

GMB

UNION

THE GMB UNION CAMPAIGN FOR TRADE UNION RECOGNITION IN AMAZON COVENTRY

A CASE STUDY TO REVIEW THE STATUTORY RECOGNITION PROCESS (AS SET OUT IN SCHEDULE A1 OF THE TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992, INSERTED BY THE EMPLOYMENT RELATIONS ACT 1999 AND SUBSEQUENTLY AMENDED BY THE EMPLOYMENT RELATIONS ACT 2004)



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Amazon's anti-union history

Amazon spends a huge amount of time and resources trying to prevent workers from organising in its warehouses. It runs global monitoring projects and hires union busting enforcers with the specific aim of preventing workers from creating a union voice in their workplace.

In the US in 2022, Amazon had to declare spending of \$14.2 million on anti-union consultants ⁱ.

In Europe, Amazon representatives were banned from accessing the buildings of the European Parliament. The decision, taken on 27th February 2024, followed the failure of Amazon to attend meetings with EU lawmakers to discuss the condition of Amazon workers. This includes a committee meeting on "Amazon attacks on fundamental workers' rights and freedoms: freedom of assembly and association, and the right to collective bargain and action" ⁱⁱ.

Amazon in the UK

In the UK, GMB Union has been supporting workers in Amazon sites across the UK for over 12 years.

The issues Amazon workers face at work have been documented, including a submission made by Amanda Gearing, GMB Senior Organiser, to the Joint Committee on Human Rights on 14th June 2023 ⁱⁱⁱ. Gearing cited further examples in statements to the CAC:

"Amazon exerts technological control over its workforce through systems of algorithmic tracking and surveillance. This system is ever present but highly secretive, so employees know they are being monitored but they do not know exactly how, what data is being collected on them or how it is being processed or considered by management."

"Targets set by Amazon, the company's constant micromanagement and surveillance of its associates creates an atmosphere of acute pressure, work being done unsafely and without proper rest."

The impact on workers' health can be devastating. Gearing stated:
"A huge proportion of workers report permanent joint damage and

musculoskeletal injuries as a result of their work. Many report that a 10-hour shift feels like 10 hours at the gym."

"The level of injury on the fulfilment centre floor is simply unacceptable. GMB research found there were around 1,000 serious injuries reported from 2016-2021. There were 1,065 ambulance callouts to Amazon sites over the same period."

In August 2022, workers at Amazon warehouses right across the UK started protests over poor pay. Amazon's workforce had continued to work through the pandemic and had faced issues around safety. They had generated massive profits for their employer, but their pay had failed to keep up with inflation as they faced the biggest cost of living crisis in decades.

First Bid for Recognition at Coventry

Amazon workers started to turn to GMB.

The union supported workers in putting together a pay claim and, specifically at the BHX4 site in Coventry, in building a union inside the warehouse to represent the voices of Amazon workers.

Amazon management refused to engage with the workers and the union moved to a ballot for industrial action. Workers have now taken 37 days of industrial action, with the strikes spreading to two other Amazon warehouses.

During the entire dispute, Amazon management has refused all offers to enter talks either directly with GMB or through ACAS.

The numbers behind the first Coventry recognition bid

By 25th April 2023, there were 718 members of GMB Union employed at the BHX4 site. In December 2022 Amazon reported that there were 1400 employees working at the site ^{iv}. Based on the understanding that over 50% of workers in the proposed bargaining unit were members of GMB, a letter requesting voluntary recognition (issued under Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992) was sent to the company on this date.

GMB confirmed that the union was willing to engage with ACAS to help facilitate any discussions.

Amazon had 10 “working days” to respond. As “working days” in this context does not include weekends or Bank Holidays, Amazon was able to issue a response on 11th May 2023. The response stated that Amazon would not agree to voluntary recognition and refused to engage with ACAS.

GMB Union made an application for statutory recognition to the CAC (Central Arbitration Committee) on 12th May 2023.

A law firm representing Amazon responded to the application on 22nd May 2023. The response stated that there were now 2749 employees in the proposed bargaining unit.

In other words, during the 27 days between the initial letter and the employer’s response, the headcount at the site had increased by around 1300 workers.

While GMB Union would still have met the threshold of 10% of the proposed bargaining unit being members of the union, the union was not able to meet the additional threshold of demonstrating that a majority of the workers in the proposed bargaining unit would be likely to favour recognition.

If the application had progressed to the CAC panel, a decision would have been made that the application was not successful. This would prevent GMB Union from making a further application for the same bargaining unit for a period of 3 years. Based on this, GMB were forced to withdraw the application ^v.

How did the process fail workers in the first bid for recognition?

The requirement to first issue a letter requesting voluntary recognition is based on the assumption that the employer will act reasonably and consider any request. The actions displayed by Amazon demonstrate that this assumption is wholly incorrect. While a request for voluntary recognition is an accepted part of the process, the delay in relation to this created an opportunity for Amazon to essentially union bust the application.

During the 27 days from the initial letter requesting voluntary recognition to the response from Amazon to the CAC, the number of workers in the bargaining unit swelled to 2749. This included temporary workers moved from other sites. The additional 1300 workers increased the number of workers confirmed by Amazon in December 2022 by around 93%.

Amazon has stated that there are periods of the year where there is increased operational demand and the workforce fluctuates to meet this. However, the initial 1400 headcount was confirmed just before Christmas – one of the busiest periods of the year.

In contrast, GMB's application was submitted in May, outside of any historically busy period.

The author and filmmaker, Oobah Butler, filmed undercover at the Coventry warehouse during this period for the Channel 4 documentary – 'The Great Amazon Heist'^{vi}. In a subsequent interview, he has stated:

"I was hired as part of a hiring spree Amazon had done outside of the peak season. And like people on the warehouse floor were saying to me 'Well, you've only been hired because of the union vote that's coming up."

"You are part of clever tactics by Amazon. Your employment... to basically flood out the union vote^{vii}."

The CAC process allows for a significant delay before the employer confirms the number of workers in the bargaining unit.

Problem: *As it stands, an employer can continue to employ and/or move workers into the potential bargaining unit up until the point of any ballot. In Coventry, Amazon used its vast wealth to flood the bargaining unit with new workers, obstructing the lawful rights of the 718 workers who had met the 50% threshold for statutory recognition.*

Policy solution: *Amend legislation to set the size of the bargaining unit at a fixed number on the date an application for recognition is made. That way, unions and employers have a level playing field to make the case for or against union recognition to a set number of workers. This prevents employers from getting around having to win the argument by simply inflating the size of the bargaining unit to dilute the unionised share.*

Second Bid for Recognition at Coventry

On 4th December 2023, GMB Union submitted a further request for voluntary recognition (issued under Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992). Again, GMB Union confirmed that we were willing to engage with ACAS to help facilitate any discussions.

Amazon responded on 18th December 2023. The response refused the request for voluntary recognition and failed to acknowledge or respond to the offer to work with ACAS.

The numbers behind the second recognition bid

An application for statutory recognition was sent to the CAC on 4th March 2024. At this point, the workers at the BHX4 had managed to build a union of 1255 GMB members at the warehouse.

The law firm representing Amazon responded to the application on 12th March 2024. They confirmed that the number of workers employed at the site had continued to grow. In May 2023, Amazon had employed a total of 2749 workers in the proposed bargaining unit to try and prevent union recognition. The number of workers in the proposed bargaining unit was now 3058. Amazon confirmed that the figure would continue to grow and was “anticipated” to be 3085 by Friday 15th May 2024.

Following a comparison of workers and union members, the CAC Panel concluded that the level of union membership within the bargaining unit stood at 35.62%. This meant that the union met the threshold of at least 10% of the workers in the proposed bargaining unit. The Panel also stated:

“In our experience, in such circumstances, support of recognition would be likely to surpass 35.62% by a margin which would take the total support to over 50%.

On the basis of the evidence before it, the Panel has decided that, on the balance of probabilities, a majority of the workers in the proposed bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit, as required by paragraph 36(1)(b) of the Schedule.”^{viii}

As the application for recognition was accepted by the CAC, GMB and Amazon had to agree the access arrangements for the ballot.

In line with the Code of Practice- Access and unfair practices during recognition and derecognition ballots, on 25th April 2024, GMB emailed the General Manager of BHX4 and the Regional Manager to request a meeting to discuss access arrangements. GMB confirmed that the union would agree to utilise ACAS to support this process.

On 26th April, Amazon management responded with a refusal to meet and confirmed that all discussions will need to be undertaken through their legal representatives, Eversheds Sutherland.

All of the negotiations to reach an agreement on access had to be undertaken through email exchanges. The initial timescale set out by the CAC for this was 10 working days. It took 52 days before the final agreement was signed off on 17th June 2024.

Amazon's intimidation of workers, anti-union messaging and captive meetings

Before the agreement was signed, Amazon had already run meetings with groups of workers and each worker had been told to attend up to five of these. Managers from other warehouses had been brought in to facilitate these meetings. These managers were also utilised to also have individual conversation with workers on the shopfloor.

Amazon put up anti-union material on display screens, notice boards, posters on the back of toilet cubicle doors, pop up display displays in corridors and canteen tables.

BHX4 workers interviewed by Dr Tom Vickers from Nottingham Trent University between January and July 2024 report widespread fear among workers of being victimised by Amazon for trade union activity. The following workers' account expresses the longstanding climate of fear and curtailment of worker voice within the warehouse:

"the little posters in the toilets, [saying] 'Come and speak to us [managers]. You don't need to pay to speak to [us, unlike] a union. You can come, our doors are always open. I've known people go in those doors, speak to managers and

not come back. People know the limits of what they can say to managers."
(GA-02, employed by Amazon for 4 years)

Workers describe several distinct phases in Amazon's response to unionisation at Coventry. In the first phase, where the level of unionisation at Coventry was still low, leaders described direct pressure from Amazon to not discuss the union with workmates, and measures such as removal from certain roles and reduced offer of hours for workers on flexible contracts. Intimidation was also reported during the first official strike, as these workers described to Vickers: *"They try to intimidate us. I remember when there was the first strike outside ... the big manager ... they come with the phone and try to film us. Okay. Take a video with us to intimidate us. ... He tried to intimidate, to scare people"* (GA-21)

"at the start, they were very strict and it was like ... if I'm talking to you about the union, you then run off to the manager and say I've just talked to you about the union, I'll be into a meeting with a disciplinary, just for mentioning the word union. But obviously, because the GMB's turned around and said, 'If they try, that's a protected characteristic and we're gonna protect you.' ... but I think the problem is trying to explain that to a new non-English person. Because they hear it from a manager." (GA-04, employed by Amazon for 6 years)

In the second phase, as union membership rose, workers describe less overt opposition from managers, a general relaxation of the management culture and some small pay increases and other benefits, as this worker interviewed by Vickers described:

"And they start a little bit to push us the money. Give you a little bonus. They give you some, you know, like candy, like a kid. And they say, we are take care of all." (GA-21)

Yet even during this period workers report that Amazon maintained a steady pressure to dissuade workers from joining a union:

"Amazon as well campaigned against GMB, even though they will say, 'Oh, we accept your right to join any union'. But they still work in between to tell you that joining a union won't give you the best option." (GA-05)

In summary, the CAC process did not offer sufficient protections and reassurance to workers to mitigate against the influence of this fear on the ballot outcome.

Access rules aren't fit for purpose

Once an application for recognition has been accepted, a union can request access to workers at their workplace and/or during their working time. The guidance for the access arrangements is set out in the Code of Practice – Access and unfair practices during recognition and derecognition ballots.

The CAC has no official decision-making or mediation responsibilities regarding this part of the process and cannot force an access agreement on the parties. This places the union under pressure to accept an agreement or risk moving forward without agreed access in place.

The Code of Practice states that an access agreement could include:

- the union's programme for where, when and how it will access the workers on site and/or during their working time; and
- a mechanism for resolving disagreements, if any arise, about implementing the agreed programme of access.

The access agreement for the ballot at BHX4 was a 17-page document with significant restrictions, including around the ability of union activists working at BHX4 to communicate with their colleagues. The agreement stated that activists "shall not carry out any solicitation of employees on site at BHX4".

Amazon's campaign against recognition began months before the formal access period started for the GMB and continued after it ended.

By the time the access agreement was signed, Amazon workers had already experienced 105 days of management's unrelenting union-busting campaign.

This represented an abuse of Amazon's control of the warehouse and the company's access to workers during their hours of work, which it used to swamp other sources of information. Its anti-union messaging played to workers' insecurities and created a climate of fear and uncertainty about what recognition might mean.

The following four weeks after the access agreement was signed formed the access period. GMB were able to hold three x 45-minute meetings for each shift over a two-week period. Amazon held the same number of meetings over this period but had told workers to attend up to 5 meetings each before this and a

further meeting after this. In total, Amazon held up to 7 “captive audience” meetings for each worker from the point at which GMB made the application for recognition.

GMB were able to also hold drop-in sessions over workers' breaks, but access to all of these meetings were strictly controlled by a management issued ticket system.

This system was made impossible as workers had to collect a ticket up to half an hour before their shift started, most people arrive just in time to start work and don't have time to be searching for a person that was issuing tickets. No flexibility was given, the opportunity to get a ticket would be closed and no negotiation was allowed.

GMB were not given any information on the number of tickets issued but had to raise instances with Amazon's legal team of workers saying they had not been given a ticket to attend. The GMB officials undertaking these meetings were escorted by a manager from the moment they entered the building, including waiting outside of toilets.

During the four-week access period, the union had access to a single notice board and 3 display screens.

Amazon had more display screens and notice boards with anti-union material in just the walkway entrance to the main BHX4 building, than the union had access to across the whole site.

Amazon were also able to send anti-union material through the company mobile phone app that workers have to use for details of work. GMB had no access to this.

Amazon were able to send managers to put pressure on workers through direct anti-union conversations on the shop floor. GMB activists were prevented from doing this.

Problem: *Employers are able to delay the beginning of the access period where unions are able to make the case for recognition to workers in their workplace. During this delay, employers are able to make the anti-union case unopposed, which is unfair and damaging to the integrity of the ballot. This is what happened in Coventry.*

Policy solution: *Amend legislation so that from the moment an application is made, all activity inside the workplace must meet the standards in the DTI Code of Practice. In addition, ensure negotiations for the access agreement last no longer than 10 days, with the CAC having the power to adjudicate on disputes and enforce an agreement if the time limit has expired without agreement.*

Confusion and lack of transparency over ballot process

Amazon and GMB agreed that the ballot for union recognition would be run as a workplace ballot run over six days. It was agreed that there would also be a postal ballot for those workers who were not able to attend the site during the workplace ballot.

For the purposes of the union recognition ballot, Amazon confirmed the details of the workers in the bargaining unit to the CAC on 1st July 2024. As a number of workers would not be able to attend BHX4 during the workplace ballot, a postal ballot would also be required.

The workplace ballot was run on site from Monday 8th July to Saturday 13th July. The postal vote was opened on 3rd July 2024 and closed on 15th July.

GMB collated a list of workers who were not able to attend the workplace during the ballot and passed this information on to both Amazon and the CAC. Amazon management initially told workers who were absent after this to contact the CAC directly. The CAC were unable to resolve this. Workers were then told to contact HR at Amazon. Amazon finally confirmed on 11th July (4 days before the postal ballot closed) that “a request has not been made by the relevant individual(s) far enough in advance of the ballot closing to facilitate a postal ballot.”

The workplace ballot closed on 13th July 2024 and the postal ballot for workers not able to attend the workplace during this period closed on 15th July. The results of the ballot were sent to the CAC on the same day and the outcome of the ballot was confirmed to GMB and Amazon on 17th July.

The results of the ballot stated that there were 3012 workers in the proposed bargaining unit. 2601 workers voted in the ballot (86% of the total bargaining unit). 1281 workers voted for union recognition (49.5% of the “valid” vote) and

1309 workers did not vote for union recognition (50.5% of the “valid” vote). 11 ballot papers were deemed as spoiled or otherwise invalid.

The vote for union recognition was lost by 29 votes.

On the day GMB received confirmation of the outcome, the union sent a complaint to the CAC stating that Amazon had failed to comply with its duty to refrain from using any unfair practice. The complaint was sent at the point it became apparent that the ballot was lost by a number of votes far smaller than the likely effect of the QR codes.

The CAC issued a declaration on 24th July 2024. This stated that the complaint should have been made no later than 16th July, before the results were issued. The CAC Panel stated that the union was not recognised as entitled to conduct collective bargaining on behalf of the bargaining unit^{ix}.

How did the process fail workers during the second bid for recognition?

At the point of the membership check by the CAC, the number of workers in the proposed bargaining unit had grown to 3085. This is 336 more workers than in April 2023 and 1685 more there were in December 2023.

For context, there are two Amazon “cross-dock” warehouses in the UK. These are Amazon warehouses that accept freight from vendors/sellers and then ship products to fulfilment centres. BHX4 is one and the other is LTN4 in Doncaster. The Doncaster site currently employs just over 1400 workers – about the same as BHX4 before the first bid for recognition was made.

As before, Amazon used its wealth to employ significant numbers of workers to ensure that the union did not reach the target of 50% of the workforce being members of the union.

The CAC undertook a comparison check of the names and dates of birth supplied by GMB and those provided by Amazon. The CAC concluded that the percentage of union members in the proposed bargaining unit was 35.62%. However, the check also highlighted that 237 names given by GMB did not match those from the employer.

The union reviewed the list of 237 members and contacted the relevant individuals where appropriate. The union was able to establish that 19 had moved to other Amazon sites, 25 had left Amazon and 82 confirmed that they are GMB members and remain employed by Amazon at BHX4. Gearing stated: *"We think some of the discrepancies were caused by names being misspelt or typos in DOBs. The majority of our members fill in their application forms by hand and a significant number of members do not have English as their first language. This leads to inevitable errors in transcription and retyping of data, and many names may be recorded or transliterated into English differently."*

"This means, at the time of the comparison check, at least 1,182 members of the GMB Union were in the bargaining unit. This is 38.3% of the bargaining unit."

Despite continuous union busting and a complete refusal to engage with the union members, the workers at BHX4 had managed to build a union of nearly 40% of the bargaining unit. The union had met the 10% threshold and the CAC confirmed that the panel believed a majority of the workers in the proposed bargaining unit would be likely to favour recognition of the Union. Despite this, the union did not meet the 50% threshold which would enable the CAC to award automatic union recognition.

This meant that workers had to go through a ballot for union recognition. In Amazon, this presented a huge challenge.

According to statistics produced by the CAC, a ballot for union recognition is more likely to succeed when it is done outside the workplace. It is clear that the ability of an employer to influence workers when they vote at work has an identifiable impact on how those workers vote.

However, the only option available other than a ballot in the workplace is a ballot undertaken by post. The experience of the union in running statutory industrial action processes is that postal ballots are likely to disenfranchise workers like those in Amazon. The majority of workers in BHX4 live in multi-occupancy, insecure housing. The challenge of even receiving a postal ballot paper is significant.

The CAC requires a successful vote to have not only a majority of workers who vote voting for union recognition, but also a minimum 40% of the whole bargaining unit voting for union recognition. This meant that, despite the clear and identifiable impact of management pressure, the only route to ensure the

possibility of meeting the ballot thresholds was for a workplace ballot. Even then, there would still have to be a postal ballot for workers who were not due to be in work during the ballot period.

Once an application has been accepted, a union can request access to workers at their workplace and/or during their working time. The guidance for the access arrangements is set out in the Code of Practice– Access and unfair practices during recognition and derecognition ballots. The CAC has no official decision making or mediation responsibilities regarding this part of the process and cannot force an access agreement on the parties. This places the union under pressure to accept an agreement or risk moving forward without agreed access in place.

The Code of Practice states that an access agreement could include:

- the union’s programme for where, when and how it will access the workers on site and/or during their working time; and
- a mechanism for resolving disagreements, if any arise, about implementing the agreed programme of access.

The access agreement for the ballot at BHX4 was a 17–page document with significant restrictions, including around the ability of union activists working at BHX4 to communicate with their colleagues. The agreement stated that activists “shall not carry out any solicitation of employees on site at BHX4”.

Anti-union misinformation and targeting of workplace union leaders

Amazon launched an intense campaign to try to persuade workers to vote No on the basis that union recognition does not benefit workers or resolve many of their issues. The current process would not consider this as an unfair practice, but GMB assert that this is fundamentally wrong. Union recognition gives workers a collective voice and a legal framework to make work better. This was the start of the third phase in Amazon’s response to unionisation at Coventry.

Gearing stated:

“The statement made by Amazon at paragraph 11.16 that the “working environment, use of technology, monitoring and performance management” – in other words, health and safety, terms and conditions, pay – are not issues for a collective bargaining process, is simply wrong.”

"...we believe our union's presence, and our representation of Associates at BHX4, has already led to a better working environment, both in relation to pay but also in relation to Associates rights more generally."

The Amazon campaign set out to intimidate leaders among the workers. For example, a GMB rep who had secured a change of role after collapsing at work with a heart attack and suffering ongoing health problems said a manager told them following the application for recognition that they should be grateful for the accommodations that had been made due to their health, and threatened, *"You want equality, do you want me to put you back in the line?"* (fieldnotes 27/03/24).

This was reportedly followed by a different manager telling the same leader that their occupational health accommodations would be reviewed and suggesting they might be transferred to a more physically demanding role.

When the ballot commenced, the GMB rep was transferred back to the line, after which they again collapsed and were taken to hospital by ambulance. They reported that the Chair of the Associate Forum told them the reason they had been transferred was that their previous role gave them too much opportunity to speak with colleagues (fieldnotes 24/07/24).

Anti-union staff drafted in from other sites

In the period leading up to the recognition ballot, Amazon managers briefed staff that the company would be bringing in "ER Leads" (individuals specialising in Employment Resources).

Associates were advised that these "Leads" specialise in "union activity" and that Associates should go and speak to them if they had questions about unions.

Up to 30 managers were drafted in from other sites across the UK to talk to workers in the warehouse, sometimes following GMB reps around trying to persuade them against the union while they tried to do their job. A worker interviewed by Vickers described how:

▮ *"we have external managers coming in, speaking to the staff for the last few weeks, right? And then [saying], why you shouldn't join GMB. 'What's*

there for you?’ ‘You’re going to lose a benefit.’ ‘GMB can’t do nothing for you’, so on.” (GA-18)

Workers told Vickers that it was particularly noticeable some of these managers were of the same nationalities as some of the largest sections of workers, in a sudden change to the previous demographics of the BHX4 management. For the first time in leaders’ experience Amazon held meetings and produced written information in workers’ first languages, all directly arguing against union recognition (fieldnotes 03/07/24). Workers described to Vickers, how:

“one month before [the recognition ballot], and they even started to bring their different managers from other FCs because when they find out, okay, Indians, a majority of them ... working [in the warehouse are] Indians, okay, in what language they speak. For example, if they speak Telugu, they try to bring them managers from Telugu. When they find out the Punjabi ... they bring the managers from Punjabi and then, and for the Eritreans also working [in] most [large numbers]. So they try to bring that the guy who can speak their language and also the one of the managers speaking Arabic and they started to contact in their own languages. So they tried to brainwash the people as much as possible, even when the associate is speaking and that kind of languages, they attend even more.” (GA-32, employed by Amazon for 5 years)

“90 percent of Eritreans are GMB members. I think there’s a 90 percent of Ethiopians that are GMB members as well. Majority of that culture, they speak the same language. What they’ve [Amazon have] done, out of the blue, they’ve called in a manager from London that speaks the language... I’ve been watching this guy ... I’m on my line, I’m talking to another [member of staff]... This guy comes past, he ignores me. Talks to him in his own language... Then I’m talking, he’s on the next line. And he’s talking to everybody... I ask someone, look who is he? They go, ‘Oh yeah, he’s talking about GMB, why you don’t want to join.’” (GA-18)

Workers reported that Amazon spread considerable fear and confusion among the workforce about what the consequences of union recognition could mean, with Amazon telling workers that recognition could lead to a removal of benefits, delay pay rises granted other warehouses, and even risk the closure of the site.

The vast majority of Amazon workers in Coventry are from a migrant or refugee background, many send money to family in their country of origin, and so any

threat to pay or jobs carries very serious consequences. Each worker was invited to as many as five or more hour-long meetings, described as ‘voluntary information sessions’, held by Amazon to argue against recognition, prior to the union’s access period, and further meetings in between the end of the access period and the opening of the ballot, as the following workers interviewed by Vickers describe:

“leading to the ballot, the organising was not really fair, because Amazon had their several meetings, which they lied to us, you know, it was supposed to be 45 minutes ... Even some persons even had like four or five meetings” (GA-33, employed by Amazon for 2 years)

“GMB session, they gave only 45 minutes, but the Amazon session is minimum 45 minutes ... It went up to one hour, 30 minutes. Even some of the session went to two hours as well. So, they didn't care about anything... they have that money and ... it is their company. So they spend all of the hours, they don't even care about [whether] the associate are working or not. They try to send them to that session to do the brainwashing and everything” (GA-32, employed by Amazon for 5 years)

This was combined with the misuse of management instruments such as ‘team connects’, to bombard workers with information that created a climate of fear about the possible consequences of recognition:

“the lies Amazon has fed them about losing their jobs, about the closure of the FC, has really been a big challenge for us in building the GMB family in the FC [Fulfilment Centre]. Amazon has already fed them with the lies and the managers calling them all of a sudden in connect meetings and telling them how they are going to close the FC” (GA-33, employed by Amazon for 2 years)

“They [management] organise a meeting with people to say what bad is union ... And they send rumours. For instance, if the union come here, we'll close. And the people are scared because, you know, they come to me, not just to me, to all representatives, they said ... they can close the warehouse.” (GA-21)

Amid this climate of uncertainty, Amazon management promoted the message that voting No was the safest course, summed up in these screens and posters displayed inside the warehouse during the ballot:

“Not sure if you want GMB to gain recognition? Don't sit on the fence. You can vote no to keep your options open.”

"GMB makes promises. Amazon delivers progress. Vote for Amazon guarantees over union unknowns."

Anti-union propaganda was displayed throughout the warehouse in the months leading up to the ballot, on screens, pop-up stands, displays on every table in the canteen, and the backs of toilet stall doors. Some of these anti-union materials included a QR code that workers could use to generate an email from their own account to the GMB cancelling their membership – a measure that the union responded to with a legal claim alleging that this was a service provided by Amazon which constituted an inducement to leave the union.

Rumours were spread that union recognition would lead to the closure of the site and the complete removal of overtime.

More specifically, workers were told that union recognition would mean that there would be no pay rise this year, and that any eventual pay rise would see workers lose benefits.

The impact on workers who were already struggling with the cost of living cannot be underestimated.

By the time the ballot concluded, workers at BHX4 had experienced 135 days of Amazon management's unrelenting union-busting. Workers were told to attend up to 7 management led meetings. These meetings ranged from 45 minutes up to 2 hours and 30 minutes. 5 of these meetings had taken place before GMB had even been given access to the site. The DTI Code of Practice on Access and unfair practices during recognition and derecognition ballots does not cover campaigning activity which occurs before the CAC decides that a ballot should be held.

Compared to the 7 Amazon meetings, workers were only given the option of attending 1 meeting in BHX4 with GMB. Attendance at the meetings was overseen and controlled by Amazon with a strict time limit of 45 minutes applied. The union was not given any information about how many workers were invited but had to raise issues with Amazon's legal representatives after some workers stated that they had not received a ticket to attend a GMB meeting.

There were more Amazon display screens and notice boards with anti-union material just in the walkway entrance to the main BHX4 building, than the union had access to across the whole site.

Amazon were able to send anti-union material through the company mobile phone app that workers have to use for details of work. GMB had no access to this.

Amazon were able to send managers to put pressure on workers through direct anti-union conversations on the shop floor. GMB activists were prevented from doing this.

Before the ballot opened, Amazon sent a list of contact details for workers who they stated would not be in work during the workplace ballot. This list was supplied on 1st July 2024. GMB was not given any information regarding the number of workers who were on this list.

In order to ensure that as many workers as possible were given an opportunity to vote, GMB also compiled a list of workers who confirmed that they would not be at work during the workplace ballot. The list of 44 workers was sent to both the CAC and Amazon. We have not received any confirmation that any actions were taken regarding this list.

We are aware of at least one employer in the proposed bargaining unit who confirmed they would not be in work before 1st July was sent but did not receive a postal vote. The union was not able to verify if Amazon had included this worker in the list of those who needed a postal vote.

After the list was sent on 1st July, a number of workers confirmed through sickness and other reasons, were not able to attend the BHX4 during the workplace ballot. GMB collated a separate list of 4 workers and supplied these to both the CAC and the employer. This was sent on 8th July, 7 days before the ballot closed. On 11th July, Amazon's legal representatives confirmed that the individuals would not be given a postal ballot.

The result of Amazon's unlawful QR code was not revealed until it was too late to contest it

By the time the ballot closed on 15th July 2024, 71 workers had used the Amazon QR code to generate an email from their own account to GMB cancelling their

union membership. Subsequently, 35 of these workers quickly rejoined the union.

While the legal claim alleging that this was a service provided by Amazon which constituted an inducement to leave the union is continuing, it is clear that this measure had an impact on workers already placed under considerable pressure from Amazon's anti-union activities.

The union could have made a challenge to the CAC about Amazon's unfair practices during the ballot. However, there was no way GMB could have become aware of the impact of Amazon's union busting until the outcome was confirmed. A complaint issued before the ballot closed also risked halting the process and would give Amazon even more opportunities to continue union busting before a vote was completed.

The results of the ballot were sent to the CAC on 15th July, but the outcome was not confirmed until 17th July. The results of the ballot stated that there were 3012 workers in the proposed bargaining unit. 2601 workers voted in the ballot (86% of the total bargaining unit). 1281 workers voted for union recognition (49.5% of the "valid" vote) and 1309 workers did not vote for union recognition (50.5% of the "valid" vote).

The independent organisation undertaking the ballot confirmed that 11 ballot papers were deemed as spoiled or otherwise invalid. GMB was not given any other information regarding this and had no oversight of these papers.

The outcome of the ballot was the first time that GMB became aware that there were 3012 workers in the proposed bargaining unit.

It was also only at this point that the union was able to identify that the vote was close enough to confidently assert that Amazon's anti-union campaign had an identifiable impact on the outcome.

The final result revealed that Amazon QR code was used to cancel the union membership of 36 workers who didn't rejoin. The vote for union recognition was lost by only 29 votes. It was at this point that it became apparent that the ballot was lost by a number of votes far smaller than 36 who had used the QR codes and not rejoined the union.

As a result of this – and on the day GMB received confirmation of the outcome – the union sent a complaint to the CAC stating that Amazon had failed to comply with its duty to refrain from using any unfair practice.

The CAC responded to the complaint and issued a declaration on 24th July 2024. This stated that the complaint was not upheld. The decision was not based on an assessment of Amazon’s unlawful QR code, but on the basis that the complaint should have been made no later than 16th July, before the results were issued.

The CAC Panel declaration stated that the union was not recognised as entitled to conduct collective bargaining on behalf of the bargaining unit. GMB is prevented from making an application for statutory recognition for the same bargaining unit for a period of 3 years.

What Should Amended Legalisation Look Like?

Detailed proposals:

1. Union recognition is a good thing

We believe that union recognition is a positive step forward. It can benefit both employers and workers by helping to create safer workplaces with better terms and conditions that support the economy. On this basis, legislation to support workers in securing union recognition should not be neutral. While ensuring that any decision needs to be based on an indication of the wishes of the majority of workers in any bargaining unit, the legislation should support the position that there are obvious benefits in union recognition and, more importantly, opposition from an employer is not going to be in the interests of workers.

Beyond this, there are specific recommendations arising from the experience of workers fighting for union recognition at Amazon Coventry.

2. Set the number of workers in the bargaining unit at the start of the process

The ability of an employer to increase workers in a proposed bargaining unit in the time period between the letter for voluntary recognition and the membership check, enabled Amazon to prevent the first application for union recognition in Coventry. The fact that an employer can continue to employ additional workers in the bargaining unit up to the point of any ballot further exacerbates this.

The resolution of this issue is to require the employer to confirm the number of workers in the proposed bargaining unit at the date an application is made. A decision made by the CAC as to whether an application is accepted, and regarding potential automatic recognition would then be made on the basis of workers employed at the time of an application.

If an application is accepted, but automatic recognition is not awarded, a ballot of workers would then be undertaken. In this circumstance, those workers

entitled to vote will be taken from those employed at the point an application was submitted.

Where recognition is awarded, the CAC would decide whether the results should apply to anyone who has joined the company after the bargaining unit was set.

3. One threshold for an application to be accepted

For an application to be accepted, the union(s) not only has to show that they have at least 10% union membership within the proposed bargaining unit, but also provide evidence that a majority of employees are in favour of recognition.

As an organisation, Amazon spends a huge amount of time and money on trying to stop workers from building a union. GMB estimated that the company was spending an additional £300k a week to try and stop the first bid for recognition in Coventry^x. In this environment, the 2 thresholds present a huge challenge to workers even being able to have a say on union recognition.

By accepting applications based solely on one threshold, 10% of workers in the bargaining unit being members of the union, the impact of union busting is mitigated, and workers will be able to have their say on union recognition.

The second threshold can still be relevant, but only as a test for automatic union recognition. In practice, this means that the CAC panel would be able to award automatic recognition in circumstances where they determine that the majority of workers in a bargaining unit are likely to favour union recognition.

4. Shorten the timescales

GMB submitted the ACA application on 4th March 2024. The outcome of the process was finally confirmed 142 days later.

The significant timescales, specifically at the start of the process, enabled Amazon to implement an unrelenting campaign of union busting before the

union secured access to talk to workers. The length of a campaign favours the party with deeper pockets, which is almost always the employer.

A process that took nearly 5 months also presents major challenges to a union faced with a business that has a very high turnover of staff.

There are a number of simple amendments that can streamline the process and shorten the timelines.

The first is to remove the request for voluntary recognition from the statutory process. While it is generally accepted that a voluntary agreement has benefits for all sides, this step currently presents a 10-working day (effectively 2 weeks) delay. An employer has the ability to agree to voluntary recognition even after an application for statutory recognition has been made. Removing this step from the statutory process does not impact on this but does ensure that an employer cannot use this period to impact the outcome.

The second is in relation to the timescales to agree access. Once the CAC gives notice to the employer and the union that it intends to hold a ballot, there then follows a period of 10 working days to negotiate access. Unfortunately, access is an area the CAC cannot adjudicate on or enforce, and the Code of Practice is limited in guidance. In the second bid for union recognition at Amazon Coventry, this led to the negotiations around access taking 4 weeks. The amendments set out in the next bullet point will enable a 10-working day period for negotiating access much more achievable.

5. Make Access Equal

The CAC has no official decision making or mediation responsibilities regarding the access part of the process and cannot force an agreement on the parties. In addition, any campaigning by the employer outside of the actual ballot period is not covered by the DTI Code of Practice- Access and unfair practices during recognition and derecognition ballots.

This enabled Amazon to engage in an unrelenting campaign of union busting before the union even secured access to speak to workers inside BHX4. Even during the period when the union had access to the workplace, the anti-union messaging from the company was operating at a scale far above that offered to GMB.

It is in the interests of workers to ensure that there is a level playing field, and that there is a fair and equal level of access for both a union(s) and an employer.

From the point at which an application for recognition is made, all activities inside the workplace should be covered by the Code of Practice. In practical terms, the only campaigning within a workplace should occur during the agreed access period.

To ensure that negotiations around access are limited, as far as possible, to 10 working days, the CAC should have the ability to adjudicate on issues around access and, where needed, also have the ability to enforce an access agreement.

To support this, the Code of Practice should set out the minimum requirements for access. The minimum requirements will need to include:

- A sufficient number of workplace meetings to ensure that every worker has the option of attending during their normal working hours;
- All workplace meetings should be held for a minimum of 60 minutes;
- The union(s) is given equal access to any and all communication methods and/or systems used by the employer to talk to workers about union recognition;
- Any restrictions on union activists talking to workers about union recognition would be deemed as an unfair practice. Effectively, union activists in a workplace involved in the statutory recognition process should be afforded the same rights as union representatives appointed by an independent union in workplaces where the union is recognised for collective bargaining purposes.

6. Electronic voting to help workers have their say

Statistics from the CAC show that workplace ballots are less likely to lead to a vote for union recognition. Based on this, it appears that the ability of an employer to influence workers when they vote at work has an identifiable impact on how those workers vote.

Conversely, postal votes are likely to lead to a lower turnout and, in workplaces such as Amazon, workers living in multi-occupancy and/or insecure housing are hugely disadvantaged by postal votes.

By giving the CAC the ability to offer electronic voting, all of these issues are addressed. Electronic ballots ensure that workers have a better chance of voting, without any fear of interference from their employer.

7. A majority vote is enough

For a union to win a ballot for union recognition, not only do the majority of workers voting have to vote yes, but also at least 40% of the total bargaining unit has to vote for union recognition.

This can lead to a situation where the majority of workers vote “yes” to union recognition, but union recognition is still not awarded. There are few, if any, instances outside of employment law legislation where this would be accepted. The reason for this is that turnout is not necessarily an indication of a preference. Based on this, it should not be used to exclude a specific outcome.

The outcome of a ballot for union recognition should be determined solely on how the majority of workers vote in the ballot.

8. Recognition should mean recognition

The legislation states that statutory recognition enables a trade union to be recognised for collective bargaining on pay, hours and holiday. The specified limitations of recognition do not help workers trying to make work better. There is also no reference to rights associated with trade union-appointed health and safety representatives, which creates some additional confusion on what trade union recognition means.

Amazon used the limitations set out in the Act to tell workers that union recognition would not help them to address many of the issues they are concerned about.

The reality is that trade union recognition leads to better paid jobs and safer workplaces. It helps to create more effective workplace democracy.

On the basis that union is a good thing, statutory recognition should enable unions to be recognised for collective bargaining on all terms and conditions.

9. Make time for complaints

The current process allows for complaints regarding potential unfair practises, but these must be submitted within 24 hours of the ballot for recognition closing.

This precludes a complaint regarding an unfair practice that is identified after this period.

It also means that a complaint will have to be made before the outcome has been confirmed and, therefore, before the impact of any unfair practice can be assessed.

Employment legislation usually gives a timescale of 3 months from the date of an incident to raise a claim at employment tribunal. This is generally accepted as a reasonable timescale.

On this basis, complaints regarding potential unfair practices should be allowed up to 3 months minus one day from the date of the incident being complained about.

10. Lower the timescale for making a further application for union recognition

When a union is not successful in an application for union recognition, that union is then prevented from making an application for statutory recognition for the same bargaining unit for a period of 3 years.

This restriction is an arbitrary timescale that severely limits the ability of workers to improve their workplace.

Lowering the restriction to 6 months ensures that an employer does not have to deal with a series of applications, but also ensures that workers aren't unnecessarily prevented from campaigning for a union in their workplace.

References

- [i] www.theguardian.com/commentisfree/article/2024/jul/23/amazon-gmb-union-coventry-warehouse-vote
- [ii] www.euractiv.com/section/politics/news/european-parliament-bans-amazon-from-its-premises
- [iii] committees.parliament.uk/oralevidence/13326/pdf
- [iv] www.reuters.com/world/uk/uk-amazon-workers-coventry-warehouse-vote-strike-action-union-2022-12-16
- [v] www.gov.uk/government/publications/cac-outcome-gmb-amazon-uk-services-ltd-2
- [vi] www.youtube.com/watch?v=GdHYM7QT9kw
- [vii] x.com/PoliticsJOE_UK/status/1715417435975692561
- [viii] www.gov.uk/government/publications/cac-outcome-gmb-amazon-uk-services-limited-3
- [ix] www.gov.uk/government/publications/cac-outcome-gmb-amazon-uk-services-limited-3
- [x] www.gmb.org.uk/news/amazon-dirty-tricks-mean-gmb-withdraw-recognition-bid



We would like to thank the GMB activists and members at the Amazon Warehouse in Coventry.

We hope that this case study highlights their strength and determination in leading the campaign to unionise Amazon. Their actions have already inspired workers right across the UK to fight for a union voice in their workplace.

The next step is to support workers by creating a fair process statutory recognition process, based on the understanding that union recognition is a good thing.

We would also like to thank the following for their support and invaluable contributions to this report:

Foxglove Legal
Michael Newman, Leigh Day
Tom Vickers, Nottingham Trent University



**For more information, please contact:
Stuart Richards, GMB Senior Organiser
Email: stuart.richards@gmb.org.uk
Tel: 0330 165 5585**



Leigh Day