Case Ref No: IC-86/2023

THE INDUSTRIAL COURT

THE TRADE UNION AND LABOUR RELATIONS (NORTHERN IRELAND) ORDER 1995 (AS INSERTED BY ARTICLE 3 OF THE EMPLOYMENT RELATIONS (NORTHERN IRELAND) ORDER 1999)

SCHEDULE 1A – COLLECTIVE BARGAINING: RECOGNITION

DECISION ON APPROPRIATE BARGAINING UNIT

The Parties:

Unite the Union

And

Seagate Technology (Ireland)

Background

1. The Industrial Court (the Court) received an application from Unite the Union on 17 April 2023, for recognition at Seagate Technology, Springtown Industrial Estate, Londonderry BT48 0LY. The proposed bargaining unit was described as 'All Manufacturing Specialists'

Acceptance Stage

2. The Panel appointed in this case consists of Mrs. Sarah Havlin, Chairman of the Industrial Court of Northern Ireland, Mr. Robin Bell, Member of the Industrial Court of Northern Ireland with experience of acting on behalf of Employees, and Ms. Patricia O'Callaghan, Member of the Industrial Court of Northern Ireland with experience of acting on behalf of Employers. By way of a Decision on 19 May 2023, the Panel decided that the Application met the requirements for acceptance

Negotiation Period

3. Pursuant to Schedule, the parties were referred by the Chairman of the Industrial Court to the Labour Relations Agency (LRA) on 22 May to explore the possible agreement of the bargaining unit.

4. The Parties attended with LRA for facilitated negotiation meetings but the bargaining unit could not be agreed. In absence of any agreement, the matter was referred back to the Industrial Court on 15 June.

5. The Chairman directed by way of correspondence that the parties must lodge submissions in respect of the appropriate bargaining immediately and the matter would be considered by the Industrial Court on 10 July 2023.

6. The Employer sought an extension to the relevant period and an adjournment of the date of 10 July on two grounds. The first was the unavailability of its legal representative on that date, and the second was a more substantial request to extend the period with a stay of the proceedings for a 3 month period due to a workforce restructuring process. The request to stay the proceedings on this basis was strongly opposed by the Union

7. On 29 June the Chairman of the Industrial Court directed that the case would be granted a short extension to facilitate a hearing date that suited the Employer's legal representative, but that a stay on the application would not be granted if it could not be agreed by the parties. Accordingly the hearing was fixed to proceed before the Panel on 31 July 2023 with the date of 10 July fixed for the submission of written arguments on the appropriate bargaining unit and associated document bundles.

8. Written submissions and document bundles were duly received by the Industrial Court from the Employer and from the Union on 10 July**.** These were cross copied to the parties and a further replying submission was lodged by the Union on 26 July, which was copied to the Employer. No further documents or written submissions were lodged with the Industrial Court.

9. On 5 July the Employer issued a pre-action protocol letter notifying its intention to initiate an application for Judicial Review of two decisions taken by the Industrial Court, namely the decision to accept the application on 19 May, and the refusal by the Industrial Court to grant the Employer's application to stay the application for pending the completion of its workforce restructuring process. The Employer also sought injunctive relief to prevent the Industrial Court's intended consideration date of 31 July from going ahead.

10. On 24 July the High Court issued a 'decision on the papers', refusing leave for judicial review on all grounds of challenge. The Employer's legal representative immediately sought a full hearing of its application for leave for judicial review, which was heard at the High Court on 27 July. On 28 July, the High Court issued its decision refusing the granting of leave for judicial review on all grounds of challenge.

11. The consideration hearing date in respect of the appropriate bargaining unit therefore went ahead before the Panel on 31 July at the Office of the Industrial and Fair Employment Tribunals, Killymeal House, Belfast. The hearing was attended by Neil Gillam on behalf of the Union and Rachel Penny and Hanna McGrath on behalf of the Employer. Lynn McKinty of Unite and Mark Patton and Jennifer Connolly, both of Seagate, also attended the hearing to provide information to the Panel as required.

12. On 7 August the Industrial Court received Notice that the Employer had lodged an appeal of the High Court's decision to refuse leave for judicial review. The appeal has not been listed at the date of issuing this decision by the Industrial Court. The Industrial Court will continue to progress the application pending any future decision from the Court of Appeal.

Legal issues

13. Paragraph 19 of the Schedule provides:-

"(1) This paragraph applies if-

(a) the Court accepts an application under paragraph 11(2) or 12(2),

(b) the parties have not agreed an appropriate bargaining unit at the end of the appropriate period (defined by paragraph 18), and

(c) at the end of that period either no request under paragraph 19A(1)(b) has been made or such a request has been made but the condition in paragraph 19A(1)(c) has not been met.

(2) Within the decision period, the Court must decide whether the proposed bargaining unit is appropriate.

(3) If the Court decides that the proposed bargaining unit is not appropriate, it must also decide within the decision period a bargaining unit which is appropriate."

14. Paragraph 19B provides:-

"(1) This paragraph applies if the Court has to decide whether a bargaining unit is appropriate for the purposes of paragraph 19(2) or (3) or 19A(2) or (3).

(2) The Court must take these matters into account—

(a) the need for the unit to be compatible with effective management;

(b) the matters listed in sub-paragraph (3), so far as they do not conflict with that need.

(3) The matters are—

(a) the views of the employer and of the union (or unions);

(b) existing national and local bargaining arrangements;

(c) the desirability of avoiding small fragmented bargaining units within an undertaking;

(d) the characteristics of workers falling within the bargaining unit under consideration and of any other employees of the employer whom the Court considers relevant;

(e) the location of workers.

(4) In taking an employer's views into account for the purpose of deciding whether the proposed bargaining unit is appropriate, the Court must take into account any view the employer has about any other bargaining unit that he considers would be appropriate.

15. Relevant legal principles, in terms of statutory recognition applications, were established by the Court of Appeal in the case of *Kwik Fit Ltd v Central Arbitration Committee [2002] EWC Civ 512.* The first is that the test for the Industrial Court to apply is whether the proposed bargaining unit is an appropriate bargaining unit, not whether it is the 'most effective' or 'most desirable' bargaining unit. Therefore, the Industrial Court is not required to assess the quality of multiple possible bargaining units and decide which is better or best. The straightforward task for the Court is to decide if the bargaining unit proposed by the Union is an appropriate vehicle for the conduct of collective bargaining concerning that group of workers in the context of its compatibility with effective management.

16. The second is that the 'compatibility with effective management' test was further clarified by the *Kwik Fit* case to mean "consistent" or "able to co-exist with".

17. The task before the Panel is therefore to determine if the proposed bargaining unit is one which could reasonably be said to be an appropriate grouping of workers for the purpose of collective bargaining on pay hours and holidays, on behalf of that group of workers, in the context of whether such a unit of workers, as a vehicle for such collective bargaining, is able to co-exist with effective management of the Employer's undertaking. The issue of what is 'appropriate' must be considered by the Panel with the primary consideration being compatibility with effective management, but it can also be considered by reference to any of the relevant factors stated at Paragraph 19B(3)(a)-(e) and 19B(4), provided that such considerations do not conflict with the primary consideration of compatibility with effective management.

Description of proposed bargaining unit:

18. The proposed bargaining unit, upon which the Acceptance Decision was based, is expressed as 'All Manufacturing Specialists'.

19. The clarity of the description of the bargaining unit is not disputed and the Panel noted that it is clear to both parties as to which workers fall into this description. It is noted that the Union's number of total workers in the proposed bargaining unit was stated in its original application as being 815, and the Employer's total number as stated in its response was 817. There has been no material difference or dispute between the parties as to which workers and job roles would be included within the Union's description of the proposed bargaining unit. There are therefore no issues of differing interpretations of the proposed bargaining unit for the Panel to consider.

Summary of Written Submissions by the Parties:

The Union submitted:

20. The test is whether the proposed bargaining unit is "appropriate" not whether it is the most effective or desirable. Per Buxton LJ:

"the statutory test is set at the comparatively modest level of appropriateness, rather than of the optimum or best possible outcome:":

R (on the application of *Kwik-Fit Ltd v Central Arbitration Committee [2002] ICR 1212 at [7] ("Kwit-Fit").*

21. When taking into account the need for the bargaining unit to be compatible with effective management, "compatible" in paragraph 19B(2) means "consistent with" or "able to co-exist with" effective management, in accordance with how the employer operates, structures and manages its workforce. If the employer objects and proposes an alternative bargaining unit the Panel is not required to compare the union's proposal with the employer's and "then choose between" them, nor "to seek the optimum bargaining unit," "search for" or determine "the most suitable bargaining unit": *Kwik Fit* at [15, 11, 18]. The starting point is whether the union's proposal is appropriate: *Kwik Fit* at [6].

22. The Panel is required to consider both parties' views. If the employer has objected and proposed an alternative bargaining unit, the Panel will likely have considered the employer's views in the first limb of its analysis.

23. Where the employer objects by suggesting staff are satisfied with current arrangements and/or disinterested in joining a bargaining unit, the Panel may consider that strong levels of unionisation within the industry may indicate that staff may be open to and welcome recognition: *Transport and General Workers' Union and Armchair Passenger Transport Co Ltd* CAC Case No TURI/291/2003; GMB and Mobility Healthcare CAC Case No. TUR1/300/2003. This is especially so because workers may be reluctant to raise their heads above the parapets by voicing their support for recognition before the employer or CAC formally recognises the bargaining unit.

24. The Panel will seek to avoid the "risk of proliferation" of small units. Employers should not need to replicate two or more sets of negotiations in respect of parts of their workforce who are essentially the same. To do so would be wasteful of time and effort, and risk inconsistent outcomes as well as greater industrial unrest: *R (Lidl Ltd) v Central Arbitration Committee and anor* [2017] ICR 1145 at [35-36] per Underhill LJ.

25. Where workers are employed on discreet terms and conditions, and/or are employed because of specialist skills, it may make sense to define the constituent members of the bargaining unit by excluding some roles with different skill requirements and/or terms and conditions: *National Union of Journalists and Bristol Evening Post and Press Ltd* CAC Case No TUR1/64/2002.

26. When considering the characteristics of the workers, the Panel will consider the tasks they perform, their employment status, their working hours, and relevant working practices such as flexible vs static working hours and hourly rates of pay vs standard salaried pay: *Unison v Cornerstone Community Care* TUR1/1092/2019

27. Work location may also be a relevant but not determinative factor for consideration.

28. The bargaining unit (BU) proposed is suitable for the purposes of collective bargaining and is compatible with effective management. The BU proposed is, for want of a better description, the classic production operator group on the shop floor within the Respondent. On a very basic level they all have the same job title and do the same job. All MS's work on and need to be trained and certified to operate the machines or tools of production and no other roles do so.

29. Management recognises this group of employees as a distinct group – the Union understands that codes are utilised to describe the employees and the proposed BU contains those described as '*oper*' which we presume to have some historical reference to the previous description of the role as production operators.

30. By way of background the title Manufacturing Specialist is a relatively new term applied to the circa 800 workers in the proposed BU. Prior to 2021 they were known as Production Operators (and to this day it remains the term utilised by many employees)

31. The employer has recognised the Manufacturing Specialist as a group within current structures. In the recent redundancy exercise representatives are elected to satisfy the statutory consultation requirements. Each of the four shifts (see para 31 infra) of Manufacturing Specialists elected two representatives to the body tasked with consultation

32. Similarly the company have an employee forum to engage with employees known as the ICD forum. The current ICD has 2 manufacturing reps per shift but the company are currently revamping their ICD and this number is set to go up to 4 reps per shift, again following the A, B, C, D shift pattern. It is therefore submitted that the existence of bargaining unit encompassing this grade and these employees is tacitly accepted the current arrangements.

33. All MS's are hourly paid and there are three grades covering same, MS1 presently at £11.10 per hour, MS2 at £11.70ph and MS3 at £12.40ph.

34. Further all MS's work the shift pattern referred to above with the vast majority working over a rotating four shifts – A B C and D covering days and nights

35. The MS group within the Respondent reports to and is controlled by a distinct management structure, reporting to the Manufacturing Director who sits at board level at Springtown along with other Directors who in turn report to the CEO.

36. Seagate argues that an alternative bargaining unit (hereinafter 'ABU') is appropriate. The panel is respectfully reminded that the starting point for its deliberations is whether the Applicant proposal is appropriate; it is not required to choose between the two proposed units. The panel is invited to dismiss this suggestion.

37. The Applicant points to following differences or difficulties between the groups identified in the ABU: Different roles, skills and responsibilities. The MS grade is straightforward and is by far the largest and most homogenous role within the facility (with only a slight variation (MS1,2 &3) as identified in the Respondent's letter of 30th May). All MS employees are required to operate the machinery and have the same or similar skills and training.

38. By extending the ABU to cover all shift working employees, the ABU proposal will dilute the BU with an array of different job roles, skills and responsibilities to include roles such as managers, professionals and engineers with an array of different roles, qualifications and pay rates. The Applicant understands that within the Engineering Specialist role alone there is a large number of identified job roles with no discernible pattern or common factors whatsoever apart from their working of shifts, shifts which do not necessarily correspond to those of the MS's. To define a BU by a single factor such as working time is neither desirable nor conducive to efficient or effective collective bargaining.

39. The inclusion of Supervisors and we understand some Managers within the Engineering Specialist role, who may have responsibility for the membership within the majority of BU is impossible to reconcile. The inclusion of first level management within the ABU is not conducive to positive industrial relations.

40. The MS grade within the facility is one specific grade (with three variations or spinal points within) The inclusion of a plethora of different roles will bring in to the BU, different terms and conditions, different pay rates including salaried staff, different bonus/incentive schemes It is entirely contrary to the stated aim of compatibility with effective management. Collective bargaining would be infinitely more complex and even within the job roles identified in the Respondent's letter would necessarily include some and exclude others, for example an engineering specialist who is not engaged on shift work would not be in the ABU, but others potentially would.

41. The BU has all of its members on exactly the same contractual terms. Previous history of the Respondent's dealing with this BU displays the acceptance of the MS role as a group. In February 2022, presumably in response to market conditions, all MS's were given an uplift to pay rates across the M1/2/3 grades. No other employee was awarded same.
Further it is our understanding that the BU of MS's is covered by one cost centre in the Respondent's internal accounting provisions.

42. Similarly in the recent redundancy announcement pay reductions were imposed across senior grades in which the distinct workplace groups including MS's were protected. The Respondent's bonus or incentive scheme designates the MS's as Direct Labour which involves the equitable sharing of a bonus to each MS as a flat rate percentage known as a Company Performance Bonus (CPB) On the contrary the ABU contains all others, known as Key Contributors who receive individualised bonuses dependent on specific performance including appraisal and manager discretion.

43. All MS's work through the same management structure of Supervisor, Shift Manager, Senior and Manufacturing Director. Others are subject to different structures

44. It is the Union's position that that the proposed BU is an obvious, appropriate collection of similarly skilled employees who are tasked with similar duties and subject to the same terms and conditions. It is not simply that they have the same job title but that they are a distinct workplace grouping with a distinct identity recognised by the company.

45. To dictate the BU by one factor alone (shift working) as suggested by the Respondent makes little sense other than as an attempt to dilute the BU where the Respondent is now aware of the level of Union membership with the Applicant's proposal.

46. No other union has alternative bargaining arrangements within the facility. It is noted that the Respondent has in the past acknowledged this group in respect of non-unionised pay arrangements.

47. A bargaining unit of 800 shop floor workers is a considerable sized group and runs little to no risk of small fragmented bargaining groups in itself. It is accepted that at a future point other groups may seek a seat at the table and that can be and should be considered as and when that occurs. A Union with the history of and the size of Unite is experienced in collectively bargaining on behalf of different groups, who perform different roles and enjoy different terms and conditions within one workplace.

48. All of the Respondent's employees are based at one location however it is the characteristics of that work which make the proposed BU both appropriate and frankly obvious. This is a classic and orthodox demarcation in an industrial context and one that is present and recognised through the UK. The panel is invited to ignore the rather pellucid attempts, which are in line with the general approach to this application, to propose an ABU which makes little practical or industrial sense.

The Employer submitted:

49. Unite have proposed a Bargaining Unit (BU) in their application to the Industrial Court of "all Manufacturing specialist employees at Springtown". Seagate's contention is that the union's proposed Bargaining Unit is not appropriate.

50. Our primary concerns are: Unite is focusing on one employee job category only, namely, Manufacturing Specialists based on two factors, neither of which are valid criteria within the relevant law to determine an appropriate bargaining unit:

- It has high union density in this job category (not yet tested) •
- These union members are the only group to have requested union recognition.

51. Whilst Manufacturing Specialist is a distinct role, it is part of a larger and highly integrated Wafer Operations team consisting of Engineering Specialists, Supervisors, Production and Materials Assistants, who all work together in the manufacture of the recording head. Unite's proposed bargaining unit is unworkable as it excludes employees in other job categories who work within the site Wafer Operations team, share the same characteristics as Manufacturing Specialists, and work identical or largely similar work patterns.

52. The union's proposed bargaining unit is not compatible with effective management and would fragment the Wafer Operations team. The union's proposed bargaining unit introduces a high risk of negotiated outcomes resulting in differential employment terms, leading to anomalies and perceptions of unfairness, which in turn could affect the climate of industrial relations and breed discontent between colleagues who work closely together.

53. Our cross department multi-functional shift teams require ongoing daily interaction to support the manufacturing process. The functional team are interdependent, share the same cleanroom environment, work on the same processes and tools. All job roles perform responsibilities integral to the manufacture and supply of high-quality product.

54. Common pay, hours, holidays and benefits apply to all roles, and are determined based on our Total Rewards approach, these are implemented for all shift workers working across multiple departments. The same shift payments apply irrespective of department. The union's proposed bargaining unit carries a high risk of introducing differentials between co-workers employed on identical or largely similar employment terms (working patterns, holidays, benefits and pay allowances).

55. Negotiated outcomes from the manufacturing specialist only proposed bargaining unit would need to be applied to other job roles outside the proposed bargaining unit (e.g.) shift pattern. We encourage the Industrial Court to conclude that the union's proposed bargaining unit is not appropriate and reject it.

56. We wish to propose an alternative bargaining unit for consideration, which we believe is appropriate: Seagate believe that the bargaining unit should be inclusive of all shift employees. All shift employees based at our Springtown site including Manufacturing Specialists, Engineering Specialists, PC and Material Assistants and Supervisors directly involved in supporting the manufacture of the product and are inextricably linked to co-workers in other shift-based job roles.

57. This alternative bargaining unit is compatible with effective management, the primary criteria the IC should apply. The alternative bargaining unit reflects our integrated

organisational culture and how we manage resources on a cross functional coordinated basis within the business. All shift teams are directly responsible for maintaining cleanroom systems, manufacturing process, tooling and product starts to enable the manufacture of the product on their shift.

58. We encourage the Industrial Court to accept this alternative bargaining unit option because it is:
• Inclusive of all the employees directly involved in Wafer Operations supporting production of the product at the site
• Reflective of the organisation structure of shift teams supporting 24 X 7 operations at the site.
• Ensures consistency for all shift-based employees who have a high degree of commonality of employment terms, specifically pay, working hours, shift-work pattern, holidays and benefits.
We wish to add at this juncture, that our views on the Proposed Bargaining Unit and the Alternative Bargaining Unit are based on current restructuring and job reduction circumstances and are subject to significant uncertainty for the foreseeable few months.

59. The Panel must also have regard to paragraph 171 of the Schedule, which specifies the IC's general duty and which provides that "[i]n exercising functions under this Schedule in any particular case the IC must have regard to the object of encouraging and promoting fair and efficient practices and arrangements in the workplace, so far as having regard to that object is consistent with applying other provisions of this Schedule in the case concerned."

60. Importantly, at the stage of assessing the appropriateness of the Union's proposed bargaining unit, Paragraph 19B(4) provides that, in taking an employer's views into account for the purposes of deciding whether the proposed bargaining unit is appropriate, the IC must take into account any view the employer has about any other bargaining unit that it considers would be appropriate. While the IC is not called upon to choose between rival contenders for the appropriate bargaining unit, it must consider the views of the employer and consider any observations and issues that the employer has of the Union's proposal. This includes considering any alternative bargaining unit(s) proposed by the employer (Paragraph 19B(4)).

61. If the IC decides that the Union's proposed bargaining unit is not appropriate, as the employer submits in the present case, the IC must decide an alternative bargaining unit Seagate challenges the appropriateness of the Union's proposed bargaining unit (all Manufacturing Specialists) and puts forward its views on alternative bargaining unit which would be appropriate, applying the approach to the legislation set out above. That alternative bargaining unit is, as per the executive summary, all shift employees, consisting of Manufacturing Specialists (MS), Engineering Specialists (ES), Assistants (both "Materials" Assistants and "PC" Assistants) and Supervisors.

62. The paramount or overriding requirement is compatibility with effective management. Seagate's primary submission is that the Union's proposed bargaining unit is not appropriate because it is incompatible with effective management.

63. The Company's position is that the Union's proposed bargaining unit bears no likeness to the way that Seagate operates in practice and would be an impediment to the effective and smooth functioning of its Wafer Operations. This is neither fair nor efficient and therefore out with the Court's general duty under paragraph 171 of the schedule. Unite are focusing on one

employee job category, MS based on two factors, neither of which meet or relate to the overriding or subsidiary requirements: Unite claims high union density in this job category; and this is the only group to approached Unite to seek union recognition.

64. In *Unite the Union v London City Airport* [TUR1/1139(2019)] the CAC said, "that the Union's membership density is strongest in one particular area is not a determinative factor that the Panel can take into account under the terms of the Schedule".

65. Whilst the MS is a distinct job category, it is one part of a larger Wafer Operations team working together with Engineering Specialists, Supervisors, Production & Materials Assistants who are all highly integrated and involved in the manufacture Seagate's product. The Union's proposed bargaining unit excludes other job categories working on shifts within the site Wafer Operations team all of whom support the manufacturing process, work identical (or substantially similar) shift patterns, have almost identical terms and conditions of employment.

66. In *GPMU and Ritrama* (UK) Ltd [TUR1/178/02] the CAC stated that the concept of effective management is to be understood as relating principally to methods of resolving issues of pay, hours and holiday by means of collective bargaining. In other words, taking account of the statutory criteria and the way that the employer operates and is organised, does the proposed bargaining unit offer a sensible and workable vehicle for setting pay, hours and holiday.

67. If we look at hours, as one example, and focus on the issue of shift working. Seagate organises and operates its Wafer Operations by reference to 24/7 rotating shift systems (e.g. Shift A, B, C, D rotating between days and nights). Each shift consists of categories of employees beyond the proposed bargaining unit. If the IC Panel were to determine that MS is the appropriate bargaining unit such that the Union was recognised to collectively bargain about those hours of work or breaks (or indeed the shift allowances, or when and how much holiday can be taken), any such change would impact the shift system. Shifts cannot be changed just for the MS grades. The entirety of the shift system would have to be altered, and this effects employees far beyond MS grades. This is just one example of the incompatibility with effective management.

68. In contrast, Seagate's alternative bargaining unit does not "split the shifts". From that evidence the IC Panel can see the high degree of unity and integration between MS, ES, Assistants and Supervisors. They are engaged on almost identical terms and conditions of employment, they work identical (or very similar) shift patterns, they are all integral to the highly technical and finely tuned Wafer Operations process. This alternative bargain unit is entirely compatible with effective management and means that any union-negotiated changes to pay, hours and holidays would be applied consistently to all those who work shifts - this would promote fair and efficient practices.

69. The Union's proposed bargaining unit excludes many other workers who share many of the same characteristics and common terms of employment.

70. On the issue of terms of employment, the CAC had significant regard for the importance of maintaining commonality of terms and purpose within a wider division when reaching its decision in the case of *CWU and MCI* [TUR1/482(2005)] as follows:

"We think it is not appropriate in this case, where the Company has invested effort in producing harmonised terms and conditions and a 'team culture', to include some workers doing a particular type of job within collective bargaining arrangements whilst leaving other workers in the same category outside it. The evidence also supported the proposition that there were workers with similar functions (even if without the same job title) both inside and outside the Union's proposed bargaining unit...

71. The Union seeks recognition in respect of one part of its Wafer Operations team which would unnecessarily split an integrated function into pieces. This will lead to division and fragmentation. Whilst the proposed bargaining unit is not of itself numerically small, the Schedule refers to small, fragmented units and it is necessary for the IC to look at both elements of this phrase, and from two perspectives – from within and from outside the proposed bargaining unit.

72. If the proposed bargaining unit (presently c. 804 employees) were determined to be the appropriate one, that would leave approximately a further 340 Wafer Operations colleagues outside of the bargaining unit. One group would have their pay/ hours/ holiday collectively bargained, the other would not. The danger of fragmentation was summed up by the CAC in the case *of CWU and Cable & Wireless* [TUR1/570/2007] as follows:

"Fragmentation is not measured numerically as a given proportion of the workforce but in terms of whether a bargaining unit would divide up the workforce into numerous groups prone to compete with each other."

Collins J developed this on judicial review *R (Cable & Wireless Services UK Ltd) v CAC* [2008] IRLR 425]):

"Small fragmented units are regarded as undesirable in themselves. However, it is obvious that the real problem is the risk of proliferation which is likely to result from the creation of one such unit."

73. More recently, in *Lidl Ltd v Central Arbitration Committee & Anor* [2017] EWCA Civ 328, the Court of Appeal stated: "…

It has long been regarded as undesirable (to use the statutory term) that employers should have to negotiate in more than one forum – and, more particularly, with more than one trade union – in respect of parts of their workforce who were not essentially different. At the very least, conducting two or more sets of negotiations where one would do is wasteful of time and effort. But there is also the risk of inconsistent outcomes, which can breed anomalies and discontent between comparable groups of workers (including, though certainly not only, in an equal pay context). The policy expressed by head (c) is evidently that, other things being equal, where a group of employees can appropriately be bargained for by a single trade union in a single bargaining unit it is desirable that they should be. It is thus concerned specifically with fragmentation of collective bargaining." 28. The approach of the CAC in the case of Unite the Union and Paragon Labels Ltd [TUR1/852/13] is also apt to the current case: "…the Panel considers that the evidence presented suggests an employer with workers with largely common terms and conditions of employment that have been determined by central management with a very limited scope for modification by Factory Mangers (for example overtime is allocated to relevant workers by Factory Managers within a budget set by central management). …. Further, the Panel has noted both parties' comments regarding fragmentation with reference made to Cable & Wireless. We consider that there is a genuine difficulty presented by the Union's proposed bargaining unit in relation to potential fragmentation and fragmented bargaining. Firstly, the proposed bargaining unit excludes roles that share a number of characteristics with roles that have been included. They share the same terms and conditions and are hourly paid. The only difference, for some at least, appears to be a differing channel of management, such as with the Plate Workers and related roles. The risk of further fragmentation of bargaining also exists in separating one site for collective bargaining amongst a number of sites with workers with same terms and conditions that are decided by central management. It strikes the Panel that the Employer has, in this case, raised a valid argument regarding effective management. The Employer's is a business that is particularly dependent upon the fast reaction to customer orders. The Panel considers that having one site with differing terms to others, such as regarding pay, hours and holidays presents an obstacle to effective management. The Panel concludes that the Union's proposed bargaining unit is not an appropriate unit."

74. A key spirit of the legislation was to avoid fragmentation. Seagate submits that fragmentation is simply not necessary or appropriate here. It makes sense that the bargaining unit is extended to include all shift workers. The problem in Lidl was that the employer could have faced "a small island of recognition in sea of non-recognition". The concern for Seagate is the reverse – a smaller island of non-recognition in a sea of recognition.

75. Accordingly, in assessing the desirability of avoiding small, fragmented bargaining units within an undertaking, the focus is on avoiding fragmentation of collective bargaining where that may result in the core terms of employment for different parts of what is essentially a single workforce being set in different forums, with the risk of adverse consequences such as inconsistent outcomes breeding anomalies and discontent between comparable groups of co-workers.

76. Seagate submits this division of Manufacturing Specialist grades from the rest of their shift working colleagues is arbitrary and unfair based on nothing more than claims and arguments of union density. Those other shift working colleagues have been excluded for no reason other than that the union presumably does not believe that it has the requisite levels of membership, affiliation or support within the wider Wafer Operations population.

77. It is accepted that Seagate does not currently recognise a trade union for collective bargaining purposes elsewhere within its operations in Northern Ireland. However, it has for many years operated an Employee Forum which provides a voice to all employees, regardless of role.

78. Seagate's longstanding practice of informing and consulting employees is described earlier in these submissions. The ICD Employee Forum (Information and Consultation) was established in 2005 consists of 18 elected employee representatives from all functions across the Springtown site. 12 ICD positions are specifically reserved to represent shift employees. The intended purpose of the Forum is to strengthen the process of information exchange, consultation and representation at a strategic level between the company and its employees. The Employee Forum covers all employees at the Springtown site. The ICD is due to under-go a review process to re-energise its role and impact on mutually beneficial matters once the current re-structuring collective consultation process is concluded.

79. Seagate contends that the Union's proposed bargaining unit is not appropriate because the MS levels, whilst a specific job category, are part of highly integrated and complex manufacturing process. To divide them from colleagues who work together in close proximity, the same shift hours, and enjoy the same employment terms is not compatible with effective management and does not promote fair and efficient practices;

80. Different employment terms arising from union bargaining could create tension between the MS group and others within Wafer Operations and (in the case of a change in hours of work) would be completely unworkable within the established shift system;

81. The Union has selected the unit based on its membership presence this an irrelevant criterion to determine a bargaining unit. The proposed bargaining unit would divide the shift working population and would be unworkable in practice; and lead to tension, discontent and division amongst co-workers, it will lead to undesirable fragmentation. In contrast, Seagate contends that its preferred bargaining unit is appropriate because it would be compatible with

effective management, all these workers have almost identical terms and conditions of employment and work on an integrated basis, particularly in relation to shift systems; it is more aligned with Seagate's centralised decision-making progress related to people practices and policies, all workers in this bargaining unit are employed on substantially the same contractual terms and qualify for identical benefits and working conditions, collective bargaining may take place in respect of all employees affected by proposed changes to pay, hours and holidays irrespective of their precise job category within Wafer Operations; any union negotiated changes to pay, hours and holidays would be applied consistently to all shift workers –this would promote fair and efficient practices, it is more inclusive and non-divisive, there would be no fragmentation.

82. The proposed bargaining unit excludes other employees directly involved in supporting the manufacturing process this would potentially erode our shift team cohesion. It does not take account of the cross departmental multi-functional nature of the manufacturing process requiring input and coordination of all the shift to enable the process. Negotiated outcomes from the Manufacturing Specialist only proposed bargaining unit would need to be applied to other job roles outside the proposed bargaining unit (e.g.) shift pattern, shift allowances.

83. Seagate's Total Rewards approach to compensation and benefits is to provide similar terms and conditions of employment and employment practice to all employees regardless of their role.

84. The Panel noted that Employer's arguments were set in the context of a comprehensive analysis of the company's profile, production chain, shift patterns, company values and culture, employment practices, global business environment and sample job descriptions.

Replying Submissions:

The Union submitted the following written arguments in response to the Employer's submission:

85. The Applicant Union notes the position being adopted by the Respondent, namely that it is premature to assess the appropriateness of the Bargaining Unit at this time and the assertion that any changes to the BU will negate the efficacy of the process.

86. The Applicant Union contends this point is without merit and indicative of the approach taken generally by the Respondent to this application. It is our view that the Respondent has obfuscated at every stage of the statutory process and has not sought to engage meaningfully with the Union at any point. Meetings have been perfunctory and utilised to provide ammunition for an anti-Union and anti-recognition campaign being run in the workplace.

87. The statutory process has defined timelines within it for a number of reasons, one of the most obvious being to ensure that the process is not elongated by an employer's refusal to enter into discussion and utilise time to defeat the application.

88. For all intents and purposes the Bargaining Unit will remain in some form– whether that be the PBU or indeed the ABU. The manufacturing process at Springtown will continue. There will be a reduction in headcount in certain areas but the basic structure will remain – as it has done since the arrival of Seagate in 1993. The role of Production Operator – renamed as

it was in circa 2015, Manufacturing Specialist, will remain and the essential ingredients of the manufacturing process will remain.

89. Seagate has consistently and regularly responded to market conditions and changes by the utilisation of redundancy. There have been global exercises in 2015, 2016, 2020 and 2022. If the Respondent's logic is accepted, it is foreseeable that they may be near permanently in a 'state of flux'

90. The statutory process has inbuilt mechanisms to deal with either changes to the Bargaining Unit – under Part III of the Schedule to the 1995 Act or Part IV should derecognition become something the employer seeks. These provisions, particularly under Part III were specifically set out to deal with situation such as that which exists presently in Seagate.

91. The relevant law is reasonably straightforward and the panel is referred to para 1296 of Harvey on Industrial Relations and Employment Law at Division N1:

(e) Current 'snapshot' [1296] The CAC will not normally be deflected by an employer's plea that circumstances are about to change dramatically, so that it is a waste of time attempting to define a bargaining unit. The CAC must determine the issue on the basis of the circumstances as they exist at the time when the decision falls to be made: other procedures may be invoked if and when there is a material change of circumstances (UCATT and Critical Path Associates (TUR1/177/02, 11 July 2002), CAC—where the company was in the process of changing direction and moving into new kinds of work; cf UNIFI and Bank Tejarat (TUR1/144/01, 11 February 2002), CAC—*where the employer was about to disappear as a result of merger*

92. We note the Respondent's primary and first concern that neither of the two factors on which the Union position is supposedly premised are relevant for the purposes of determining appropriateness. We are at a loss as where this has come from. We refer to our application to the Court which states the following as the Union's 'Reason for selecting the proposed Bargaining Unit'. The representation of the Union's position in the submission as being self-serving is incorrect.

93. We note the acceptance of the Manufacturing Specialist by the Respondent as a 'distinct role' The Respondent relies heavily on the integrated production process as reason for its objections. Respectfully, all manufacturing processes are likely to be integrated – if they were not it would presumably be of concern and most certainly inefficient.

94. We do not accept that the PBU is unworkable simply because other individuals who support the manufacturing process are not part of it.

95. We do not accept that the two principal groups whom the Respondent is seeking to add to the PBU – that being Supervisors and Engineering Specialists 'share the same characteristics' They do, it is accepted work to an extent under the same shift system – this is hardly surprising in a production environment that has 24/7 working. However they are distinct in a number of important ways: The Engineering Specialists are predominantly qualified in what would be traditionally known as a 'trade' The minimum qualification is ONC level we understand but many are time served Engineers, Electricians, Plumbers etc. The minimum qualification for the MS role is lower, previously being five GCSE's and now we understand

limited to a defined period of manufacturing experience. Within the Engineering Specialist Role there are an array of different roles, qualifications and pay rates

96. The Supervisors are first level management responsible for discipline amongst the MS contingent. The MS role is the only one within the PBU that can be and is replaced with agency labour. Whilst no agency labour is present at the moment due to the ongoing 'state of flux' we understand that up to 100 agency roles have in the past been utilised in the MS contingent over the four shifts. This is not the case for the ES and Supervisor role which require experience or qualifications.

97. The MS role is almost exclusively within the cleanroom and they are required to be present at their place of work unless on one of the pre-ordained break times. They are, in common parlance, required to be present and correct at their work station. ES roles are different, predominantly autonomous in how they operate – i.e. where and whether they are required and operate independently (subject to supervision) for example they take breaks as and when they can depending on what they are doing.

98. The Respondent points to the risks of negotiated outcomes resulting in differential employment terms. This ignores the reality of the fact, accepted within the Respondent's submission, that differential employment terms (most notably pay) already exist. The hourly rates for Manufacturing Specialists as compared to Engineering Specialists and Supervisors are markedly different (and notably not included in the extensive material provided by the Respondent) All of the ES group enjoy an element of performance related pay resulting in differentials even within the ES group and both the ES group and the Supervisors are entitled to participate in a Share scheme. Further, the bonus schemes applied to the MS role (known as Direct Labour) and all other roles (known as key contributors) are substantially different in how they operate and can lead to large differentials in what is paid to the respective groups. Other differences exist – for example an attendance bonus (of 60 hours) is paid annually to MS and ES but not to Supervisors. Ultimately whilst all have the fact that they receive an hourly rate and shift allowance (if worked in the case of ES) in common, there is certainly no 'common pay' to all roles as indicated in the document.

99. The MS role is the lowest paid role on site, the basic hourly rate being in or around the living wage. 8. Whilst other terms are similar – for example in pension contributions and hours this is not uncommon within workplaces.

100. It is stated that 'negotiated outcomes would need to be applied to other job roles outside the bargaining unit' This is simply not a reason to reject the appropriateness of the PBU and is matter for the employer as to whether any changes made are applied to other areas. The risk of differentials arising between co-workers ignores the fact that they already exist.

101. The provision of an ABU with reference to shift working alone is simply confusing, will result in anomalies and not is conducive to effective management. There are roles within the ES group in particular where some will be inside the BU (as they do not work shifts) and others are not, creating exactly the sort of divides which the Respondent has highlighted in its response.

103. The shift working referred to by the Respondent is a combination of different shift patterns – see 3.0 and 3.1. As we have stated previously the MS role all undertake the same – Shifts A to D. The ES and others roles widen this to include Shifts G and H. Utilising the

figures provide by the Respondent we estimate that up to a quarter of the PBU will not either work the shift pattern operated by the MSs (barring one individual who we believes may have in place a reasonable adjustment) The MS role operates the rotating day and night – ie shift A B C and D. We understand that the ES role has combination of all shift patterns – including the G and H and some not working shifts at all. 11.

104. The MS's all report to one Manufacturing Director – though a simple hierarchical system of supervision. The ES roles straddle a number of Directors.

105. The 'integrated organisational culture' and '24/7 operations' referred to by the Respondent is common to many manufacturing facilities and does not and cannot necessitate a single Bargaining Unit.

106. The Respondent's submission, much of which, whilst interesting and informative, was largely, we would submit, of limited relevance to the issues before us. It describes in detail how pay is dealt with presently when bluntly the purpose of the application is to provide an alternative approach to same. The table at figure 15 is misleading indicating commonality of terms which are standard practice across the organisation and in a lot of cases simply the statutory minimum required– benefits such as pension, maternity pay, parental leave etc are almost universally standard in large employers.

107. The PBU is, as we have stated in our original submission, the classic semi-skilled shop floor, responsible for production. All of the operatives contained within are managed by one Director with a series of hierarchical management below (including Supervisors) below him. This is so orthodox it needs repeating that it operates in factories, workplaces and facilities across Northern Ireland and the UK, for examples locally; Unite would represent the fitters and riveters (production operatives) in Bombardier, the bus drivers in Translink, the production operators in Moy Park etc etc. These are (in Bombardier and Moy Park) multinational operations who have managed to cope with representation by Unite of the largest groupings within their workforce whilst allowing for different representation (and none) in respect of more specialised, qualified or professional groups.

108. The ABU is simply an attempt to delay, dilute and add a degree of confusion (and in the case of Supervisors an element of mischief) to a simple and effective collective bargaining structure. The inclusion of a multitude of different roles, all with their own personal pay rates is simply not conducive or compatible with effective management. Experience would tell us so.

109. The Union is of the view that nothing in the proposed BU would be incompatible with effective management. What it will be, and this is obvious from the commentary in the Respondent's original submission, is a change to the way things are done at Seagate. That of course is our intention and we make no apology for this however it is emphatically not a reason for the proposed BU to be rejected or amended under the tests set out in Schedule 1

Replying Submissions by the Employer:

110. By letter of 26 July the Employer confirmed that it would not make any further written submissions and would address further points verbally at the hearing before the Panel.

111. There were no new points made at the hearing that had not previously been made in the comprehensive written submissions of the parties. The Panel is grateful to both the Union and the Employer and their respective legal teams for the comprehensive submissions made which have been of significant assistance to the Panel.

Considerations

Stages of Process in an Application for Statutory Recognition and Role of the Industrial Court

111. Employers may need to work with Trade Unions which represent groups of their employees, known as bargaining units. However, not all workers who are members of a trade union will be employed in a workplace where their Union enjoys recognition rights. Recognition of a Union entitles the Union to collective bargaining rights, which is the right to directly negotiate with the Employer in respect of pay hours and holidays on behalf of a group of workers.

112. Many Trade Unions enjoy recognition rights through voluntary recognition agreements with Employers. If a Union believes that it has a sufficiently significant level of support for recognition within a group of workers and that group of workers is an appropriate bargaining unit, the Union can approach an Employer to request voluntary recognition. If an Employer refuses to enter into a voluntary agreement, an independent certified Trade Union can utilise the statutory application procedure for legal recognition by applying to the Industrial Court of Northern Ireland under Schedule 1A of The Trade Union and Labour Relations (Northern Ireland) Order 1995 (as inserted by Article 3 of the Employment Relations (Northern Ireland) Order 1999).

113. The Industrial Court provides a formal platform for the parties to exchange information within the limits of individual worker's privacy and data protection rights, and the individual employment rights of workers. It is the parties, not the Industrial Court, who are best placed to understand the workplace situation in which they are involved and positive workplace relationships are in the interest of both Employer and workers. Agreement is therefore encouraged and facilitated at all stages in partnership with both parties in dispute, and with the Labour Relations Agency In the absence of agreement between a Union and an Employer, the Industrial Court will act in an arbitration role and issue binding decisions to the parties. This can be done at each stage of the process, if required. These decisions are based on the evaluation of the best information available on the balance of probabilities in accordance with the statutory requirements under the Schedule. The Industrial Court has no investigative power and it will not directly inspect or interrogate the records of either party nor will it directly contact individual workers.

114. The consideration of the appropriate bargaining unit is the second stage of the Industrial Court's procedure of narrowing down the issues in a contested application for statutory recognition by a Trade Union. The first stage is Acceptance and the next stage is consideration of Recognition, either with or without a ballot.

115. The Acceptance test is a consideration of both union membership levels, and whether a majority of workers in the group of workers, proposed as the bargaining unit, are likely to favour the recognition of the Union. In this case, the acceptance of the application was based

on the stated membership density within the proposed bargaining unit, which was assessed as being over 50% at that point in time. In the absence of evidence to the contrary, Union membership is taken as a strong indicator of likely support for recognition. In other cases, a Union may not be in a position to rely on a majority membership within the proposed bargaining unit and can seek to rely on other evidence of significant support for recognition. For example, declarations from workers in the bargaining unit who are not members of the Union, but who may be contemplating membership and who wish to express their support for Union recognition. Each case will turn on its own individual circumstances for setting out why a Union believes there is a likelihood of majority of support for recognition within the identified unit.

116. After Acceptance, the relevant unit for the Court's further consideration, shifts from the Union's 'proposed' bargaining unit to what is deemed to be the 'appropriate' bargaining unit. In many cases, both the proposed and the appropriate units end up being the same. However, this is not always the case and the Industrial Court must declare an appropriate bargaining unit which has been either reached by negotiation of the parties, or determined by way of a formal decision by the Industrial Court. The appropriate bargaining unit is then used as the unit upon which the next stages of the process are based.

117. The immediate next stage of the process will involve careful consideration of the numbers in the appropriate bargaining unit (which may have changed since Acceptance stage), the Union's membership levels within it and any other available evidence which relates to the support or non-support of Union recognition. There will be an exchange of information on these matters and, if the parties remain in disagreement, the Industrial Court will take a decision on the available evidence at to whether recognition of the Union should be declared automatically or if a ballot is required. If a ballot is ordered by the Industrial Court, it will appoint a qualified independent person to contact the workers within the appropriate bargaining unit and conduct the ballot in a fully independent and confidential manner.

118. It should be noted, that if the appropriate bargaining unit is agreed or determined as being different from the Union's proposed bargaining unit, the Industrial Court must run a validity process of the appropriate bargaining unit. This process involves a reconsideration of the admissibility and acceptance tests to determine if those conditions continue to be satisfied, and, if that is the case, for a Validity decision on any different bargaining unit to be issued, before proceeding further.

119. It is therefore essential for the matter of the bargaining unit to be assessed before the application can proceed as it will enable the Industrial Court to consider the support level for Union recognition within the appropriate bargaining unit and progress the application to the next stages up to and including a ballot, if required.

120. The task for the Panel at this stage is to test whether the unit proposed is appropriate for its purpose, and that purpose is to enable collective bargaining which is able to coexist with effective management. It is not for the Industrial Court to find that collective bargaining itself cannot coexist with the effective management of an Employer's undertaking. An Employer may have strong views about the existence of a unionised unit or units within its workforce, but that does not negate the role and function of the Industrial Court which is one of gaining best understanding of the level of support on the part of workers, within an appropriate unit,

for recognition of that trade union to collectively bargain with the Employer on behalf of the workers in that unit.

Redundancies at Seagate and Impact on Bargaining Unit

121. Before we turn to the issue of the critical considerations of the Panel in determining the appropriate bargaining unit, it is important to state that the Employer takes the primary position that the appropriate bargaining unit cannot be assessed at all, because of a significant planned voluntary exit scheme which may have forceful consequences in the overall number or workers within the proposed bargaining unit of 'all manufacturing specialists'.

122. Within this specified category of around 800 workers, the Employer claims that 116 voluntary redundancies are proposed, with a consultation end date of 29 August 2023. A further 160 redundancies are proposed with a consultation end date of 19 September 2023. This has been stated by the Employer as a potential for up to 276 workers to exit the bargaining unit in the near future. It is therefore the view of the Employer that the Union's application for recognition is ill judged and that its support base within this group of workers is not certain or stable. This is the reason for the Employer's strong view that the application should not proceed until the precise number of workers can be more clear and certain.

123. The Union strongly objects to this argument by the Employer and argues that the issue of the potential of workers leaving the bargaining unit and the impact, if any, on Union membership density within the bargaining is an entirely separate issue which should not prejudice the legal right of the Union to pursue its recognition application on behalf of its members. The Union is aware that the bargaining unit may diminish in number and its density of membership and support may also change as a result. The Union's legal representative stated at the hearing that the Union was prepared to go to a ballot on recognition to fully and fairly test the support for recognition, even after any exit of a significant number of workers, should that occur.

124. The Panel noted that the position taken by the Union to continue its application in the knowledge of the potential for a material change in the total number of workers in the bargaining unit, is in fact more of a risk for the Union than for the Employer. For example, if the Union's proposed bargaining unit is determined as being the appropriate bargaining unit and the Union subsequently finds that its membership/support level in that unit has fallen below 50% because a large proportion of exiting workers are Union members, then the Union is risking the outcome of an unsuccessful recognition application. The resulting penalty for the Union under the Schedule will be a 3 year prohibition in bringing another application for the same or similar bargaining unit. However, it can be equally said that any future exit of workers from Seagate may not materially affect the proportionate density of Union membership and/or support within the bargaining unit.

125. The Panel notes the diverging views of the parties on this issue and that the Employer's preference is to stay the application in totality, pending the completion of the redundancies. In the absence of agreement the Panel sees no reason why the Union should not be permitted to continue its application under the Schedule, at its own risk.

126. The Employer maintains its primary position that the application should be stayed until the workforce restructuring has completed and a bargaining unit should not be determined

under the present circumstances in the company. Notwithstanding this, and in the alternative, the Employer submitted its arguments in respect of the appropriate bargaining unit.

Statutory Test - Appropriate Bargaining Unit

127. The central question for the Panel is whether the proposed bargaining unit can be reasonably said to be 'appropriate'. As previously stated, the legislation requires the panel to test appropriateness by reference to what is 'compatible with effective management'.

128. In terms of assessing compatibility with effective management, insofar as they do not conflict with the primary need for the bargaining unit to be compatible with effective management, under section 19B(1)(3), the Panel can take the following matters into consideration:

a) the views of the employer and the union
b) existing national and local bargaining arrangements
c) the desirability of avoiding small and fragmented bargaining units within an undertaking
d) the characteristics of workers falling within the bargaining unit under consideration
e) the location of workers

Further, under section 19B(1)(4) it is stated that when taking the Employer's views into account for the purpose of deciding whether the proposed bargaining unit is appropriate, the Court must take into account any view the employer has about any other bargaining unit that it considers would be appropriate.

129. In terms of *'the views of the Employer and the Union'* in this case, these have been set out above and our conclusions on the arguments submitted is set out in this decision.

130. In terms of '*existing national and local bargaining arrangements'*, this is not deemed to be a material consideration for the Panel in this particular case as there are no other recognized unions in this workforce.

131. In terms of '*the desirability of avoiding small and fragmented bargaining units'* within an undertaking, this is not deemed to be a material consideration in this case. A bargaining unit of over 800 out of a total workforce of almost 1600 cannot be said to be small. Further, there are no other bargaining units in this workforce and thus there is currently no fragmentation of the workforce into multiple bargaining units or multiple trade unions representing multiple bargaining units. The Panel notes the argument of the Employer that fragmentation will be an outcome of recognition for the proposed bargaining unit, even if there is only one bargaining unit within its workforce. It was argued that this is because such a scenario will result in a different approach by the Employer to the workers in the bargaining unit compared to other categories of workers in its employment.

132. It is the view of the Panel that 'fragmentation' is defined, as per the *Lidl* case in relation to proliferation and avoiding a complex situation, where an Employer would have to negotiate with multiple Unions for multiple bargaining units across its workforce, rather than in relation to preventing a scenario where a Union can be recognized for one section of an employer's workforce. Therefore the Panel's view is that the Employer's arguments about the claimed 'fragmentation' of its overall workforce by the designation of workers in the

proposed bargaining unit, are in fact arguments relating to the issue of compatibility with effective management, and not specific arguments which are relevant to the issue of avoiding small and fragmented bargaining units.

133. In terms of '*the characteristics of workers'*, this is deemed to be a material consideration for the Panel in this case. Our conclusions on this consideration are contained in this decision.

134. In terms of '*the location of workers'*, this is not a material consideration for the Panel as all workers in the proposed bargaining unit work in the same location, given that the Employer operates from only one premises in Northern Ireland. The location of workers was not a contested issue between the parties in their submissions on the appropriateness of the bargaining unit.

135. In terms of the proposed alternative bargaining unit put forward by the Employer, this has been considered by the Panel, insofar as it may be helpful in two possible ways:

- In the event that the Union's bargaining unit is not deemed to be appropriate and the Panel must consider what other bargaining unit would be appropriate
- In illustrating to the Panel why the Union's proposed bargaining unit may not be appropriate. It is important to state that the Panel, as per the principle in the *Kwik Fit* case, is **not** required to compare the two units and make a judgment as to which is 'better' or 'best'. The Panel must only look at the issue of determining whether the Union's proposed bargaining is or is not appropriate. However, information provided by the Employer by way of an alternative bargaining unit may also have the potential to persuade the Panel that the Union's proposed bargaining unit is not appropriate.

136. Therefore, in this case, the Panel has formed the view that the relevant and permissible considerations for the Panel when determining the appropriateness of the bargaining unit based on its compatibility with effective management (provided they do not conflict with the primary need to consider compatibility with effective management) are the characteristics of the workers, the views expressed by the Union and Employer and, in the case of the Employer's views, the alternative bargaining unit proposed by the Employer.

Reasons

137. Before turning to our conclusions on the primary issue of whether the proposed bargaining unit is deemed to be appropriate, as considered under the overriding test of what is compatible with effective management, we will deal with the Panel's conclusions on the other relevant and permissible considerations, insofar as they do not conflict with the issue of compatibility with effective management:

Characteristics of workers

137. The Panel is of the view that the Union's proposed bargaining unit contains job roles with shared features, which would tend to support the position that it is appropriate for the purpose of collective bargaining for a distinct group; namely that all the workers within it are easily identifiable by job title, job role and job function. Further, all job roles in the Union's proposed bargaining unit share many common and unifying characteristics, including similar skills sets and similar pay and conditions. The Panel's conclusion therefore is that the characteristics of the workers within the proposed bargaining unit point to a strong starting

point for designating an appropriate unit for the purpose of collective bargaining for a distinct and cohesive group of workers.

Views expressed by the Union and Employer (including the view of the Employer on any other bargaining unit that it considers would be appropriate):

138. The Union has argued that the proposed bargaining unit is appropriate in that it designates a category of workers with very clear and obvious links and commonalities and is therefore compatible with effective management, because such a unionized unit can coexist with effective management of the Employer's overall undertaking. The Employer claims that such a unit will be difficult to manage separately, will cause workplace division and unrest and will cut across company practice and approaches to managing pay and reward for other categories of staff who also share similarities and characteristics with the manufacturing specialists. In illustrating this argument, the Employer has put forward a suggested alternative bargaining unit, which is considerably larger in number, and includes workers with the job role of Engineering Specialists, Assistants (both "Materials" Assistants and "PC" Assistants) and Supervisors.

139. The Panel has carefully considered the opposing views of the Employer and its reasons for suggesting its alternative bargaining unit. The Panel particularly noted the information provided by the Employer about the nature of the work carried out by the MS1 MS2 and MS3 roles within the Employer's cohesive and integrated production team, the commonality of the shift patterns with other workers, the overall team positions and connectedness of workers and the common characteristics which these workers share with other workers outside the proposed bargaining unit. These arguments were considered at length by the Panel in order to assess whether the proposed bargaining unit is a sufficiently cohesive and distinct group of workers which could reasonably be described as being appropriate for the purpose of collective bargaining and which is able to co-exist with effective management of the Employer's undertaking.

140. Having carefully considered the comprehensive submissions of both parties, the Panel has reached the view that the Union's proposed bargaining unit is appropriate and it is compatible with effective management for the following reasons:

- The bargaining unit is clearly understood by both parties as to which workers fall within it and which do not

- The Employer concedes that 'Manufacturing Specialist' is a distinct role (see paragraph 51 of this decision)

- The job roles within the Union's proposed bargaining unit are similar job roles with a strong commonality of features including similar pay rates and employment conditions and also share a 'trade' based job profile and skills set.

- All workers in the unit have a similar line management and reporting structure

- The budget responsibility for all workers in the proposed bargaining unit is under the same management

- The MS1 MS2 grades are very similar and MS3 Grade has some differences to MS1 and MS2, but overall the three grades included are sufficiently similar to designate the group as being a cohesive and identifiable group for the purpose of collective bargaining on behalf of all these grades.

- The interdependencies on pay between the workers included in this unit and those outside it is not a reason to find that the unit is not an appropriate bargaining unit for the purpose of conducting collective bargaining between Union and Employer. The Employer is concerned that separate arrangements on pay for these workers will be divisive, cut across existing pay structures and cause management problems in other parts of its workforce. However, such a submission is an argument against the principle of collective bargaining itself, and is not a sufficient reason for the Panel to determine that the bargaining unit is not appropriate. This submission is also an argument against the potential *outcomes* which may or may not flow from collective bargaining. It is not an argument which demonstrates that a process of collective bargaining for this particular group of workers cannot coexist with effective management. If the Union were to achieve recognition, this will merely enable the Union to negotiate on behalf of that particular unit, it does not require the Employer to accede to Union demands.

- The Employer's argument that the Union has merely selected this unit because that is precisely where it has the highest density of Union membership in the Employer's workforce is not accepted. Such an argument may be convincing if workers in a designated bargaining unit only shared union membership as a common characteristic, but who are otherwise are disconnected in terms of material characteristics and circumstances, such as work location, similar terms and conditions of employment and holding similar job roles. That is clearly not the case with this group of workers.

- The Panel considers the Union's proposed bargaining unit to be appropriate but it has also considered the Employer's argument about an alternative bargaining unit based on shift workers. This consideration by the Panel was not exercised in the context of considering the Employer's alternative as a comparator, but insofar as the alternative may provide insight for the reasons why the Union's proposed bargaining unit may be incompatible with effective management and therefore not appropriate. The Employer's suggested unit would be considerably larger and bring more workers with very different job roles into the unit, on the basis of all workers in the alternative unit would be shift workers, who all work on an integrated basis in the production process. This grouping was argued as being more aligned with Seagate's centralised decision making and its people practices and policies. The Panel finds these arguments to be focused entirely on what is most desirable and this is not part of the required test before the Panel. The suggested alternative bargaining unit does not provide any useful illustration as to how the Union's proposed bargaining unit of only manufacturing specialists is not appropriate, and merely shows a subjective view of what is more or most desirable.

- DECISION

The Decision of the Industrial Court is that the appropriate Bargaining Unit is that proposed by the Union, that is,

"*All Manufacturing Specialists."*

Mrs. Sarah Havlin
Ms Patricia O' Callaghan
Mr Robin Bell

DATE: 21 August 2023