled from their membership report sent to ACAS for verification for voluntary recognition was accurate at that time. The Union stated that the result of every day employment in London Linen and similar companies was that employees came and went, however, that could and did not alter the fact that the GMB had the required number of members at the time of the ACAS verification.

### **Employer's clarification on TUPE Transfer**

18. In an email dated 9 October 2015 the Employer confirmed that the London Linen Group was purchased by the Johnson Service Group on 1 May 2015. The Employer stated that they were in the middle of a TUPE consultation period which was due to be completed just before the transfer date and that with effect from 1 November 2015, the business of the London Linen Group incorporating all three divisions would transfer to Johnsons Apparelmaster Limited which was part of the Johnson Service Group. The Employer stated that with effect from that date, they would all be employed by Johnsons Apparelmaster Limited though they would continue to trade as the London Linen Group.

### **Membership Check**

19. To assist the determination of two of the admissibility criteria specified in the Schedule,

namely, whether 10% of the workers in the proposed bargaining unit are members of the union (paragraph 36(1)(a)) and whether 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 (paragraph 36(1)(b)), the Panel proposed an independent check of the level of union membership and support within the proposed bargaining unit. It was agreed with the parties that the Employer would supply to the Case Manager a list of the names, dates of birth and job titles of workers within the proposed bargaining 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. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists would not be copied to the other party. These arrangements were confirmed in a letter dated 13 October 2015 from the Case Manager to both parties. The information from the Union was received by the CAC on 13 October 2015 and from the Employer 16 October 2015. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

20. The list supplied by the Employer indicated that there were 324 workers in the proposed bargaining unit. The list of members supplied by the Union contained 147 names. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was 140, a membership level of 43.21%.

21. The Case Manager's report of the results of the membership check was circulated to the Panel and the parties on 19 October 2015 and the parties were invited to comment on the results by a specified date. The Employer was also given the opportunity to comment on the Union's letter of 12 October 2015.

### **Employer's comments on the result of the membership check**

22. In a letter to the CAC dated 22 October 2015 the Employer stated that, as both the ACAS and the CAC membership checks established that the level of Union membership in the proposed bargaining unit exceeded the required 10%, they were not disputing the results or that the condition was met in full.

23. In respect of paragraph 36(1)(b) the Employer stated that it did not believe that the

majority of workers in the proposed bargaining unit would favour recognition. As well as reiterating the points it had made in paragraphs 14 and 15 above the Employer stated that discussions about recognition had been taking place since August 2014 and during that time none of their employees had asked about Trade Union recognition or requested a progress report or expressed any interest in having any Trade Union represent them on collective matters. The Employer stated that since August 2014 GMB organisers had not submitted a single employee concern to be addressed which indicated that Union members had not approached the Union to deal with any work related matters during the fourteen month period.

24. The Employer stated that the most recent Works Council meeting took place on 20 October 2015 and presented them with the opportunity to outline the principle of Trade Union Recognition with the GMB and to garner any initial response. The Employer stated that the meeting was attended by sixteen Employee Representatives of which eight were from the proposed bargaining unit and included GMB members. The Employer stated that, without exception, none of the Employee Representatives at the meeting supported the proposal for a Trade Union to speak on their behalf or represent them to address concerns. The Employer stated that the unanimous and public response confirmed their prior anecdotal evidence and reaffirmed their belief that employees in the proposed bargaining unit did not want things to change. The Employer enclosed a copy of the minutes of the meeting.

25. In conclusion, the Employer stated that they did not feel that paragraph 36(b) of the Schedule was met as there was no evidence that a majority of the workers constituting the relevant bargaining unit would be likely to favour recognition of the Union. The Employer stated that, on the contrary, a recognition agreement would remove a significant element of direct employee engagement and interaction which they and the Senior Management Team wished to retain.

#### **Union's comments on the result of the membership check**

26. In a letter to the CAC dated 20 October 2015 the Union stated that it satisfied the request as set out in paragraph 36(a) of the schedule in that it had more than 10% of the workers. The Union stated that their concern was that they had 147 members which was greater than the 43.21% quoted and further, as the CAC would appreciate, were unable to

vouch for the status of the 324 workers claimed by the company without access to detail of all the employees.

### **Considerations**

27. 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.

28. 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)*

29. 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.

30. The membership check conducted by the Case Manager showed that 43.21% of the workers in the proposed bargaining unit were members of the Union which the Employer confirmed in their letter of 22 October 2015 it did not dispute. As stated in paragraph 19 above, the Panel is satisfied that these checks were 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)*

31. Under paragraph 36(1)(b) of the Schedule, an application is not admissible unless the

Panel decides that 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. For the reasons given in the previous paragraph the level of union membership is 43.21%. The Union did not provide any additional evidence of support for recognition, such as a petition, but the Panel considers that, in the absence of evidence to the contrary, union membership provides a legitimate indicator of the views of the workers in the proposed bargaining unit as to whether they would be likely to favour recognition of the Union. It is also the Panel's experience that there will be workers who are not members of the Union who would be likely to favour recognition of the Union. The Panel notes the comments made by the Employer in paragraphs 23 - 25 above but no actual evidence in support was provided in this case except for a reference in the minutes of a Works Council Meeting to an unspecified number of GMB representatives being unsupportive of recognition. In the Panel's view, this evidence does not outweigh the significant number of workers who have taken up union membership. It is unusual in the Panel's experience for so many workers to join a Union without the aim of gaining recognition. On the basis of the evidence before it, the Panel has 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**

32. For the reasons given in paragraphs 27 to 31 above, the Panel's decision is that the application is accepted by the CAC.

## **Panel**

Mr Chris Chapman, Chairman of the Panel

Ms Lesley Mercer

Mr. Roger Roberts

30 October 2015