Case Number: TUR1/912(2015)
15 September 2015

CENTRAL ARBITRATION COMMITTEE

TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992

SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION

DECLARATION OF RECOGNITION WITHOUT A BALLOT

The Parties:

Bakers Food and Allied Workers Union
(BFAWU)

and

Fyffes Group Limited

Introduction

1. The Bakers Food and Allied Workers Union (the Union) submitted an application to the CAC on 6 May 2015 that it should be recognised for collective bargaining by Fyffes Group Limited (the Employer) for a bargaining unit comprising "all hourly paid workers employed at Cross Point Business Park" adding "We do not seek recognition in relation to managers". Cross Point Business Park is the Employer's site in Coventry and to avoid confusion it is referred to as Cross Point Business Park in this decision. The CAC gave the parties notice of receipt of the application on 12 May 2015. The Employer submitted a response dated 15 May 2015 which was duly copied to the Union.

2. In accordance with section 263 of the Trade Union and Labour Relations (Consolidation) Act 1992 (the Act), the CAC Chairman established a Panel to deal with the case. The Panel consisted of Her Honour Judge Stacey, Chairman of the Panel, and, as Members, Mr Len Aspell and Mr Malcolm Wing. The Case Manager appointed to support the Panel was Nigel Cookson.

3. By a decision dated 12 June 2015 the Panel accepted the Union's application. The parties then entered a period of negotiation in an attempt to reach agreement on the appropriate bargaining unit but no agreement was reached. Following a hearing held in Birmingham on 17 July 2015 the Panel decided, in a decision promulgated 31 July 2015, that the appropriate bargaining unit in this matter should consist of workers in the following categories:- QA Assistant; Production Operative; Packer; FLT/lntake; Maintenance; Label Printer; LGV Driver; Despatch Operative and Cleaner. This bargaining unit included all QA Assistants and Label Printers irrespective of whether they were weekly or monthly paid. This bargaining unit differed to that proposed by the Union by the inclusion of the monthly paid QA Assistants and Label Printers.

4. As the determined bargaining unit differed from that proposed by the Union, the Panel was required by paragraph 20 of the Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992 (the Schedule) to determine whether the Union's application is valid or invalid within the terms of paragraphs 43 to 50 of the Schedule. In a decision promulgated 10 August 2015 the Panel found that the application was valid for the purposes of paragraph 20 of the Schedule and gave notice to the parties that it would therefore proceed with the application.

Issues for the Panel

5. Paragraph 22(2) of Schedule A1 to the Act (the Schedule) requires the CAC to issue a declaration that a union is recognised as entitled to conduct collective bargaining on behalf of a group of workers constituting the determined bargaining unit if it is satisfied that a majority of the workers constituting the bargaining unit are members of the applicant union, unless any of the three qualifying conditions set out in Paragraph 22(4) are fulfilled. If any of these conditions are met, or the CAC is not satisfied that a majority of workers in the bargaining unit are members of the applicant union, the CAC must give notice to the parties that it intends to arrange for a secret ballot to be held. The qualifying conditions in paragraph 22(4) are as follows:

a) the CAC is satisfied there should be a ballot in the interests of good industrial relations;

b) that the CAC has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union (or unions) to conduct collective bargaining on their behalf;
c) membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of union members within the bargaining unit want the union to conduct collective bargaining on their behalf.

The Union's claim to majority membership

6. In a letter to the Case Manager dated 13 August 2015 the Union claimed that it now had majority membership within the determined bargaining unit with its records showing 113 members within the new bargaining unit of 173 workers. However, if the CAC was not satisfied as to membership levels the Union requested that a fresh check be conducted.

7. The Union further submitted that none of the conditions specified in paragraph 22(4) of the Schedule were fulfilled. According to the Union, the holding of a ballot would not be in the interests of good industrial relations. Holding a ballot would be likely to cause delay, which was likely to sour industrial relations. Further, campaigning in the run up to the ballot was likely to polarise views and stoke up feelings, which was also likely to worsen industrial relations.

8. In its letter of 4 June 2015 and subsequent email of 3 August 2015, the Employer had asserted that it considered that the majority of workers in the bargaining unit were not likely to favour recognition of the Union.

The Case Manager’s membership and support check

9. To assist in deciding whether to arrange for a secret ballot the Panel proposed independent checks of the level of union membership in the bargaining unit. The information from the Union was received by the CAC on 14 August 2015 and the information from the Employer on 19 August 2015. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists would not be copied to the other party and that agreement was confirmed in a letter from the Case Manager to both parties dated 14 August 2015.

10. The Union provided a list with the details of 113 individuals and the Employer provided a list with the details of 169 workers – representing the accurate and up to date position then as to the numbers both of Union members and the size of the bargaining unit as determined by the Panel. The Case Manager's check established that 86 of the 169 workers in the bargaining unit (50.88%) were members of the Union).

11. The CAC also received 33 forms signed by individuals calling for a secret ballot about Union recognition. A blank copy of one of these forms and the envelope in which it was received were attached to the Case Manager's report. All 33 forms and envelopes were identical to these examples. The individuals did not state whether or not they were members of the Union.

12. The Case Manager's report was issued to the parties on 20 August 2015 and the Employer was invited to make submissions on the three qualifying conditions specified in paragraph 22(4) of the Schedule.

The Employer's submissions on the Union's claim to majority membership and the qualifying conditions

13. In a letter dated 25 August 2015 the Employer submitted that a secret ballot was appropriate under paragraph 22(3) of the Schedule, regardless of the fact that a majority of the workers constituting the bargaining unit were members of the Union.

14. Given that the Union had such a small majority and the ongoing concerns of the Employer regarding the validity of support for recognition, it believed that a secret ballot was appropriate for the following reasons:

Paragraph 22(4)(a)

15. Given the small majority, there was no clear mandate for recognition. In addition, membership evidence was not synonymous with support for collective bargaining and this should not be inferred from a worker's membership of the Union. A clear mandate would be accepted if a secret ballot verified that the majority of workers in the bargaining unit supported collective bargaining. This was not unprecedented and the Employer relied on the decision in **Iron and Steel Trades Confederation[1] and Mission Foods CAC case No TUR1/256/2003** as support for this request.

16. The Employer had approached staff to see if they preferred a ballot in relation to whether they wanted union recognition. From the information received from the CAC it appeared that 42 individuals within the bargaining unit had requested a ballot at the date of writing. Given that the proportion of the union members in the bargaining unit was 50.88% it was assumed that a number of these must be union members. In any event, the strength of feeling shown by the number of responses indicated that it was in the interests of good industrial relations for a ballot to be held.

17. The Employer was aware that the Union has already made unsubstantiated allegations that pressure was brought to bear on the employees to sign letters requesting a ballot and the Employer strongly denied any intimidation had taken place. It attached signed and dated statements, from Salem Abbsi and Agata Nawrocka, a translator present at a number of meetings, stating that they did not consider the meetings intimidatory in nature. In addition the crib sheet used by the managers in these meetings was also attached.

Paragraph 22(4)(b)

18. The Employer also directed the Panel's attention to the results of the Union's petition in relation to recognition. Only 66 of the Union members in the group had signed the petition which would indicate that not even all members were in favour of collective bargaining given

[1] Mistakenly referred to as Institute of Scientific and Technical Communicators.

that the proportion of workers in the bargaining unit who signed the petition and were Union members was only 38.82%.

19. In addition, although not the question directly asked, the high number of staff requesting a ballot demonstrated that there were a number who wanted their voice heard and who were not happy with recognition being imposed in the present circumstances.

20. There was precedent for requesting a ballot in this type of situation and the Employer relied upon the cases of **Institute of Scientific and Technical Communicators and Brian Hewitt Construction Ltd CAC case No TUR1/279/2003**[2] and **GMB and Varn International Limited CAC case No TUR1/355/2004** both of which determined that where a significant number of letters were received a ballot was appropriate. This was also the decision taken in the case of **CWU and COLT Telecom Group Plc CAC Cases No TUR1/590-592/2007**.

Paragraph 22(4)(c)

21. The CAC had previously noted that a number of the union members only recently became members. Paragraph 22(5) was specifically introduced to deal with situations where unions deliberately maximised recruitment on the run up to an application for recognition where promises made to union members may well be influenced by a desire simply to recruit.

22. The Employer had concerns about misinformation which was being circulated. As previously stated, there appeared to be reduced subscriptions for new members and an ambiguity about future increases in subscriptions in the event of recognition. Secondly, attached was an example of a Facebook post (with a translation of the same) from the Polska site, to which the Union obviously contributes. These were examples of inaccurate and misleading information which may well have encouraged membership. Such membership may not however indicate support for Union recognition.

[2] See Footnote 1 above.

23. The Employer argued that all three qualifying conditions in paragraph 22(4) of the Schedule were fulfilled. It submitted that a ballot should be held in the interests of good industrial relations, based upon the fact there was credible evidence from a significant number of union members within the bargaining unit that they at the very least wanted a ballot to voice their views. It could be shown from the initial petition by the Union that not all Union members wanted the Union to conduct collective bargaining on their behalf which was supported by the number of requests for a vote.

The Union's comments on the qualifying conditions

24. On 27 August 2015 the Employer's submissions were copied to the Union and its comments invited. In a letter dated 2 September 2015 the Union argued that it was not appropriate that a ballot be held as the CAC had accepted that a majority of the workers in the bargaining unit were members of the Union and the narrowness of the Union's majority was not of itself a ground for ordering a ballot. The CAC was not entitled to "impose, in effect, a threshold for recognition without a ballot higher than that stipulated by the legislators". On this point, the Union relied on the decision in **ISTC and Fuller Computer Industries Ltd (TUR1/29/00)** which was affirmed on an application for judicial review in **R v Fullarton Computer Industries Ltd, [2001] IRLR 752**.

25. The Union submitted that none of the of the statutory exceptions to recognition without a ballot applied now that majority membership had been established as set out in more detail below.

Paragraph 22 (4)(a)

26. Contrary to the Employer's submissions, there was a clear mandate for recognition. The initial check carried out by the CAC showed that 64.12% of the workers in the bargaining unit had signed a petition indicating support for recognition. In addition, the majority of those in the bargaining unit were members of the Union. Since the most recent membership check, four new

members had joined the Union. The Union attached copies of their membership forms which it had redacted to keep identities confidential.

27. The Union submitted that the Panel should not attach any weight to the forms produced by the Employer, and signed by a minority of workers, requesting a ballot. First, it submitted, had the Employer wanted to give the workers a genuine opportunity to express their views to the CAC, it could have given them a form with options to choose from. However, it did not do this and instead provided "suggested wording" which clearly reflected its preference for a ballot.

28. Second, the workers were asked to sign the forms during individual meetings with managers and inevitably, some workers would have felt under pressure to do as requested by management.

29. Third, calling workers into meetings with senior managers and asking them to sign forms was inherently intimidatory. There was a substantial imbalance of power between a worker and a manager particularly for workers employed in jobs where they could easily be replaced by an agency worker and, consequently, had little job security.

30. Fourth, the Employer could have given the workers stamped addressed envelopes so that they would have been free to make their own private and confidential decision as to whether or not to sign the form and send it to the CAC. However, the Employer chose not to do this and instead asked workers to sign the form during the one to one meetings.

31. Fifth, Salem Abbsi said that he did not believe that management were being "pushy or forceful". However, as a Quality Assurance Assistant, he was in a more senior role with greater job security. In its decision dated 31 July 2015[3] the Panel noted that Quality Assurance Assistants were "workers that had aspirations and saw themselves as moving from managing the quality of the product to managing workers in a supervisory role."

[3] This refers to the Panel's decision as to the appropriate bargaining unit.

32. Sixth, many workers spoke little English and may not have understood the forms they were asked to sign. Agata Nawrocka says that she translated "for one lady" but it was unclear whether a translator was available in all the meetings. It was perhaps not surprising that the worker "signed straight away" when asked to do so in an individual meeting with a senior manager and a supervisor.

33. Seventh, the first 33 forms were placed in a single envelope and sent to the CAC[4]. The address on the envelope had been typed. The most likely explanation for this was that the workers returned the signed forms to the Employer and the Employer then sent the forms to the CAC.

34. For all these reasons, the Union submitted that the forms which had been provided to the CAC by the Employer were clearly not a free expression of the workers' genuine views and, therefore, the CAC should not attach any weight to this evidence.

35. The Union submitted that the circumstances which applied in **Mission Foods** were significantly different. In that case 72.4% of those in the bargaining unit had signed a petition confirming that they wanted a ballot to be held. In this case, even if the CAC was of the view that any credence should be given to the signed forms produced by the Employer, only 44 workers had signed the forms. Even if all 44 individuals who signed the forms were in the bargaining unit (which was not clear), this represented only 26% of the 169 workers in the bargaining unit.

36. Contrary to the Employer's submissions, as there were 83 non-Union members in the bargaining unit at the time of the most recent membership check, it was entirely possible that each one of the 44 workers who signed the forms were not Union members.

37. In any event, the Union submitted that holding a ballot would not be in the interests of good industrial relations. The Union had sought to establish good industrial relations both before

[4] Each form was actually received in a separate envelope with there being no instances of multiple forms being received in the same envelope. The Panel noted therefore that the submission was inaccurate to that extent.

and during the CAC process without any success. For example, the Union offered the Employer access to its Learning Services but this offer was rejected and the Employer had remained implacably opposed to establishing a relationship with the Union. The Union enclosed a copy of the letter from the Employer dated 30 March 2015 denying the Union's request for recognition without further explanation, a copy of a letter from the Employer to the workers dated 30 March 2015 setting out the Employer's reasons for rejecting the Union's request for recognition and an extract from an organisation calling itself the "World Socialist Website" containing misleading and unfair criticism of the Union and expressing the view that "trade Unions are utterly hostile to the interest of those workers trapped within them", which was left in the canteen used by workers in the bargaining unit.

38. In the Union's submission, even if a ballot was held, the outcome would not lessen the Employer's hostile attitude to trade unions and would not, therefore, improve industrial relations. On the contrary, the practical effect of a ballot would by its very nature engender an adversarial situation within the workplace, with the Union and the Employer embroiled in a divisive contest. Pressure from the Employer on individual workers to oppose recognition would be likely to intensify. This would only exacerbate the current mistrust between the Employer and the Union, which would worsen industrial relations.

Paragraph 22(4)(b)

39. The Employer asserted, in its letter of 4 June 2015 and subsequent email dated 3 August 2015, that the majority of workers in the bargaining unit were not likely to favour recognition of the Union to conduct collective bargaining on their behalf. However, no evidence had been produced to support these assertions. The forms the Employer had arranged for the workers to sign said only: "I work for Fyffes Coventry and I want a secret ballot about Union recognition". It was very clear from the "Note for Managers" produced by the Employer that the workers were only asked to express their support for a secret ballot. They were not asked to express their opposition to collective bargaining.

40. In the absence of any evidence of its own, the Employer sought to persuade the CAC to draw an inference from the Union's petition. This petition was signed by 109 workers, equivalent to 64.12% of the 170 worker bargaining unit. Sixty-six of those who had signed the petition were Union members and 43 were non-members. It could not be inferred, from the fact that not all Union members signed the petition, that those who did not sign were opposed to collective bargaining. The Union did its best to obtain as many signatures as possible. However, in circumstances where the Employer had made its opposition to the Union very clear and where some of the workers worked different shift patterns, it was not easy for the Union to obtain signatures from members. However, despite these difficult circumstances, a majority of those in the bargaining unit had joined the Union and remained in membership.

41. In all three cases quoted by the Employer under this heading, the workers who wrote to the CAC had made it expressly clear that they were opposed to collective bargaining. For example, in **Brian Hewitt**, the workers said, "Further to recent attempts by ISTC to secure collective bargaining rights within BHC Limited, I wish to make my view known that I do not wish to be represented by the Union and would prefer that the current arrangements continue." There was no evidence whatsoever that any Fyffes worker had expressed any opposition to the Union carrying out collective bargaining. Therefore, the cases quoted by the Employer under this heading were not relevant.

Paragraph 22(4)(c)

42. The Employer had not produced any evidence to support its allegation that members had been persuaded to join the Union by misinformation. As the CAC accepted in its decision dated 12 June 2015, the Union had responded to the Employer's question as to membership fee increases and had explained that the fee currently being paid was the rate applicable to an unrecognised site.

43. The posting on the Polska website was written by a lay member and reflected some minor misunderstandings of the recognition application procedure as well as the difficulties in obtaining clear information from individuals who could not read English and were, therefore,

uncertain as to what they had been asked to sign. However, the key message, that workers should not sign documents given to them by the Employer as this may undermine the Union's recognition application, was clear. In any event, this posting did not amount to evidence that Union members were encouraged to join the Union by misinformation nor to evidence that members did not want the Union to conduct collective bargaining on their behalf.

44. In summary, the Union's submission was that it had demonstrated majority membership within the bargaining unit, none of the three statutory exceptions applied and, therefore, the Union should be granted recognition.

Considerations

45. The Schedule requires the Panel to consider whether it is satisfied that the majority of the workers in the bargaining unit are members of the Union and if the Panel is satisfied that the majority of the workers in the bargaining unit are members of the Union, it must declare the Union recognised by the Employer, unless it decides that any of the three conditions in paragraph 22(4) are fulfilled. If the Panel considers any of the conditions are fulfilled it must give notice to the parties that it intends to arrange for the holding of a secret ballot.

46. The Case Manager's membership check conducted on 20 August 2015 established that 86 workers in the bargaining unit of 169 workers (50.88% of the total) were members of the Union). The Panel accepts that the majority of workers in the bargaining unit are members of the Union.

47. The Panel must now consider whether any of the three qualifying conditions stated in paragraph 22(4) (and described in paragraph 6 above) applies in this case. In deciding this matter we have given careful consideration to all the written submissions and taken full account of all the material provided to us during the process of this application.

Are we satisfied that a ballot should be held in the interests of good industrial relations?

48. The Employer has submitted that this condition applies on the basis that the Union enjoys but a small majority and so there was no clear mandate for recognition. It also argued that the membership evidence was not synonymous with support for collective bargaining and that the Panel should not infer a worker's membership of the Union as support for collective bargaining. A clear mandate would, so the Employer submitted, be accepted if a secret ballot established that the majority of workers in the bargaining unit did support collective bargaining.

49. The Employer also argued that the high number of workers that had written to the CAC asking that a secret ballot be conducted was an indication that it would be in the interests of good industrial relations to do so. After the initial 33 identical letters received a further 15 were received over the following days making a total of 50 on 15 September 2015. The Employer assumed that as the proportion of union members in the bargaining unit was 50.88%, a number of these forms must have been completed by union members.

50. The Union argued that there was a clear mandate for recognition as shown by its petition which was signed by 64.12% of the original bargaining unit although this figure is subject to change given the small increase in numbers following the Panel's decision as to the appropriate bargaining unit. The Union also gave its reasons why the Panel should place no weight on the forms given the circumstances in which they were obtained by the Employer and it took the view that it would be more likely that a ballot would worsen industrial relations given the current relationship between the parties than bring them together.

51. Having carefully considered the parties' submissions on this qualifying condition the Panel finds that the Employer has not shown that it would be in the interests of good industrial relations that a ballot be held. First, the slenderness of the Union's majority is not in itself justification for the holding of a ballot. The Union has a majority of workers in the bargaining unit in membership – 50.88% as at the time of the membership check and with the additional 4 members who have joined since, now stands at 53.25%. Parliament has laid down the threshold for recognition without a ballot at 50% plus one and that threshold has been met in this case. If

the CAC were to say that in every case where the density of Union membership was a majority but fairly close to the 50% and it followed that a ballot was a good idea, it would subvert the legislation and effectively impose a higher threshold than that set out in the statute. For the condition to be met the Panel requires evidence that a ballot would be in the interests of good industrial relations. No evidence has been put before the Panel by the Employer to explain how industrial relations would be detrimentally affected if we were to award recognition without a ballot taking place and why industrial relations would improve if a ballot were to be held. The evidence, such as it was, pointed instead to the contrary and that a slightly tense atmosphere in the workplace would become more so. There appeared to be a degree of misinformation on both sides circulating which would serve only to raise the temperature – generating heat rather than light. In the industrial experience of the Panel for which we were appointed to the CAC, there are likely to be strongly held and vocal views on both sides resulting in anxiety and instability in the workplace, and risk polarisation and a deterioration of industrial relations.

52. Whilst a narrow majority of Union membership may be a factor in some cases tilting in favour of a ballot under this qualifying condition, on the facts in this case and in the absence of other evidence it does not. In this case there is consistent evidence over a sustained period of time of very significant levels of Union membership and support for recognition evidence by the petition and that Union membership continued to grow during the currency of the case. That a number of workers have signed a form calling for a ballot is not, in our view, evidence that it would be in the interests of good industrial relations for a ballot to be held. It is 29.6% of the bargaining unit and there is no evidence to suggest that any one of them is a Union member and it is highly likely that a considerable number of those who have chosen not to join the Union during its campaign for recognition have strong views that are not supportive of trade unions or this Union. Those individuals are however in a minority compared with those who have chosen to commit to Union membership. It is also significant that despite 1-1 meetings with management with the workers in the bargaining unit 20% of the non-Union members have chosen not to sign a letter asking the CAC to conduct a ballot.

53. In our view there is no evidence to support the Employer's assertion that it would be in the interests of good industrial relations to hold a ballot and we find that this qualifying condition

is not satisfied. We remind ourselves that the burden of proof is on the Employer to prove, to the civil standard of the balance of probabilities that the condition is satisfied and it has not done so in this case.

Do we have evidence, which we consider credible, from a significant number of union members in the bargaining unit that they do not want the union to conduct collective bargaining on their behalf?

54. We have not received credible evidence from any Union members in the bargaining unit which shows a significant number of union members do not want recognition. The Employer relies on two matters in support of its argument on this qualifying condition: firstly that we infer from the fact that only 66 of the 82 Union members in the original bargaining signed the Union's petition in support of recognition. The difficulty for the Panel however is that we do not see the non-signing of the petition as an indication that these individuals opposed recognition of the Union. The Schedule is clear. For this condition to be satisfied, the Panel must receive credible evidence from a significant number of members that they do not want the Union to collectively bargain on their behalf. Such evidence must be unequivocal rather than reliant upon the Panel drawing an inference as urged by the Employer. By contrast the fact that workers, most of whom are on the minimum wage or close to it, have been contributing £4.85 per month to a Union vociferously seeking recognition for collective bargaining is compelling evidence of support for recognition. That 16 Union members did not sign the Union's petition cannot be taken as unequivocal evidence that the 16 opposed the Union being recognised.

55. Secondly the Employer directed the Panel's attention to the forms that workers had signed that called for a ballot to be held. However, this qualifying condition is limited not only as to the views of Union members but also that the view expressed must be in terms that can only lead to the conclusion that the individual did not want the Union to conduct collective bargaining on their behalf. All of the forms received by the CAC were in exactly the same terms and called for the holding of a secret ballot. These forms cannot be viewed as evidence that *Union members* do not wish the Union to conduct collective bargaining on their behalf. The letters did not state if the individuals were Union members or not and the Employer quite rightly did not ask its

employees to disclose their Union membership status during the 1-1 meetings when employees were offered the chance to sign the letter in support of a ballot. Without knowing if the letters were from Union members the condition has not been satisfied. We note in passing that if more that 47% of the bargaining unit had sent letters we would have been able to deduce that some of those must have been sent by Union members and subject to satisfying ourselves that the letters had indeed been sent by different people (rather than, for example one person sending the same letter a number of times), but that did not apply here. There was nothing in the individual letters to suppose that any of them had been signed by Union members.

56. Since it is not apparent from either the face of the letters themselves or their number that any have been sent by Union members it is not necessary for us to make findings or draw conclusions from the manner in which the 1-1 meetings were conducted. However for the sake of completeness we should point out that the note to managers provided by the Employer made clear its support for a ballot to be held and included the statement: "The union is claiming it has a majority of union members and wants to enforce recognition without a secret ballot. We believe this is wrong because it would deny your right to vote on this matter." It is an oversimplification at best and misleading at worst, since, as is clear from the statute, there is not "a right to vote on this matter" where the Union has a majority of members. The briefing note for managers also includes the accurate information (as at the time of the membership check of late August 2015) that the bargaining unit covers 169 employees of whom 86 were Union members, but then asserts that Union members therefore represent 48.25% of the bargaining unit, which is mathematically incorrect. Had it been necessary therefore to consider the provenance and rationale of the 50 letters in greater detail we may have had some concerns. However, whilst the information in the briefing note may not have been quite accurate, the statements from the Polish interpreter Agata Nawvokra and Salem Abbsi stated that management had not been pushy or forceful at the meeting and we do not find their style was hectoring as such.

57. Having considered the parties' submissions on this qualifying condition the Panel finds that it is not satisfied.

Has membership evidence been produced leading us to conclude there are doubts whether a significant number of union members in the bargaining unit want the union to conduct collective bargaining in their behalf?

58. Membership evidence is defined in paragraph 22(5) as being evidence about the circumstances in which union members became members and evidence about the length of time for which union members have been members, in a case where the CAC is satisfied that such evidence should be taken into account.

59. The Employer highlighted its disquiet that a number of the Union members had only recently taken out membership and submitted that paragraph 22(5) was specifically introduced to deal with situations where unions deliberately maximised recruitment in the run up to an application for recognition where promises made to union members may well be influenced by a desire simply to recruit. It also stated its concerns about misinformation being circulated especially as there appeared to be reduced subscription tariff for new members and an ambiguity about future increases in subscriptions in the event of recognition. The Employer submitted that inaccurate and misleading information had been disseminated which may well have encouraged membership but did not indicate support for Union recognition. The Union countered this by pointing out that the Employer had not produced any evidence to support its allegation that members had been persuaded to join because of misinformation. The Union had explained the difference in subscription rates, as was considered by the Panel and set out in the decision to accept the application dated 12 June 2015. This is not a case where Union members receive free membership pending recognition. The Union members have been making financial contributions to the Union in the context of their earnings in a sector of the economy which is traditionally not well paid at a time when incomes are being squeezed by the cost of living.

60. We have not seen evidence to support the assertion that members joined the Union based on misinformation on the part of the Union. There has been very significant and increasing levels of membership over a period of nigh on 6 months and no evidence of workers leaving the Union – which could have been expected if there had been misinformation causing them to join. Neither are we persuaded by the Employer's point that paragraph 22(5) was introduced to cover

situations such as this whereby unions maximise recruitment when they are about to embark on a campaign for recognition. What we have in this case is majority membership in the determined bargaining unit with no evidence to support a case that Union members do not want the Union to conduct collective bargaining on their behalf nor is there any membership evidence to persuade us that members do not support recognition of the Union. The membership level in the bargaining unit has been sustained since the application has been lodged with no members resigning from the Union because of the campaign currently being conducted. We have seen no evidence to support a claim that workers were wrongly induced into joining such as, for example, free membership and accordingly we have reached the conclusion that this qualifying condition is not satisfied.

61. The Panel is concerned that the delay that would necessarily follow if a ballot were to be held would be likely to be detrimental to the atmosphere in the workplace, where, as in this case, there is no conclusive evidence that Union members have changed their minds or are having second thoughts about collective bargaining, but rather the impression received is that attitudes are becoming more entrenched. It is a consequence of majority rule – whether the majority view is established by vote or Union membership – that the minority may feel disaffected and on the facts of this case the holding of a ballot would not be likely to reduce any dissatisfaction likely to be felt.

Decision

62. The Panel is therefore satisfied in accordance with paragraph 22(1)(b) of the Schedule that the majority of the workers constituting the bargaining unit are members of the Union. The Panel is satisfied that none of the conditions in paragraph 22(4) of the Schedule is fulfilled. Pursuant to paragraph 22(2) of the Schedule the CAC must issue a declaration that the Union is recognised as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit. The CAC accordingly declares that the Union is recognised by the Employer as entitled to conduct collective bargaining on behalf of the bargaining unit comprising workers in the following categories:- QA Assistant; Production Operative; Packer; FLT/lntake; Maintenance; Label Printer; LGV Driver; Despatch Operative and Cleaner. The bargaining unit

includes all QA Assistants and Label Printers irrespective of whether they are weekly or monthly paid.

Panel

Her Honour Judge Stacey, Chairman of the Panel
Mr Len Aspell
Mr Malcolm Wing

15 September 2015