Case Number: TUR1/909/2015
28 August 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:

Unite the Union

and

Safehouse Habitats (Scotland) Ltd

Introduction

1. Unite the Union (the Union) submitted an application to the CAC on 10 April 2015 that it should be recognised for collective bargaining by Safehouse Habitats (Scotland) Ltd (the Employer) for a bargaining unit comprising the "Technician group" based at the Employer's site at Strathmore House, Charles Bowman Avenue, Claverhouse Industrial Park, Dundee. The CAC gave both parties notice of receipt of the application on 15 April 2015. The Employer submitted a response to the CAC dated 21 April 2015 which was copied to the Union.

2. In accordance with section 263 of the Trade Union and Labour Relations (Consolidation) Act 1992 (the Act), the CAC Chairman established a Panel to deal with the case. The Panel consisted of Professor Linda Dickens MBE, chairing the Panel, and, as Members, Mr Paul Gates OBE and Mrs Maureen Shaw. The Case Manager appointed to support the Panel was Nigel Cookson.

3. By a decision dated 1 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. No agreement was reached. The Panel determined that the appropriate bargaining unit was that as proposed by the Union namely the "Technician group" based at the Employer's site at Strathmore House, Charles Bowman Avenue, Claverhouse Industrial Park, Dundee and this was communicated to the parties in a decision promulgated 14 July 2015.

Issues for the Panel

4. 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 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

5. In a letter from the Case Manager dated 14 July 2015 the Union was asked whether it was claiming majority membership within the determined bargaining unit and was therefore submitting that it should be granted recognition without a ballot.

6. In an email to the Case Manager dated 20 July 2015 the Union said that it had majority membership within the bargaining unit (68% of technicians) and therefore requested that recognition be granted without a ballot.

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

7. On 20 July 2015 the Union's email of the same date was copied to the Employer and the Employer was invited to make submissions on both the Union's claim to majority membership within the bargaining unit and on the three qualifying conditions specified in paragraph 22(4) of the Schedule. In an email dated 24 July 2015 the Employer commented thus:

Paragraph 22(4)(a)

8. The Employer had never objected to union recognition as a matter of principle. Its position was, and remained, that it would do what its employees wanted it to do. As such, when it became aware of this application it contacted Acas and attended a meeting with a local conciliator. As a result of that, it suggested to the Union that voluntary recognition be pursued, if that was what its technicians wanted following a secret ballot. However, the Union rejected this offer and the discussions went no further. The Employer believed that the Union itself was aware that a majority of the technicians would likely vote against formal recognition, which was why it had taken the stance it had. If the Union was confident that it had majority support in favour of recognition it was difficult to see why it would be so resistant to a ballot.

9. The Employer noted that the recent change of terms and conditions that it had currently undergone with the entire technician group was carried out harmoniously and successfully through a process of engagement and negotiation. This was the method of communication preferred by the majority of technicians that voted in the informal ballot and it could only damage industrial relations to impose recognition without a further opportunity to vote.

10. The Employer genuinely believed that should recognition be imposed without a ballot, it would cause very significant difficulties and would have profound consequences for industrial relations and the performance of the business. Those supporting union recognition were well known within the technician group and the Employer was concerned as to the strength of feeling that could arise if a technician who favoured recognition had to work in close proximity with a technician who was opposed to it. The Employer could not attempt to pick and choose technicians for a job dependent upon their support for union recognition. Not only would that go entirely against its values and ethos, but it would be impossible in practice and clearly unlawful.

Paragraph 22(4)(b)

11. The Employer had already carried out an anonymous poll to gauge support for union recognition. It wrote to the technicians setting out three options - having elected representatives, union recognition or neither. Half of the 50 technicians responded with 20 voting for either employee representatives or no representation at all and five for union recognition. Of those that voted, 80% were against union recognition. The Employer provided copies of the slips returned by the technicians explaining that the Panel should not conclude that half the technicians were unconcerned about recognition; rather it should bear in mind the difficulties inherent in them returning their slips.

12. In addition to that, 19 technicians emailed the Employer with their views on recognition as follows: 15 for either employee representatives or no representation at all and 4 for union recognition. Accordingly, some 79% of the technicians that responded were against union recognition. Redacted copies of these emails accompanied the Employer's submission with the Employer explaining it would supply unredacted copies on request on the understanding that the authors' identities were kept from the Union. As confirmed above, 20 technicians voted against recognition – and some of those must also have been union members.

Paragraph 22(4)(c)

13. The Employer referred the CAC to its decision of 1 June 2015 which set out the Employer's concerns as to why workers had joined the Union and gave alternative reasons as to why they joined at that time. The Employer also referred to the conflicting figures given by the Union in respect of the level of union membership within the Technicians. Initially it had indicated that it had 37 members within the group, which it then reduced to 35. However, when the CAC carried out its own check on membership, it found that only 34 technicians were members. This was confirmed in the Union's most recent email correspondence of 20 July 2015 which stated 68% union membership within the technician group. If the Union had supplied accurate information to the CAC, then over a period of time the technicians have been deciding to give up union membership.

14. On 27 July 2015 the Employer's submissions were copied to the Union and its comments invited. The parties were also informed the Case Manager would be in touch to discuss a further check that the Panel had requested. The parties were also informed that should a hearing be necessary to determine this issue, it would be held on 13 August 2015 at a venue to be determined and the parties would be afforded an opportunity to provide any further submissions on the issue no later than a week prior to this hearing.

The Case Manager's membership and support check

15. 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 and a further check to establish how many of the emails submitted by the Employer were from Union members stating that they were not in favour of the Union being recognised. The information from the Employer was received by the CAC on 29 July 2015 and the information from the Union was received by the CAC on 30 July 2015. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and emails would not be copied to the other party and that agreement was confirmed in a letter from the Case Manager to both parties dated 28 July 2015.

16. The Union provided a list with the details of 37 individuals and the Employer provided a list with the details of 50 workers as well as copies of emails received from workers expressing a view on Union recognition. These emails had been received following the Employer asking workers whether they wanted to discuss pay and conditions individually or through workplace representatives (as currently) or to have negotiations in the future undertaken through the Union. Examples of the workers' comments were: "*I'm personally in favour of continuing with our current arrangements and having our own elected Tech reps as opposed to a single Union Rep*"; "*Workplace representation is my vote*"; "*I am not wanting union recognition*" and "*I would be in favour of union representation*".

17. The Case Manager's check established that there were 50 workers in the bargaining unit of whom 36 (72%) were members of the Union.

18. Out of the 18 emails supplied by the Employer that expressed a view on recognition, four were from Union members saying that they did not support recognition of the Union which amounted to 8% of the workers in the bargaining unit and 11.11% of the total number of Union members. Nine non-members had also emailed to say they were against recognition of the Union (18% of the bargaining unit) and five workers had emailed to say that they were in support of the Union being recognised (10% of the bargaining unit). The percentage of workers in the bargaining unit that had expressed a view one way or another was 36%.

19. The Case Manager's report was issued to the parties on 31 July 2015 along with a letter confirming that a hearing to decide whether or not to hold a ballot under paragraphs 22 and 23 of the Schedule would take place on 13 August 2015. This hearing took place in Glasgow and the names of those that attended the hearing are annexed to this decision. Further submissions from the parties were received and cross-copied on 7 August 2015. At the hearing and with the agreement of the Panel and the Employer's representative, the solicitor acting for the Union tabled extracts from *Harvey on Industrial Relations and Employment Law.*

Summary of the Employer's submissions at the hearing

20. In order to properly explain and put into context its concerns about not having a ballot the Employer explained the background and nature of the business. The company was founded in 2003 and grew and developed to achieve an annual turnover of £21M over a period of 11 years. During this time the technician workforce grew to its peak of 61 by 2013 with the Employer committed to offering long term and permanent employment from the outset. This had not changed, despite the problems facing the industry over the past year.

21. The technicians' working environment was far removed from the usual 9-5 deskbound role. They worked on pressurised habitat systems both on-shore and off-shore and it was considered the most hazardous activity on a platform. It could be a single technician working solo or six or more working together around the clock. They would all live and sleep in close proximity so it was vital that there was no disharmony. The work was carried out around the world in places such as the Middle East, Trinidad and Tobago and Africa but it was largely focussed in the North Sea. Technicians required a high degree of diplomacy and understanding of the petrochemical industry.

22. The commitment created loyalty and shared values that the technicians felt were manifested in management action, interventions and discussions and this level of trust was mutually beneficial.

23. In 2014, the business was sold and a new board of Directors and Shareholders was formed and it was perfectly understandable that some technicians felt anxious or concerned about the change. Within 8 months of the changes the Oil & Gas sector slump commenced and after careful consideration, the business had no choice but to embark on a range of cost cutting initiatives which included a redundancy programme in respect of the technician workforce and changes in terms and conditions across the business, not just within the bargaining unit but to all staff positions. It was around this time that the Union became active within the technician group, organising meetings and generally garnering support.

24. The technician team was to be reduced from 61 posts to 51 and the redundancy process began in late August 2014. The process was finalised at the end of September 2014, at which point it was confirmed that the next step was to review terms and conditions of employment. This was clearly a time when the technicians were concerned about their futures. However, only one technician attended a meeting accompanied by a union representative, out of the total of 61, and save for this single technician, no technician discussed the Union at all. This did not mean that the technicians were not vocal about putting across their views and suggesting different ways to achieve objectives. That no technician introduced the Union into this process demonstrated, in the Employer's submission, that they did not want the Union to represent them at this most critical of times.

25. After the redundancy process, it became apparent that a comprehensive review of the technicians' terms and conditions of employment was necessary. Clearly this was a worrying and concerning time for all the technicians and the Employer was aware that the Union increased its efforts in increasing membership.

26. In early 2015 some technicians held a meeting with the Union. The Employer received feedback from a number of technicians about this meeting, suggesting that it had done nothing but increase anxiety and cast doubt about the Employer's intentions. Apparently a number of technicians became members at or following this meeting, which may well have been why such anxiety and concern was raised in the first place. Despite that, out of 29 individual meetings and seven skype calls over the ensuing days, not a single technician asked to either involve or bring a trade union representative with them although they were told they could do. In the Employer's view, this was important and significant. The issues that were being discussed were exactly the same issues that the Union would negotiate on their behalf should recognition be granted.

27. In accordance with its legal obligations, the Employer then set about organising nominations and a ballot for workplace representatives. After various revisions of the original proposal, which took into account concerns raised and suggestions put by the workplace representatives, all technicians amicably agreed the changes in their terms and conditions with no changes imposed. This was not an overnight or a 'take it or leave it' process; different proposals

were put forward by the Employer after considering the views of the workplace representatives. This process took place only a matter of months ago, it was not old history, and took place at a time that the Union said membership was booming. The Employer said this experience had led it to recognise the value of having a representative forum and consulting workplace representatives, who have an understanding of the work which a third party would lack.

28. In the 'straw poll' conducted by the Employer, three options were set out: no change; a system of Safehouse workplace representatives or union recognition. A simple slip with the three options and a SAE were sent to the technicians and they were asked to indicate their favoured option. A lot of effort was put into encouraging technicians to indicate their preferences. Twenty-five out of the 50 technicians voted. The Employer subsequently had an impromptu meeting with eight technicians who were in head office for training who gave some explanations for a reluctance to vote: some did not believe it was confidential and were afraid of the consequences; some had been advised by the Union not to respond and some lacked understanding as to what recognition meant in practice. The Employer was particularly concerned about the second point as it believed that no organisation should advise its members, or employees, not to express their view. In response to questioning by the Panel the Employer's Head of Business Support, who had been running the poll and contacting technicians to encourage voting, further suggested some technicians had not voted as they were content to sit on the fence on the issue or were fatalistic ('what will happen will happen').

29. As previously stated, the Employer's position had always been that if the technicians wished to have union recognition it would help and assist them and would engage and work constructively with any union so recognised. The first occasion that the Employer became aware of the issue was when it received the papers from the CAC. It was surprised as no technician had mentioned union recognition but it was not an unwelcome approach as the Employer was not anti-union. Indeed, the Employer subsequently suggested voluntary recognition if the Union was successful following a ballot but the Union had refused this suggestion. However, without a secret ballot, technicians may feel that they had not been given an opportunity to express their preference in a formal and confidential manner and without external duress playing a part. The

feedback received about the Union had been almost entirely negative including concerns about workers being pressurised to join the union.

30. The Employer submitted that the Union had refused the offer of a voluntary ballot as it knew full well that the technicians did not want the Union to be recognised and this was the reason why it was still insisting on recognition without a ballot. The Union had not produced any evidence to show its members wanted recognition and the Panel should take this into account.

31. All that the Employer wanted was for the technicians to be able to vote in a secret ballot with no pressure brought to bear from either side and for the technicians to decide the question of recognition themselves. The Employer would accept the outcome of the ballot whatever the result. It should not be decided on an assumption that membership alone could be taken as a desire for union recognition without further evidence.

32. It was clear that notwithstanding the membership density, a significant number of technicians did not wish the Union to conduct collective bargaining on their behalf. Harmonious teamwork was critical to the role of technician as they needed to trust colleagues explicitly and the Employer was concerned that recognition without a ballot could divide the technicians and affect their working relationships. Wherever they worked the technicians needed to have this high level of trust in each other and in management. The technicians needed to be able to work, eat and sleep alongside each other and it would cause friction to have two technicians working together with differing viewpoints.

33. There was distrust between the parties, and between member and non-member technicians which was souring good industrial relations – to the extent that technicians were fearful of admitting that they were against recognition. That distrust would only be amplified if recognition was imposed without a ballot. However, if the technicians were allowed a vote, the Employer was confident that industrial relations would improve, regardless of the eventual result. It was to be noted, submitted the Employer, that whenever any emotion is shown on the email comments it is invariably against recognition and whilst a ballot would not magically

change minds nonetheless the Employer was confident that once the technicians had expressed their views in a secret ballot without fear of retribution the remaining technicians would respect and abide by the decision.

34. In terms of the straw poll, it was noted that nearly three times as many technicians were against recognition compared to those in favour. If this was extrapolated to the total number of technicians, it would mean that only 16 technicians would favour recognition, with the remaining 34 against recognition. There were only 36 technicians who were union members. This would mean that the union members who were against recognition could vary between 55% as a minimum and 94.4% as a maximum. On any reading, that was a significant number of union members who were not in favour of recognition.

35. The Employer noted that the technicians had just been through a process involving changes to terms and conditions. If there was support for recognition, then that would have been the time that the technicians would have involved the union. However, as stated already, not a single technician did so and the only reasonable conclusion that could be reached was that the technicians did not want the Union to negotiate on their behalf. Accordingly, imposing recognition upon them now would, in the Employer's view, cause considerable industrial disruption. The Employer had already made reference to the singular working environment of the technicians, and the likely consequences of any industrial upset.

36. In addition, the Employer noted that the technicians it had spoken with over the past few days were all of the view that a ballot would be called before there was any decision on recognition. To then impose recognition without a ballot would undoubtedly cause serious concern and impact upon good industrial relations.

37. Asked by the Panel as to what difficulties or disharmony had surfaced during the course of the process following the application for recognition the Employer said that some technicians did not understand why they had to go through the process as they thought everything had been sorted out and a number did not understand fully what recognition was about. To help explain the process and the impact of recognition the Employer put together a podcast on Youtube for

the technicians to access wherever they were. The Employer also put together a Q and A which went out. The Employer believed that the process had led to undercurrents in the workforce and whilst the technicians did want closure, they wanted to decide the matter for themselves. Pressed to detail what disharmony had surfaced concerning the recognition application the Employer's Head of Engineering said that the biggest gripes from the technicians were in respect of pay and overtime and issues of fairness as between different contractors.

38. In response to a question from the Panel the Employer stated it now had transparent salary scales and bands (rather than individualised pay rates) for technicians resulting from the recent changes to the technicians' terms and conditions. Questioned by the Panel as to why it thought union membership levels had not fallen the Employer said that it did not know how membership had been presented to the technicians when they were recruited nor whether it was at a discounted rate or not. Further, the Employer believed that with the Oil and Gas Sector in difficulty, workers might wish to take advantage of the legal assistance offered by unions for example in Employment Tribunal claims, and this could be the reason why technicians remained in membership especially considering the recent round of redundancies. Another potential reason was personal injury litigation; given the hostile environments in which they worked, the technicians would take comfort knowing that they were covered in the event that something happened.

39. In closing the Employer reminded the Panel that the technicians did not carry out a straightforward 9 to 5 role but worked in very hostile environments. They felt unable to speak freely as they were concerned with what their colleagues would think. If the straw poll had returned a majority in favour of recognition then the Employer would have abided by the result. However, there was credible evidence that a significant number of Union members did not want collective bargaining. It was not just the straw poll and the emails but that the recent change in the terms and conditions was the ideal opportunity for the Union to become involved in collective bargaining but not a single technician asked that the Union be involved. It was for all the reasons given that the Employer requested that the technicians be given a ballot before deciding on the question of recognition.

Summary of the Union's submissions at the hearing

40. The Union's position was that that none of the circumstances set out in paragraph 22(4) applied and therefore there was no requirement to hold a secret ballot.

41. It was the Union's submission that it was not in the interests of good industrial relations to have a ballot and that there was a possibility that it could be detrimental to industrial relations, exacerbating problems. The Union referred the Panel to paragraph 1342 of *Harvey on Industrial Relations and Employment Law* on this point. A ballot would delay recognition and be divisive. If a ballot was scheduled, then each side would campaign for employee support for its position which could engender antagonism and divisiveness detrimental to the development of good industrial relations.

42. The Union did not dispute that a harmonious working environment was critical but the issue was whether recognition would affect this. The Employer had provided no examples of workers complaining about their colleagues because of the possibility of union recognition. Rather, it was common to have unionised companies within the Oil and Gas Sector so the Union found it difficult to understand how having non-members and members working alongside each other would hinder a harmonious environment. Contrary to the Employer's submissions the Union believed that industrial relations would worsen if a ballot was called as the inevitable delay would entrench polarity of views during the campaign leading up to the ballot. The Union believed that the best way to achieve the desired closure would be for the Panel to grant recognition without a ballot.

43. As for the second qualifying criterion, the critical words here were "credible" and "significant number" and the most credible evidence is that established in the membership check conducted by the CAC on 31 July 2015. This report showed that 36 out of the 50 workers in the bargaining unit were members of the Union, which equated to 72%. The report also suggested that four Union members submitted emails which the CAC considered were against Union recognition. That number amounted to 8% of workers in the bargaining unit but more pertinently, 11% of Union members. The question was whether a significant number of union

members had informed the CAC that they did not want the Union to be recognised. The Union argued that the number of union members that had expressed a view against the Union being recognised did not amount to a significant number of Union members and quite simply the requirement set out in paragraph 24(4)(b) was not met. The Union also argued that the emails were sent at the Employer's instigation which would sway the responses in favour of the Employer rather than the Union. The Employer had already highlighted the concern amongst the technicians as to confidentiality and this could account for why so few Union members had responded as they may have had a fear of reprisals.

44. The Union referred to paragraph 1346 of *Harvey* which read:

"The expectation is that the disaffected unions members will themselves directly inform the CAC of their opposition to collective bargaining….it is not enough for the employer to argue that the evidence demonstrates that a significant number of union members are not in favour of collective bargaining, if the members themselves choose not to voice any objections…"

45. The Union submitted that the Employer had failed to provide any credible evidence that there were a significant number of Union members not wanting the Union to conduct collective bargaining. Certainly, there was no evidence provided that allowed the CAC to determine how many of those who participated in the anonymous poll or in the emails referred to therein, were Union members. Using the figures supplied in the membership check of 31 July 2015, as few as six Union members could have voted against collective bargaining and in the email poll it was possible that no Union members could have elected for the 'no representation at all' option. The most reliable source of information was that produced by the CAC check. The Union argued that 11% or four out of 36 is not a significant number.

46. According to the Union, there was no membership evidence before the CAC which would lead the Panel to conclude that a significant number of Union members within the bargaining unit did not want the Union to conduct collective bargaining on their behalf. It was not disputed that members joined during a period of redundancies and changes to terms and conditions. However, there was evidence to show that Union membership had increased. Since the original membership check was conducted two further individuals had joined the Union

whilst none had resigned membership during the same period. "Membership evidence" must be evidence and not assertion or allegation. There was majority membership within the determined bargaining unit and for this criterion to apply the Employer must put forward evidence. Questioned by the Panel as to how membership was presented to the workers the solicitor for the Union said that, as far as he was aware, discounted rates were not offered to the technicians. Member services mentioned by the Employer, such as legal advice, had long been a common part of union membership alongside collective bargaining.

47. Commenting on the Employer's statement that it offered to go down the voluntary route, the Union said that this was predicated on there being consensus amongst the technicians in an Acas conducted ballot. However, as there was a lack of trust between the parties it was not surprising that the Union wanted the protection of the statutory process. It was suggested by the Employer that the reason why the Union had not agreed to a ballot was because it did not believe that it had majority support. However, this was simply not true, on the basis of its own inquiries the Union was confident it would obtain majority support were a ballot to be held.

48. In relation to the point made by the Employer as to why no technicians had asked for the Union to be involved in the consultations over the new terms and conditions, the Union suggested this might be to avoid revealing their membership status in the context of distrust between the Employer and the Union.

49. In closing the Union submitted that on the grounds that none of the qualifying conditions was engaged, the Panel should declare the Union recognised without the need for a ballot.

Considerations

50. 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.

51. The Union has asked the Panel to declare recognition of the Union for collective bargaining without a ballot. The Case Manager's membership check undertaken in July established that 36 workers in the bargaining unit of 50 workers, that is 72% of the total, were members of the Union. Clarification was sought on the difference in numbers between this and an earlier check undertaken in May which had indicated 34 members (68% of the total in the bargaining unit). Documents were produced by the Union showing June 2015 joining dates for two members. The Panel accepts that the majority of workers in the bargaining unit are members of the Union.

52. We must now consider whether any of the three qualifying conditions stated in paragraph 22(4) (described in paragraph 4 of this decision) applies in this case. In deciding this matter we have given careful consideration to all the written and verbal submissions and taken full account of all the material provided to us during the process of this application. It is for the parties to decide who should attend a hearing of the CAC but we consider it unfortunate that no one from the Union who is involved in direct interaction with the Technicians was available to accompany the solicitor representing the Union. There were one or two questions which would have been more appropriately put to such a representative than to the Union's solicitor but ultimately we do not feel that we were hampered by this absence in reaching our decision.

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

53. The Panel is in no doubt that the technicians' dangerous working environment and the circumstances of living and working together in close proximity place a particular emphasis on cooperation, harmony and trust. We also appreciate the Employer's desire to maintain good industrial relations which it sees as based on trust. The Employer contends that having recognition 'imposed' on the technicians would undermine cooperation, harmony and trust in a way that awarding recognition on the basis of a ballot which found in favour of recognition would not. In its submission the Employer argued that not holding a ballot would 'cause very

significant difficulties indeed and would have profound consequences for industrial relations and upon the performance of the business more generally'.

54. We do not find any evidence to support these contentions. What evidence there is tends to a contrary view. For example, although we were informed in the Employer's submission that the supporters of union recognition 'are well known within the technician group' no instance could be provided at the hearing of disharmony between technicians in favour of union recognition and those against, or of industrial relations difficulties arising around the issue and there is no evidence to suggest that this situation would change if recognition were to be awarded on the basis of majority membership of the Union.

55. We do not attach much weight in the circumstances of this case to the Union's contention that the delay which calling a ballot necessarily involves would be harmful to good industrial relations. There is a possibility that campaigning in the balloting period could risk generating some disharmony of the kind the Employer rightly is concerned to avoid although this is not inevitable and would depend significantly on the approach taken by the parties.

56. On the evidence we are not satisfied that a ballot is required in the interests of good industrial relations.

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?

57. We have received no evidence directly from the Union members in the bargaining unit. The Employer invites us to drawn an inference from the fact that – with one exception - technicians did not ask to have union representation during the process of redundancy handling nor at subsequent one to one discussions on changes to terms and conditions. It also has provided the results of its internal anonymous poll and the emails received from 19 technicians in response to an invitation from the Employer to express views on union recognition. These emails were identifiable and checked by the Case Manager against the list of employees in the

bargaining unit and against union membership records. We have the results of that Check which we consider to have been conducted fairly and appropriately. We look at each of these in turn.

58. It is not disputed that during the restructuring of terms and conditions technicians in the Union did not seek to involve their Union. This might demonstrate there is no desire for collective bargaining among union members, as the Employer suggests, but equally there could be other explanations for an individual not wishing to ask for union representation or involvement at a time when the Union is not recognised by the Employer. The Employer appears genuinely of the view that a significant number of technicians do not want union recognition, a view it says is confirmed through its conversations with some of the employee representatives. In our view this reporting of views does not amount to credible evidence from union members in the bargaining unit.

59. There are 36 union members among the 50 technicians so some of the 25 responding to the Employer's poll are union members. However there is no way of ascertaining which of the 20 replies voting in favour of one of the two non-union recognition options, or which of the five replies in favour of union recognition, came from union members. Further, there are other issues relating to this poll which raise questions as to its reliability and usefulness. For example there is no way of checking whether any one voted more than once; the Employer completed some forms on behalf of technicians who were not able to send them back but had their views ascertained by phone. There are also competing possible explanations for the response rate which was lower than the Employer hoped for despite considerable effort over a sustained period to get returns. It would not be safe to extrapolate the results of this informal poll to the whole bargaining unit as suggested by the Employer.

60. More credibility can be attached to the emails received by the Employer where 18 technicians constituting 36% of the workers in the bargaining unit gave their view on union recognition, although we note that the Employer was actively soliciting views and directly contacting people to get them to send emails. Some replies indicate that it was only after a conversation with a manager that an email was being sent.

61. The check undertaken by the Case Manager shows that four of the 13 emails expressing a view against union recognition came from Union members (the category to which the condition in 22(4)(b) relates). The question arises as to whether this is a significant number. In assessing this we consider if it casts doubt on whether the majority membership equates to majority support for recognition looking at how the number relates to the number of members as a whole and the number of workers in the bargaining unit. The four amounts to 11% of union members. If we deduct four from the number of union members in the bargaining unit we are left with 32, amounting to 64% of the bargaining unit. We do not consider that the email evidence shows a significant number of union members do not want recognition.

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?

62. It has been suggested by the Employer that technicians joined the Union at a time of job insecurity and change and that since then interest in Union recognition has waned, not least since the system of having consultation with employee representatives was seen to be effective. Further the Employer submitted that employees might have been attracted into membership by the offer of benefits unrelated to recognition for collective bargaining. It is not disputed that interest in the Union arose around the time of restructuring and change. It is not unusual in the Panel's experience for such events to act as a catalyst for unionisation. There is however no evidence – as opposed to assertion – that interest in the Union has waned or (as discussed above) that a significant number of union members would prefer to have no collective representation or a non-union system. There has been no decline in Union membership. Comparing the check undertaken in May with that in July indicates no resignations and two new members. No evidence has been produced to show that those joining the Union at any time were pressured or misled into so doing or joined only for reasons other than wishing to have the Union recognised for collective bargaining on their behalf. We do not find this condition for ordering a ballot fulfilled.

Decision

63. The Panel is 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 the "Technician group" based at the Employer's site at Strathmore House, Charles Bowman Avenue, Claverhouse Industrial Park, Dundee.

Panel

Professor Linda Dickens MBE, Deputy Chairman of the CAC
Mr Paul Gates OBE
Mrs Maureen Shaw

28 August 2015

Appendix

Names of those who attended the hearing on 13 August 2015:

For the Union

Mr Ruaraidh Lawson	-	Solicitor, Allan McDougall Solicitors

For the Employer

Mr Gordon MacKay	-	CEO, Safehouse Habitats (Scotland) Ltd
Mr Steve Collins	-	Head of Engineering
Ms Suzanne Garty	-	Head of Business Support
Ms Sue James	-	HR Consultant
Mr Rehan Pasha	-	Solicitor, Bramhalls Solicitors