

**17 May 2017**

**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:**

**Community Union**

**and**

**Coilcolor Limited**

**Introduction**

1. Community Union (the Union) submitted an application to the CAC dated 1 August 2016 that it should be recognised for collective bargaining by Coilcolor Limited (the Employer) for a bargaining unit comprising “All hourly paid production workers in the paint line and profiling areas” The location of the bargaining unit was given as “Whitehead Estate, Docks Way, Newport, Gwent NP20 2NW”. The application was received by the CAC on 2 August 2016 and the CAC gave both parties notice of receipt of the application on 3 August 2016. The Employer submitted a response to the CAC dated 9 August 2016, 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 Gillian Morris, as Panel Chair, and, as Members, Mr Michael Shepherd and Ms Judy McKnight CBE. The Case Manager appointed to support the

Panel was Miss Sharmin Khan. For the purposes of this decision Ms McKnight was replaced by Ms Lesley Mercer.

3. The CAC Panel has extended the acceptance period on four occasions in this case. The initial period expired on 16 August 2016. It was extended until 31 August 2016 to provide more time for the Panel to consider all the evidence and further extended to 30 September 2016 to allow time for the parties to comment on the results of a membership check and for the Panel to consider said comments before arriving at a decision. On 22 September 2016 the Union asked for the proceedings to be stayed to allow time for Acas to conduct a confidential ballot and the Panel agreed to this request. On 23 February 2017 the Union confirmed that it wished the Panel to proceed with the application, Acas assistance having ceased, and the acceptance period was extended until 20 March 2017 to allow time for the parties to comment on the results of the membership check and for the Panel to consider said comments before arriving at a decision. The period was further extended until 17 May 2017 to accommodate a hearing and to allow time for the Panel to reach its 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 to the CAC the Union stated that it had sent its written request for recognition to the Employer on 12 May 2016. A further letter was sent on 9 June 2016 referring to the first letter and stating that if the Union did not receive a response by 17 June 2016 it would need to proceed with the CAC process. Copies of both these letters were attached to the Union's application. The Union stated that the Employer did not, following receipt of its request for recognition, respond with a proposal that Acas be requested to assist. The Union stated that it had copied the application and supporting documents to the Employer on 1 August 2016.

6. The Union stated that there were 37 workers employed by the Employer, of whom 30 were in the proposed bargaining unit. The Union stated that there were 12 members of the Union within the proposed bargaining unit. 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 had a petition signed by 23 workers employed within the proposed bargaining unit indicating their support for the recognition of the Union. The Union stated that the petition would be made available to the CAC upon request.

7. The Union stated that the reason for selecting the proposed bargaining unit was that these hourly paid workers were a distinct and identifiable group within the Employer's business, who were managed in the same way and subject to the same terms and conditions as each other. The Union stated that its proposed bargaining unit had not been agreed with the Employer and, as far as it was aware, there was no existing recognition agreement in force covering any of the workers in the proposed bargaining unit.

8. The Union stated that it had made a previous application under Schedule A1 in November 2015 but had withdrawn that application prior to acceptance by the CAC. The Union confirmed that it held a current certificate of independence.

### **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 a written request for recognition from the Union on 13 June 2016. The Employer said that it had responded by e-mail on the same day requesting more information. The Employer attached a copy of that e-mail to its response. In that e-mail the Employer said that it did not have a copy of the Union's letter dated 12 May 2016 and it asked the Union to send a copy. The Employer also said that its feedback was that staff did not want recognition of the Union and asked the Union to send it a document with the names of those who had joined the Union since the Union's previous application to the CAC. The Employer said that it had received no further correspondence from the Union until 2 August 2016, when it had received the application to the CAC.

10. The Employer stated that it had not, before receiving a copy of the application from the Union, agreed the bargaining unit with the Union and that it did not agree it. The Employer

said that it was not clear which sections of the factory were included i.e. slitter operators, fabricators, maintenance etc.

11. In answer to the question as to whether it had proposed that Acas be requested to assist following receipt of the Union's request, the Employer stated that it had not but that it would like the input of Acas.

12. The Employer stated that it employed a total of 56 workers and that it agreed with the number of workers in the Union's proposed bargaining unit as defined in the Union's application. The Employer stated that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit.

13. In answer to the question as to whether it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer stated that it had carried out an employee survey which indicated that the Union had seven members not 12 as stated by the Union in the application.

14. When asked for its reasons if it did not consider that a majority of the workers in the proposed bargaining unit would be likely to support recognition the Employer stated that it had conducted an employee survey which indicated that a further three employees over and above the existing members may be willing to support recognition of the Union which would give them a total of 10 out of 30 employees.

15. When asked whether it was aware of any previous application under the Schedule by the Union in respect of the proposed bargaining unit or a similar bargaining unit, the Employer said that it had received the same application from the Union in November 2015 which had incorrect employee numbers and after a dispute the Union had withdrawn the application.

16. Finally, when asked if it had received any other application under the Schedule for statutory recognition in respect of any workers in the proposed bargaining unit, the Employer inserted "N/A".

### **Evidence of the Employer's receipt of the Union's request under the Schedule**

17. The Panel noted the contents of the Employer's e-mail of 13 June 2016 referred to in paragraph 9 above, and on 12 August 2016 the Case Manager, by direction of the Panel, wrote

to the Union to ask whether it had any evidence that its letter of 12 May 2016 had been received by the Employer. On 18 August 2016 the Union sent an e-mail to the CAC to which it attached a copy of a recorded delivery receipt dated 9 June 2016 and a Royal Mail proof of delivery note dated 10 June 2016. On 19 August 2016 the Union sent to the CAC a copy of an e-mail which it had sent to the Employer on 13 June 2016 in response to the Employer's e-mail which it had received earlier that day. A copy of the letter dated 12 May 2016 was attached to the Union's e-mail. In its e-mail the Union said that it had asked its legal officer to determine whether it was reasonable for the Employer to request a list of names on the petition for recognition as this could lead to problems in the future for its members. The Union also stated that it had spoken to a representative of the Employer by telephone who had reiterated that the Employer did not want a union. On 22 August 2016 the Employer confirmed to the Case Manager by telephone that it did receive the Union's letter of 12 May 2016 as an attachment to the Union's email of 13 June 2016 and said that the Union was not being ignored.

#### **Union's comments on the Employer's response to the application**

18. On 19 August 2017 the Union submitted its comments in respect of the Employer's response to its application by e-mail to the CAC. The Union stated that all the job roles described in the proposed bargaining unit were within paint line and profiling. In respect of its membership, the Union stated that it was able to prove which workers were Union members through its Subscriber Membership System, and that it was willing to provide this information, together with its petition, for a confidential check to be undertaken by the CAC. The Union said that it had concerns regarding the Employer's previous conduct towards its members so preferred a confidential check to publishing its members' names.

#### **Employer's response to the Union's comments**

19. In an e-mail to the CAC dated 23 August 2016 the Employer said that it was unclear about the accusations that the Union was making in regards to its conduct (see paragraph 18 above) and asked the Union to clarify and substantiate its claim. The Employer stated it had no problem recognising a union if that was the request of the majority of the work force but that its feedback from the majority was that they particularly did not want the Union involved in their employment.

#### **First Membership and Support Check**

20. 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 within the proposed bargaining unit; of those who had signed the Union's petition supporting recognition; and of those who had signed a petition compiled by the Employer opposing recognition. It was agreed with the parties that the Employer would supply to the Case Manager a list of the names, addresses, job titles, and dates of birth of the workers within the proposed bargaining unit, and a copy of its petition not in favour of recognition and that the Union would supply to the Case Manager a list of the names and addresses (and dates of birth where possible) of its paid up members within that unit and a copy of its petition in favour of recognition. It was explicitly agreed with both parties that, to preserve confidentiality, the respective information would not be copied to the other party. These arrangements were confirmed in a letter dated 23 August 2016 from the Case Manager to both parties.

21. The information from the Union was received by the CAC on 23 August 2016 and from the Employer on 25 August 2016. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

22. The list supplied by the Employer indicated that there were 30 workers within the proposed bargaining unit. The list of members supplied by the Union contained nine names. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was nine, a membership level of 30%.

23. The Union provided a PDF (scanned) copy of its petition which was on one A4 page of the Union's official letter headed paper. Appearing at the top left hand corner of the page was the heading "Union recognition at CoilColor Ltd". Underneath this heading appeared the statement:

"By signing the below petition, you agree to union recognition on the Coilcolor Ltd site at Whitehead Estate, Newport, Gwent, Docks Way, Newport NP20 2NW".

Beneath this statement was a table with columns headed “Name”, “Address”, “Position/Department”, and “Signature”. No dates appeared on the Union’s petition. According to the Case Manager’s report, the petition contained 23 names/signatures. Of these, 20 were on the Employer’s list of names, representing 66.7% of the proposed bargaining unit. The number of petition names/signatories who were union members was nine (30% of the proposed bargaining unit) and the number of petition names/signatories who were non-members was 11 (36.7% of the proposed bargaining unit).

24. The Employer provided a PDF (scanned) copy of its petition and the original petition was submitted to the CAC by post. The Employer’s petition was the results of a poll conducted by the Employer. The results of the poll were on two sides of A4 paper. At the top of each side was the heading and statement:

**“Hourly paid production workers union membership survey**

We have been approach by the Community Union requesting that their union be recognised at Coilcolor, in order to do so they need a current membership of 10% and at least the support of 50%.”

Beneath the heading/statement was a row of the following headings and questions: “Name”, “Are you a member of Community Union”, “If not would you support recognition for them”, “Are you a member of another union if so which one?”, “Date”.

Beneath the row of headings and questions were hand-written answers. There were 30 names entered and their answers. Answers entered were a “Yes” “No”, or “N/A”. One of the sides had the date “08/08/16” entered on the first row of answers with ditto marks entered for the date on the remaining rows. On the second side the date entered on the first row of answers was “09/08/2016” with tick marks entered for the date on the remaining rows.

In its covering e-mail to the CAC to which the information for the check was attached, the Employer said that the poll was taken by a member of the bargaining unit and had been delivered to the Employer’s Managing Director.

According to the Case Manager’s report 19 workers answered “No” to the question whether they would support recognition of the Union and nine answered “Yes”. 11 of the workers

who answered “No” had signed the Union’s petition in favour of recognition. Two of the 11 were Union members, nine were non-members.

25. The Case Manager’s report of the results of the membership and support check was circulated to the Panel and the parties on 5 September 2016 and the parties were invited to comment on the results by a specified date. Comments from the Employer were received on 6 September 2016 and from the Union on 7 September 2016. Having considered the Case Manager’s report and the parties’ comments thereon, the Panel decided to hold a hearing in order to assist the Panel to decide whether the application should be accepted and the Case Manager informed the parties of this decision in a letter dated 14 September 2016. In that letter the Union was also asked to confirm over what period the Union’s petition signatures were obtained. In an e-mail to the CAC dated 14 September 2016 the Union confirmed that that its petition had been conducted between 9 and 23 March 2016.

### **The Stay in CAC Proceedings**

26. On 22 September 2016 the Union informed the Case Manager that the parties were using the services of Acas to work with the parties to organise a confidential ballot. As this would take some time, the Union requested that the Panel stayed the application. The Panel granted an initial stay until 31 October 2016; this was further extended until 27 January 2017 to allow time for the Acas ballot process to be completed. The stay was confirmed to the parties in letters from the CAC dated 10 October 2016 and 30 December 2016 respectively.

### **The Lifting of the Stay and Subsequent Correspondence**

27. On 15 February 2017 Acas informed the CAC that the Employer had now decided that it did not wish to use the services of Acas in conducting a recognition ballot and would prefer to follow the CAC process. The Union then confirmed by e-mail to the CAC on 23 February 2017 that it would like the Panel to proceed with the statutory process. In a letter to the parties dated 10 March 2017, the CAC notified both parties that as Acas assistance had now ceased, the Panel would proceed with the application. The parties were invited to submit their current positions on the admissibility of the application. On 14 March 2017, both parties confirmed in writing to the Case Manager that their positions on the admissibility of the application remained

unchanged. The Employer also stated that a member of staff who had been willing to recognise the union had resigned.

28. In a letter dated from the CAC dated 21 March 2017 the parties were informed that following consideration of the aforementioned correspondence the Panel had decided to hold a hearing on 10 May 2017 to assist the Panel to decide whether the application should be accepted. The parties were asked to submit their statement of case to the CAC by 3 May 2017 for exchange between the parties and the Panel prior to the hearing. In an e-mail to the CAC dated 28 April 2017 the Employer informed the Case Manager that on 11 April 2017 it had passed a letter to all factory employees. A copy of this letter, dated 10 April 2017, was attached to the Employer's e-mail. The Employer said that it had attached a response form to the letter and that all but one response form had been returned. The Employer said that it would like these forms to be taken into account by the Panel and offered them on a confidential basis for a CAC check. The Employer's e-mail was copied to the Union and to the Panel on 28 April 2017.

### **The Second Membership and Support Check**

29. In an e-mail from the Case Manager dated 2 May 2017 both parties were informed that the Panel had asked the Case Manager to conduct a confidential check of the Employer's response forms as soon as possible and that once completed the parties would have an opportunity to comment on the report of the check. The Union confirmed in an e-mail to the Case Manager dated 2 May 2017 that it did not have an updated petition or an updated list of its members in the proposed bargaining unit to submit for this check. The Case Manager agreed with the Union that the check would be carried out using the information supplied by the Union in August 2016 for the purposes of the first membership and support check (see paragraphs 20-24 above). The Employer was asked to submit a copy of its employee responses by e-mail (and the originals in the post) and an updated list of workers in the bargaining unit by noon the following day including their names, addresses, job titles and dates of birth. It was understood by both parties that the parties' respective data for the check would not be cross copied to the other party or to the Panel. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

30. The list supplied by the Employer indicated that there were 27 workers in the proposed bargaining unit. The list of members supplied by the Union in August 2016 contained nine names. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was nine, a membership level of 33.33%.

31. According to the Case Manager's report the Union's petition, described in paragraph 23 above, contained 23 names. Of these, 16 were on the Employer's list of names, representing 59.26% of the proposed bargaining unit. The number of petition names/signatories who were union members was nine (33.33% of the proposed bargaining unit) and the number of petition names/signatories who were non-members was seven (25.93% of the proposed bargaining unit).

32. The Employer provided by e-mail to the CAC on 2 May 2017 a sample of the letter that it had issued to the workers on 11 April 2017 (see paragraph 28 above) and a PDF (scanned) copy of the slips completed by workers in response to this letter ("the petition slips"). The Employer also provided the original petition slips by post to the CAC. The sample letter read as follows:

"Name and address

10/04/2017

Dear XXXXXXXX ,

As you are aware Coilcolor has been approached by Community Union stating they believe they have enough of a majority support from our employees to have their union recognised within Coilcolor.

After discussions with all of Coilcolor's employees and numerous polls, I do not believe this is the case. I believe Community Union would not be welcome by the majority of Coilcolor's workforce, I have voiced this opinion to the Community union and Community do not acknowledge our findings and have decided to take Coilcolor to an arbitration committee in London. I am happy to attend the meeting to support our employees and will be taking a Coilcolor representative with me. I will need some data to present to the committee.

Please could you fill in the attached form and return it to me as soon as is possible.

Needless to say your response will remain private and confidential. Please do not discuss your decision with other employees as it is important everyone votes with their own views and opinions.

Thank you,

Warm Regards

Michelle”

The Employer submitted 26 completed petition slips. Each petition slip had the worker’s name hand-written at the top of the page, beneath which were four statements for the worker to circle to indicate which statement was applicable to him or her. Below these statements was a space for the worker to sign and date the petition slip. The petition slips read as follows:

“I am **NOT** a member of Community union

I **AM** a member of Community union

I **DO NOT** wish to recognise the community union

I **WOULD** recognise community union

Signed

Date”

The earliest dated petition slip was 10 April 2017 and the most recent dated petition slip was 28 April 2017. One petition slip was dated in error as 10 May 2017. Three petition slips were unsigned and undated but had the worker’s name hand-written at the top of the page.

33. According to the Case Manager’s report 16 workers in the proposed bargaining unit, representing 59.26% of the proposed bargaining unit, indicated on the petition slip that they did not support recognition of the Union. Of those 16 workers, seven had signed the Union’s petition. Seven workers (25.92% of the proposed bargaining unit) had signed petition slips stating that they supported recognition. Two workers in the proposed bargaining unit were on the Union’s membership list but indicated on the petition slip that they were not Union members (7.41% of the proposed bargaining unit) and one worker indicated to the Employer that he/she was a member of the Union but did not appear on the Union's membership list (3.7

% of the proposed bargaining unit).

34. The Case Manager's report of the membership and support check was circulated to the Panel and the parties on 5 May 2017. The parties were asked to supply comments on the results of the check by 8 May 2017. The Union informed the Case Manager that it would be unable to comply with this deadline and the Panel Chair agreed that in view of the short time allowed for comments and the proximity of the hearing any comments by the parties on the check should be admitted at the hearing on 10 May 2017.

### **The hearing**

35. The hearing took place in London on 10 May 2017. The names of those attending the hearing is annexed to this decision.

### **Matters clarified at the start of the hearing**

36. The Case Manager clarified that the words "not in support" should be inserted in paragraph 20(n) of her report of the second membership and support check following the words "Employer's petition". The Panel Chair sought to establish that both parties had a shared understanding of the most crucial elements of the second membership and support check and both parties confirmed that they did. The Panel Chair noted that the Employer had submitted material at the hearing which indicated that there were 28 workers in the proposed bargaining unit rather than the 27 who had been included for the purposes of the second membership and support check. She informed the parties that the Panel would rely on the figures contained in the check.

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

37. The Union said that it had been approached by the Employer's workers in March 2016 asking for a meeting with the Union and that around 16 or 17 people had attended the meeting arranged in response to that request. The Union had explained the benefits of membership to those attending and had the petition referred to in paragraphs 23 and 31 above ready for signature at that meeting. The Union said that the majority of people at the meeting had signed the petition and it was then circulated to other workers who were asked whether

they were willing to sign. The Union said that the petition had been returned with signatures to the Union by late March 2016. In answer to the Employer's contention that those attending had been misled into thinking that they would have their children's University fees paid by the Union and would receive cheap car insurance if they were to join the Union, the Union denied that it had misled workers about the nature and scope of the benefits that the Union could offer. The Union explained that it was able to offer certain benefits in relation to car insurance and that members of four or more years' standing could apply for assistance with fees for their children's first year of University. The Union stated that it now had eight members in the proposed bargaining unit, one worker having left the Union since August 2016.

38. The Union said that there had been a significant degree of antipathy between the Employer and the Union, mainly manifested in correspondence between the parties and the CAC. The Union pointed to the conflict between the evidence which the Union had provided in the form of a petition in support of recognition and the evidence provided by the Employer in August 2016. The Union said that the poll conducted by the Employer which was the subject of the first membership check was unsigned and therefore more difficult to verify and the fact that there were individuals who the Employer's poll had indicated were not in support of recognition but were Union members and had signed the Union's petition cast doubt on the Employer's self-administered poll. The Union said that, in the light of the apparent conflict of evidence, the Union had suggested that Acas input may be helpful but that the conciliator initially appointed by Acas had not progressed the matter and that the replacement conciliator had reported to the Union that he was unable to get the Employer to engage with him. The Union said that it had considerable concerns that the Employer had used the period of the stay to conduct a campaign against union recognition. The Union said that it was concerned that any petition submitted by the Employer may not have been impartially obtained and that there may have been misrepresentation of what union recognition would mean for the business. The Union also said that it had been told that management was standing over workers when they responded to the Employer's letter dated 10 April 2016 (see paragraph 32 above). The Union read out a text from an individual worker to the Employer which had been received on the morning of the hearing. In that text the sender, who wished to remain anonymous, had alleged that workers in the proposed bargaining unit had been put under pressure to say no to union recognition. The Union pointed out that, as well as being explicit, pressure could be implicit, deriving from a desire to comply with the Employer's wishes. In answer to the Employer's allegations of bullying of workers within the proposed bargaining unit by Union members, the

Union said that it was a disciplinary offence under the Union rules to bring the Union into disrepute and that bullying, if reported to it, would not be tolerated.

39. In answers to questions from the Panel the Union acknowledged that reliance on a petition which was 14 months old was not “ideal” in terms of reassurance that it represented workers’ current views. The Union said that it had approached a contact at the Employer on 2 May 2017 to ask whether workers would be willing to sign a new petition but had been told by that contact that workers would be too scared to do this. The Panel put it to the Union that it had been told on 21 March 2017, prior to the Employer’s letter to the workforce distributed on 11 April 2017, that a hearing would take place on 10 May 2017, leaving time for a fresh petition to have been organized without the ‘fear factor’ which the Employer’s letter may have created. The Union said that it was a “fair comment” that no refreshment petition had been compiled in the period between 21 March 2017 and the date of the hearing. In answer to a question from the Panel about the wording of the petition, which referred only to “union recognition”, the Union said that it took it for granted that workers would know what that was and that there was no requirement to spell out the exact scope of recognition. The Union said that the Employer had not queried what the text of the petition meant.

### **Summary of the Employer’s submissions**

40. The Employer explained that it was a family steel business which had been established in 1978 by the father of the two current Managing Directors and that it was one of only two privately-owned coating lines in Europe. Since 1982 the Company had been based in Newport at an old British Steel Corporation site. The Employer said that it employed over 50 people and had excellent staff retention, with half of the staff having been employed for over 10 years and 11 for 25 years. The Employer said that the Managing Directors had a close working relationship with all their staff and recognised that their staff were the back-bone of the business. The Employer said that it would not make staff do anything they did not wish to do. The Employer said that it trained all staff in every area of the process to encourage full visibility of the entire business and its objectives. The Employer said that it had been recognised for its progressive approach and had won the HSBC business thinking award in 2010. The Employer said that the importance it gave to health and safety was reflected in the length of service of its staff and the fact that fathers had encouraged some of their sons to work in the business. The Employer said that its Human Resource team was always accessible and operated an open door

policy, meaning that at any time any member of staff could discuss any problems or issues with the Managing Directors with no appointment being necessary. The Employer said that it had a compliance room which was open at all times for staff to review the company's compliance documents and its policies and procedures.

41. The Employer said that it had initially been approached by the Union for recognition for a workforce of 36 workers in September 2015. At that stage the Employer had not agreed with the Union's number of employees or number wanting recognition and eventually the Union had withdrawn its application in December 2015. The Employer said that it had had a fresh approach for recognition in June 2016. The Employer said that it had had a difficult start to 2016, experiencing a flood from a neighbouring development (in respect of which the insurers were disputing liability) as well as having some shorter working hours resulting in some reduction in staff. The Employer said that having spoken to all the staff and their managers in the factory, it became obvious that the majority of workers did not want the Union within their workplace. The Employer said that many workers had had dealings with the Union in previous employment and felt that its presence was unnecessary.

42. One of the Employer's two Managing Directors, Ms Michelle Proctor, attended the hearing. Ms Proctor said that she had been informed by the Employer's Operations Manager that the Union had organised a meeting. The Employer exhibited a statement from the Operations Manager in which he stated that initially a few workers had believed that they would have their children's university fees paid by the Union and would get cheap car insurance but that after reading up on these issues they had changed their view. Ms Proctor said that she believed that workers had been bullied by two employees and manipulated by them into supporting the Union.

43. In answer to questions from the Panel Ms Proctor explained in detail how the letter set out in paragraph 32 above had been distributed and the petition slips collected. Ms Proctor explained that the letters had been personalised with names and addresses. She said that her colleague in Human Resources had decided on the wording and had advised that they should contain names so that they could be the subject of a check by the CAC. The letters had been distributed to workers by the Operations Manager by hand and workers had been asked to return the completed forms the same day before leaving work. Ms Proctor said that they were handed out around 11.30am and given back to the Operations Manager "in dribs and drabs".

She acknowledged that it would have been possible for the Operations Manager to have read the responses. Ms Proctor denied that workers would have felt intimidated into not expressing their honest views and said that she had come before the CAC because workers themselves wanted her to come.

44. Ms Proctor said that the Employer had not, in the end, agreed to a ballot organised by Acas because Acas had advised that the Union may wish to talk to the workers in the proposed bargaining unit and she did not feel that they should be influenced one way or the other by either the Union or the Employer. She said that she was worried that workers would misinterpret what membership could offer and then change their minds. Ms Proctor acknowledged that there were a few issues with a minority of workers on the coating line. She said that in the past the Employer had given workers a wage rise to reflect inflation but that it lacked the money to do that at the moment and that this may be the problem. She said that the issue of recognition was divisive and unnecessary and asked that there should be a period in which the dust could settle.

45. The Employer submitted that the vast majority of workers in the proposed bargaining unit did not support Union recognition and that the Union's petition was too old to be relied upon. The Employer said that only five workers had stated that they were members of the Union on the petition slips and that the number (eight) quoted by the Union at the hearing had not been independently verified.

### **Considerations**

46. 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.

47. 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)*

48. 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. The membership check conducted by the Case Manager, described in paragraphs 29-33 above, showed that 33.33% of the workers in the proposed bargaining unit (nine out of 27) were members of the Union. As stated in paragraph 29 above, the Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties. At the hearing the Union stated that its membership had fallen to eight, representing 29.63% of the bargaining unit. The Employer pointed out that the figure of eight had not been verified since the first check had been conducted in August 2016 and that only five of those responding to its own survey had indicated that they were members of the Union. The Employer did not dispute, however, that the test set out in paragraph 36(1)(a) was met. The Panel notes that it is possible that not all those responding to the Employer's non-confidential letter would have been willing to declare that they are Union members, but on the basis that there is a minimum of five Union members within a bargaining unit of 27 workers the level of union membership is at least 18.51%. 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)*

49. 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. The Union relied on its petition in support of recognition to demonstrate that this test was met. As described in paragraph 31 above, the support check conducted by the Case Manager showed that 59.26% of the workers in the proposed bargaining unit (16 out of 27) had signed the Union's petition. The Employer submitted that 59.26% of those in the proposed bargaining unit (16 out of 27) had indicated that they were not in support of recognition when responding to its request for workers' views. Seven of the 16 workers responding to the Employer that they were not in support of recognition had previously signed

the Union's petition in favour of recognition.

50. The Panel notes that signatures to the Union's petition were collected in the period 9-23 March 2016 and the Union itself acknowledged at the hearing that opinions may have changed in the 14 months between then and the hearing date. The Panel also notes that responses to the Employer's request for views on union recognition were not confidential and that individuals may have been inhibited in giving their views. The Panel notes that paragraph 36(1)(b) requires it to make a positive decision 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 statutory test to be met. The Panel is unable to place any substantial weight on the evidence of either party in this case. On the basis of the evidence before it, the Panel has been unable to conclude 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.

51. The Panel notes that the Union's petition did not require signatures to be dated and asked only if those signing agreed "to union recognition". The Panel considers that it would have been more appropriate for the Union to follow the common practice of requiring signatures to be dated, and advisable for the Union to specify, where a petition is likely to be relied upon in the statutory process, that recognition was being sought for the purposes of "pay, hours and holidays".

## **Decision**

52. For the reasons given in paragraphs 49-50 above, the Panel's decision is that the application is not accepted by the CAC.

## **Panel**

Professor Gillian Morris - CAC Deputy Chairman

Ms Lesley Mercer

Mr Michael Shepherd

17 May 2017

## **Appendix**

List of those attending on behalf of each of the parties

### **Community**

Mr Alun Davies	Regional Officer
Mr Grant Williams LLM	Community Legal Officer

### **Coilcolor Ltd**

Ms Michelle Proctor	Managing Director
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