

21 November 2016

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DECISION ON WHETHER TO ACCEPT THE APPLICATION

The Parties:

PROSPECT

and

Babcock Mission Critical Services Offshore Limited

Introduction

1. Prospect (the Union) submitted an application to the CAC dated 9 September 2016 that it should be recognised for collective bargaining by Babcock Mission Critical Services Offshore Limited (the Employer) for a bargaining unit comprising “Those holding either a B1 or B2 licence, or both (as recognised by the European Aviation Safety Agency and the Civil Aviation Authority) and employed by Babcock Mission Critical Services Offshore Limited at all of its operational locations fulfilling the role of licensed aircraft engineers.”. The Union stated for location “All locations at which members within the Bargaining Unit work on behalf of the employer”. The CAC gave both parties notice of receipt of the application on 9 September 2016. The Employer submitted a response to the CAC dated 22 September 2016 which was copied to the Union.

2. In accordance with section 263 of the Trade Union and Labour Relations (Consolidation) Act 1992 (the Act), the CAC Chairman established a Panel to deal with the case consisting of Professor Kenneth Miller, Chairman of the Panel, and as Members, Ms Virginia Branney and Mrs Maureen Shaw. The Case Manager appointed to support the Panel was Miss Sharmin Khan.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 23 September 2016. The acceptance period was then extended on several occasions until 21 November 2016 in order to allow time for the Employer to provide a complete response, for the CAC to conduct a membership check, to allow time for the parties to comment thereon and for the Panel to arrive at a decision.

Issues

4. The Panel is required by paragraph 15 of Schedule A1 to the Act (the Schedule) to decide whether the Union's application to the CAC is valid within the terms of paragraphs 5 to 9; is made in accordance with paragraphs 11 or 12; is admissible within the terms of paragraphs 33 to 42; and whether it should be accepted.

Summary of the Union's application

5. In its application to the CAC the Union stated that it had made its formal request for recognition in a letter dated 22 August 2016 to which the Employer responded on 23 August 2016 explaining its view that it consulted and communicated using established methods which had proven to be effective and that it would be in touch with the Union if this changed. The Union attached a copy of both correspondences with its application.

6. The Union stated that the total number of workers employed by the Employer was 300 of whom 85 were in its proposed bargaining unit. It stated that it had 47 members in the proposed bargaining unit. The Union stated that the Employer had not agreed the number of workers in the proposed bargaining unit. When asked to provide evidence that the majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining, the Union stated that it already had 47 members in the proposed bargaining unit and attached a list of its members extracted from its membership database with the names redacted. It would make available the full records to the CAC Case Manager. The Union also stated that it had undertaken a survey of workers in the proposed bargaining unit in July and August. It was conducted electronically to the e-mail addresses it held for its members. The Union also asked its members to pass the survey on to non-members and wrote to members for whom it did not hold an e-mail

address. Part of the Survey asked “whether you are a trade union member or not, would you like Prospect to secure collective bargaining rights with Babcock Mission Critical Services so that we could directly negotiate on your pay, working hours, and holidays etc.?” Forty-seven people responded to this question, with 45 (96%) saying “Yes, I would like Prospect to be recognised”. A copy of the report of the survey was attached to the application. The Union stated that the full data including the names of respondents would be made available to the Case Manager.

7. The Union stated that it had selected the proposed bargaining unit as Aviation Engineering was a recognised collective area within the aviation sector and staff working within it held recognisable and tightly defined certification in accordance with both UK and EU legislation. Those within the bargaining unit were easily identifiable, operating within a distinct labour market in the UK. Prospect had been the lead union for aviation engineers for over a decade. The workers within its proposed bargaining unit were on the same terms and conditions and suitable for collective bargaining as a group. When asked whether the bargaining unit had been agreed with the Employer the Union answered “No”.

8. Finally, the Union stated that there was no existing recognition agreement which covered any of the workers in the bargaining unit, that it had not made a previous application under the Schedule for statutory recognition for workers in the proposed bargaining unit or a similar unit. The Union confirmed that it held a current certificate of independence. The Union confirmed that the date on which it had copied its application and supporting documentation to the Employer was 9 September 2016.

Summary of the Employer’s response to the Union’s application

9. In its response to the Union’s application the Employer stated that it received the Union’s written request for recognition on 22 August 2016. The Employer stated that it responded on 23 August 2016, rejecting the Union’s request because it already had in place established methods for consulting and communicating with staff, which had proved to be effective. The Employer also enclosed a copy of its letter of response. The Employer stated that it had received a copy of the

application form from the Union and supporting documents from the CAC on 12 September under cover of a letter dated 9 September 2016.

10. The Employer stated that before receiving a copy of the application form from the Union, it had not agreed the bargaining unit with the Union. The Employer then answered “No” when in the next question of the CAC’s Employer’s response questionnaire, it was asked if it agreed with the Union’s proposed bargaining unit. It stated that without prejudice to its primary position that the Union’s application should not be accepted, it objected to the Union’s proposed bargaining unit because the group of workers was too narrow to be compatible with effective management. In its view the bargaining unit should include all engineering staff within its recognised engineering function and who were on the engineering pay structure which included B1.3 certifying staff (inclusive of supervisory positions), B2 certifying staff, all Chief Engineers (line management staff who were B1.3 certifying) and all Category A certifying staff, totalling 108 employees. The Employer outlined its reasons for its position on the bargaining unit but, for the purposes of this decision, they are not set out here as this is a matter addressed at the next stage of the application process.

11. The Employer stated that it employed a total of 505 workers. When asked whether it agreed with the number of workers in the proposed bargaining unit as defined in the Union's application the Employer answered “No”, stating it believed the Union’s proposed bargaining unit of B1 and B2 engineers contained 96 workers.

12. When asked to indicate the reasons why it disagreed with the Union’s membership in the proposed bargaining unit, the Employer stated that: a) the Union’s attached list of members contained 47 entries. There were only 45 job roles so the Employer was unable to verify whether the 2 remaining members were in the B1, B2 Engineers category and b) the list of e-mail addresses provided by the Union of workers who responded to the Union’s survey included workers who were not B1 or B2 Engineers. The Employer attached a highlighted list to indicate the relevant workers.

13. When asked to give reasons if it did not believe that a majority of workers in the bargaining unit were likely to support recognition, the Employer stated that the Union’s survey was unreliable

because: the list of e-mail addresses for members included in the Union's proposed bargaining unit contained members who were not B1 or B2 engineers; the Union had stated that it had conducted the survey by asking members to pass it to non-members. A list of all the workers who had taken the survey was not provided, so the Employer was unable to verify whether these workers were part of the bargaining unit and finally the bargaining unit identified by the Union contained 96 workers. The survey received 45 responses in support of recognition and this was not a majority.

14. Finally, the Employer stated there was no existing agreement for recognition in force covering workers in the proposed bargaining unit and that it was not aware of any previous application under the Schedule for statutory recognition by the Union in respect of this or a similar bargaining unit.

Union's comments on the Employer's response to the application.

15. On 13 October 2016 the Union submitted its responding comments to the CAC. It had noted the Employer's dispute of its figures in respect of the numbers of Engineers employed and the number of staff within its proposed bargaining Unit. The Union believed that these discrepancies were understandable where a union was not able to directly engage with the workforce at their workplace and were not significant enough to warrant not progressing the application.

16. The Union maintained that its level of membership indicated a high level of support for Union assistance in the workplace. It was aware of at least one staff representative on the Employee Consultation Forum (ECF) who had stated that he wanted Union involvement in addition to the current arrangements.

17. Union membership was already near to the 50% mark in the bargaining unit and this was achieved through a non-disruptive recruitment process without direct access to staff in the workplace. The Union believed that with further access to staff through the statutory recognition process it would be able to both grow membership and demonstrate that the majority of staff would support recognition.

The membership and support check

18. To assist the determination of two of the admissibility criteria specified in the Schedule, namely, whether 10% of the workers in the proposed bargaining unit are members of the union (paragraph 36(1)(a)) and whether a majority of the workers in the proposed bargaining unit are likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit (paragraph 36(1)(b)), the Panel proposed independent checks of the level of union membership in the proposed bargaining unit and the number of workers in that unit who had responded to the Union's survey in support of recognition. It was agreed with the parties that the Employer would supply to the Case Manager a list of the full names, addresses, dates of birth and job titles of workers within the proposed bargaining unit and that the Union would supply to the Case Manager a list of the full names, addresses and dates of birth of the paid up Union members within that unit and a list of the e-mail addresses of the respondents to its survey. The information from both parties was received by the CAC by 20 October 2016. It was explicitly agreed with both parties that in order 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 30 September 2016. The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties. The results of the checks are reported below in paragraphs 22 and 23 below.

Clarification of the proposed bargaining unit

19. On 13 October 2016 the Case Manager, by telephone and e-mail asked the Employer to check that all exclusions to the proposed bargaining unit as specified by the Union had been omitted from its list of workers supplied for the membership and support check. In response the Employer re-submitted its list stating that there were a number of management positions, Part M Engineers and Trainers who held the B1 and B2 licences which it had included though it was possible the management and trainer roles could be queried. The Employer confirmed that any personnel who, whilst on its Engineering pay structure did not hold the B1.3 or B2 licence was removed from the list. The list now included 113 workers plus vacant B1.3 and B2 positions. The Employer's e-mail was copied to the Union who was asked by the Case Manager to confirm if management positions, Part M Engineers and Trainers were in the proposed bargaining unit.

20. By letter dated 17 October 2016 the Union stated that it had identified in its application the proposed bargaining unit as those holding a B1 or B2 licence fulfilling the role of licensed aircraft engineers. It did not consider that the management positions, with the exception of managers with direct responsibility for running a shift (i.e. those managers to whom operational B1 and B2 Engineers reported in the first instance), or Part M engineers were properly part of the unit it had proposed as they did not fulfil the operational role as identified. It also noted that the Employer's list and number of those in the bargaining unit included vacant positions which it understood should not be counted.

21. After receiving a copy of the Union's letter, the Employer re-submitted its list of workers for the check in accordance with the Union's proposed bargaining unit as described above. In the CAC's Employer's Response Questionnaire to the Unions' application, the Employer had answered that there were 96 workers in the Union's proposed bargaining unit. The list provided for the check contained 10 more workers. The Employer confirmed by e-mail to the Case Manager on 21 October 2016 that the increase was due to the addition of those managers with a B1 & B2 qualification as defined by the Union.

Results of the Case Manager's membership and support check

22. The list supplied by the Employer showed that there were 106 workers in the proposed bargaining unit. The list of members supplied by the Union contained 49 names. According to the Case Manager's report the number of Union members in the proposed bargaining unit was 41, a membership level of 39%.

23. The Case Manager's checks established that there were 38 names on the Union's list of the workers surveyed, 30 of which appeared on the Employer's list, and therefore 28% of workers in the proposed bargaining unit responded to the survey. Of these, 27 i.e. 25% of the proposed bargaining unit were Union members and 3, i.e. 3% of the proposed bargaining unit, were non-Union members.

24. The report of the results of the membership and support check was circulated to the Panel and to the parties for comment on 26 October 2016.

Summary of the Employer's comments

25. The Employer, in its letter to the CAC dated 27 October 2016, asserted that the majority of the workers in the proposed bargaining unit were unlikely to support recognition of the Union for the purposes of collective bargaining for the following reasons.

26. The Union's survey was issued to all of its members by e-mail and post but the Case Manager's report showed that membership had decreased to 39% and that the proportion of Union members who had taken part in the Union's survey and who presumably supported recognition dropped to 25% since the Union's claim to majority support in its application.

27. The results of the survey showing 25% of the proposed bargaining unit supported recognition of the Union did not satisfy the test that a majority of workers in the bargaining unit would be likely to favour recognition of the union to conduct collective bargaining on their behalf. The survey showed an apparent lack of support and with the majority of the relevant workers being non-union members showed that the Union had no evidence that it had met the test. In its letter to the CAC of 13 October 2016 the Union had stated "with further access to staff through the statutory recognition process we would be able to grow membership and illustrate that the majority of staff would support recognition."

28. The Union had asked its members to approach non-union members to complete the survey. The Employer understood this was widely circulated as well as two further updated communications from the Union dated 20 September and 11 October 2016 following the Union's application to the CAC. Despite all workers in the proposed bargaining unit being actively encouraged to join the Union and/or support recognition, the Union had not elicited the relevant support it needed.

29. Finally, in a letter to the CAC dated 2 November 2016, the Employer stated its view that the workers in the bargaining unit regarded the current ECF as an appropriate and effective forum for consultation on matters that the Union was seeking recognition for. The ECF had a greater range of influence in terms of representation of staff and over a wider range of topics than that would be subject to collective bargaining under a statutory recognition agreement. At the recent

ECF meeting on 7 October 2016, the representative covering the relevant bargaining unit positively endorsed the role of the ECF.

Summary of the Union's comments

30. The Union queried the number of workers on the list provided by the Employer for the Case Manager's check. The Union believed that the Employer had misunderstood the Union's proposed bargaining unit. The proposed bargaining unit was those workers holding a B1 or B2 licence fulfilling the role of licensed aircraft engineers and it was clarified by the Union that it did not include Part M engineers or those holding management positions, with the exception of managers who had direct responsibility for running a shift, i.e. those managers to whom operational B1 and B2 engineers reported to in the first instance. The Employer had identified 96 workers within the Union's proposed bargaining unit in response to the application but this figure had now increased to a total of 106. The Employer's explanation was that this was because of the addition of "those managers with a B1 and B2 qualification as defined by the Union". However, the Union contended that the job titles listed in the report as those included on the Employer's list, included roles not within its proposal i.e.: Chief Engineer; Base Maintenance Manager; Line maintenance Manager; Trainer B2 and Trainer B1.3. Whilst these roles may be held by employees with a license they were not operational in the sense that was identified by the Union and were not part of its proposed bargaining unit

31. The roles of the Chief Engineer, at bases other than Aberdeen, and the Base and Line Maintenance Managers at Aberdeen were much more of a managerial role and did not have the direct responsibility of running a shift. The direct reporting role covered by the Union's definition of the proposed bargaining unit was that undertaken by "Team Leaders" and "Deputy Team Leaders". Moreover, whilst Trainers were license holders, they were not directly related to the day to day operational activity and therefore outside the proposed bargaining unit. The Union could not be sure of the number of posts, but it understood there would be three chief engineers, one base maintenance manager, one line maintenance manager, and two each of the trainers. This would reduce the number of workers on the Employers list by 9 so the base line for the number of workers in the proposed bargaining unit would be no more than 97.

Paragraph 36(1)(a) of the Schedule i.e. whether the Union has 10% membership in the proposed bargaining unit.

32. Based on its own understanding of the numbers in the bargaining unit, the Union's membership level in the proposed bargaining unit was 42%. On the basis of the numbers declared by the Employer, the Union had a membership level of 39% in the proposed bargaining unit.

Paragraph 36(1)(b) of the Schedule i.e. whether a majority of the proposed bargaining unit are likely to favour recognition of the Union for the purposes of collective bargaining on their behalf.

33. The Union contended the statutory test should be applied to its proposed bargaining unit which according to the Union for the reasons already given contained a maximum of 97 workers. The Union stated that it understood that the test was whether there was *likely* to be majority support. It was not required of the Union at this stage, to show that there was definitely a majority. It did not have absolute evidence of majority support but asked the Panel to consider the following points when reaching its decision.

34. The level of membership was considerably over the 10% hurdle. By its calculations it had over 42% membership. The Union appreciated that this was not the same as demonstrating that all would favour recognition, but the Union understood that the CAC will often accept membership as being evidence of likely support for recognition, unless there was any evidence to the contrary and there was no evidence to the contrary in this case. The number of non-members who had voiced their support for recognition through its survey was a further 3% which brought the percentage of those likely to favour recognition to over 45%.

35. The Union also explained that it currently had considerable difficulty in reaching non-members, to ask them to join the Union and particularly for the purposes of asking them if they would be likely to support recognition. Firstly, it did not have contact details for non-members so the survey was sent to members who were asked to pass it on to any non-members. The low response was due to several existing members expressing concerns about being too openly committed to the Union at this stage.

36. Secondly the workers were based at secure airport sites so the Union did not have access to the physical workplace. It would not be able to ‘stand at the gates’ to identify and approach workers going in or out of the workplace, as it would be impossible to identify who were aircraft engineers as opposed to other workers. The Union felt it would be moved on quickly if it tried to leaflet or get petitions signed at the perimeter of the airport.

37. Several workers were based off shore and many worked away from home. The majority of the workers were on shift working patterns. Even relying on email correspondence to workers’ private email addresses had difficulties. Many workers were away from home and only travelled to the airport site for the days on shift. Those working off shore may have limited internet access. Shift patterns could be quite intense interspersed with, in some cases, considerable home to base travel, which would often mean limited access to email and private emails not being checked regularly. The Union’s evidence across its wider membership base was that these situations were not always conducive to members reading every email the Union sent.

38. The Union concluded that despite these difficulties it could show considerable support for recognition within the proposed bargaining unit, largely through its existing membership. With proper access to the workers it believed it would be able to achieve a majority vote in favour of recognition.

Summary of the Employer’s submissions to the Panel

39. By e-mail on 1 November 2016 the Employer was invited by the Case Manager, on behalf of the Panel to submit its response to the Union’s comments on the membership and support check. The Employer was asked to address specifically the Union’s query over the Employer’s inclusion of the Chief Engineer; Base Maintenance Manager; Line Maintenance Manager; Trainer B2 and Trainer B1.3 job roles.

40. The Employer replied by letter dated 2 November 2016. The Employer put its case that the Chief Engineer; Base Maintenance Manager and Line Maintenance Manager should be included in the Union’s proposed bargaining unit as these roles did have direct responsibility for running the shifts. The Chief Engineer was directly responsible for the operation of the shifts and

all Shift Leaders reported directly into Line/Base Maintenance Managers who were required to inspect and sign off work. They were intrinsically linked to the operation of the shifts and should be contained within the Union's proposed bargaining unit. The specialist trainers were also close to this group and to date were consulted with alongside the B1 and B2 engineers. They had the B1 and B2 engineering qualifications so naturally formed part of the proposed bargaining unit.

41. The Employer informed the CAC that it had noticed the list that was provided for the check had one worker who appeared twice in error and attached with its reply a corrected list containing 105 workers. However this did not change the proportion of members in the proposed bargaining unit according to the Case Manager's report at 39%. The percentage figure for number of workers in the proposed bargaining unit who had answered the Union's survey rose to 29% and of those who were Union members rose to 26%. However these changes did not alter the Employer's views on the results of the check already submitted (paragraph 25 to 29 above).

42. In respect of the Union's point that it had difficulty in accessing non-members, the Employer reiterated its point that it was aware that the Union's recent communications were widely circulated amongst the proposed bargaining unit and assumed that the survey on which the Union relied was also widely circulated and only 27 of the 49 members within the proposed bargaining unit responded. This could mean that the balance of the membership did not necessarily favour recognition. The Employer argued that this may well have been because members wanted to take up the benefits of individual membership but were content with the existing forum in place for collective consultation purposes.

Union's response to the Employer's submissions

43. On 4 November 2016 the Union submitted its final comments. It did not agree with the Employer's position that the Chief Engineer, Base Maintenance Manager or Line Maintenance Manager were included in its proposed bargaining unit. These managers whilst having some overall responsibility did not fall within the category described by the Union. Reiterating its description (see paragraph 31 above), the Union stated its bargaining unit therefore included the licensed aircraft engineers and their direct managers. It agreed that the team leaders and deputy team leaders were included, but it did not propose that the higher level managers were

part of its bargaining unit. Neither did it agree that the trainers fell within its proposed bargaining unit as they were not fulfilling the role of the engineer and did not have direct responsibility for running a shift. The Employer's comments were more towards an argument as to what the bargaining unit would be in their view, rather than considering who was actually in the Union's proposed bargaining unit, which the Union understood was the test for the Panel's consideration at the admissibility stage.

Considerations

44. In determining whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 4 above are satisfied. The Panel has considered carefully the submissions of both parties and all the evidence in reaching its decision.

45. The Panel is satisfied that the Union made a valid request to the Employer for recognition within the terms of paragraphs 5 to 9 of the Schedule and that its application was made in accordance with paragraph 11(2). The Panel is also satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 35 and paragraphs 37 to 42 of the Schedule. The remaining issues for the Panel to decide are whether the admissibility criteria set out in paragraph 36(1)(a) and paragraph 36(1)(b) are met.

Paragraph 36(1)(a)

46. Under paragraph 36(1)(a) of the Schedule an application is not admissible unless the Panel decides that members of the Union constitute at least 10% of the workers in the proposed bargaining unit. The membership check conducted by the Case Manager showed that at least 39% of the workers in the proposed bargaining unit were members of the Union. As previously stated, the Panel is satisfied that this check was conducted properly and impartially and in accordance with the arrangements agreed with the parties. On the membership check evidence before us, the Panel is satisfied that members of the Union constitute at least 10% of the workers in the proposed bargaining unit as required by paragraph 36(1)(a) of the Schedule.

Paragraph 36(1)(b)

47. Under paragraph 36(1)(b) of the Schedule, an application is not admissible unless the Panel decides that a majority of the workers constituting the relevant bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit. As the parties did not agree the appropriate bargaining unit before the Union's application was submitted to the CAC, in this case the relevant bargaining unit is the Unions' proposed bargaining unit. The statutory test is also clear that it is asking if the Union can demonstrate the *likelihood* of majority support for recognition and not *actual* support. The Panel is clear that the admissibility tests are to be applied to the Union's proposed bargaining unit and it is for the Union to define its proposed bargaining unit. The Schedule requires the Union to specify this in its initial request to the Employer for whom the Union is seeking recognition.

48. In obtaining the information required for the membership and support checks the type of role intended to be within the scope of the Union's proposed bargaining unit was clarified by the Union. In addition the subsequent Case Manager's report set out the final list of job titles included on the Employer's list of workers in the proposed bargaining unit allowing the Union to argue with some merit that the Employer had included some roles that the Union did not intend to be within its bargaining unit.

49. The Panel is aware that there was some confusion at the initial stage of the Case Manager obtaining the information from the Employer hence her request for the Union to clarify whether certain roles mentioned by the Employer were supposed to be in the proposed bargaining unit. Furthermore, the Employer's explanation of the inclusion of some of those disputed roles suggests there may have been also an element of the Employer's view of what the appropriate bargaining unit might be. In regard to the roles of Chief Engineer, Base Maintenance Manager and Line Maintenance Manager, the Employer had stated "...we believe that these should be included ...they are intrinsically linked to the operation of the shifts and should be contained within the Union's proposed bargaining unit"; then also in regard to the specialist trainers (who "also hold the B1 and B2 engineering qualifications" and "have been consulted to date"), the Employer stated that they "...would appear to naturally form part of this proposed bargaining unit". However this is something that is for the parties to reach agreement on at the next stage of the statutory process

once an application has been accepted. Certainly, on the face of it, the inclusion of the, possibly 4, specialist trainers looks to be extraneous to the bargaining unit the Union has proposed. Nevertheless, the Panel can be sure that the membership level is around the 40% mark.

50. The low response to the survey was the main plank of the Employer's response. However it is evident that the Union has logistical problems communicating with its members and major difficulties in respect of non-members. In regard to the latter, the Union was reliant on existing members to get the survey distributed to 'non-members they knew about'. To be reliant solely on this means, in the Panel's experience, is a highly unusual way of petition distribution in statutory recognition cases. In these circumstances members would have to have both the means and the motivation to contact non-members. Moreover the Union did express that there had been reluctance on the part of some of its members to identify to other workers their Union membership. In addition the Panel accepts the Union's point that there were practical difficulties. E-mail was not as reliable as it might be given that some workers were away from home coupled with shift working arrangements. This made the reliance on e-mail less effective than might otherwise have been the case.

51. The Panel notes the outcomes of the Union's survey. In particular it notes that the number of Union members that responded with a positive response to the survey was lower than the total membership for reasons alluded to by the Union in the preceding paragraph. However, it is the Panel's experience that, in the absence of evidence to the contrary, union membership is usually indicative of likely support of recognition of the Union for collective bargaining. No such evidence was put forward by the Employer to demonstrate the contrary in this case.

52. The Panel also acknowledges that given the nature and location of the Employer's business, the Union had only limited access to the workers at the acceptance stage and could not, therefore, engage with the workers to any great extent. The greater access which the statutory procedure offers at the next stage of the process, would increase the likelihood of the Union achieving a majority support. In fact only 10 of the remaining 62 workers would need to express support for recognition of the Union to achieve majority support.

53. On the evidence put forward, and taking account of the industrial relations experience and expertise for which the Panel was appointed, the Panel believes that it is certainly feasible for the Union to obtain majority support in a ballot. On the balance of probabilities and for the reasons provided above the Panel concludes and is satisfied that it is likely that a majority of the workers within the proposed bargaining unit would favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit.

Decision

54. The Panel's decision is that the application is accepted by the CAC. In accordance with the provisions of the Schedule the parties can discuss and try to reach an agreement on the appropriate bargaining unit.

Panel

Professor Kenneth Miller - Chairman of the Panel

Ms Virginia Branney

Mrs Maureen Shaw

21 November 2016