



Industrial Court

Statutory
Recognition

Guidelines for
Balloting
Organisations



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INTRODUCTION

- 1.1 Under Schedule 1A to the Trade Union and Labour Relations (NI) Order 1995 (enacted in the Employment Relations (NI) Order 1999 and amended in the Employment Relations (NI) Order 2004) trade unions may apply to the Industrial Court for the legal right to be recognised by an employer for collective bargaining over pay, hours and holidays, in respect of a group of workers in a particular bargaining unit. The Industrial Court (the Court) is a Tribunal Non-Departmental Public Body with statutory powers. The acting Chairman is Mr Barry Fitzpatrick. It has been given statutory responsibility to adjudicate in disputes over trade union recognition. Where this cannot be agreed voluntarily the Court's approach is informal and seeks to be problem-solving in line with its general duty under Paragraph 171 of the Schedule to 'have regard to the object of encouraging and promoting fair and efficient practices and arrangements in the workplace'. The Court's role with regard to trade union recognition forms the majority of its work. (For further information on this or the Court's other statutory duties please refer to the website at www.industrialcourt.gov.uk).
- 1.2 Determinations are made by a Panel of three Court Members and a Case Manager is appointed to assist each Panel. The basic principle is that recognition is granted if a majority of the workers in the bargaining unit wish it, provided that the application meets the statutory criteria. The Court may declare the union to be recognised without a ballot if more than 50% of the workers in the bargaining unit are members of the union. Where the Court is not satisfied that a majority of the workers in the bargaining unit are members of the union, or where, despite majority membership conditions for a ballot are nonetheless satisfied, the Court must call a ballot.

Ballots on Recognition and Derecognition

- 1.3 In certain circumstances the Court has a duty to order a ballot asking all the workers in the bargaining unit 'whether they want the union (or unions) to conduct collective bargaining on their behalf' (in a recognition ballot) or 'whether the bargaining arrangements should be ended' (in a derecognition ballot). If the Court decides a ballot should be held, it gives notice to the parties of the impending ballot. The Panel appoints a qualified independent person (QIP) to conduct the ballot. The Panel selects the QIP from those bodies specified in the Recognition and Derecognition Ballots (Qualified Persons), (Amendment) Order (NI) 2004.
- 1.4 Although the QIP conducts the ballot, the Panel has to decide the time and the form of the ballot as well as whether the ballot should be a workplace ballot or a postal ballot (or if special factors apply, a combination of the two). The ballot must be held within 20 working days starting the day after that on which the QIP is appointed, unless the Panel decides on a longer period. The respective roles of the QIP and the Court are set out at paragraphs 4.1 to 5.9.
- 1.5 The Department for Employment and Learning (DEL) "Code of Practice on Access and Unfair Practices During Ballots for Trade Union Recognition or De-recognition" gives practical guidance about the issues which arise when an employer receives a request from a union to be granted access to the workers at their workplace and/or

during their working time after the Court has called for a recognition or derecognition ballot (see Annex 4).

- 1.6** After the votes have been counted, the QIP must inform the Court of the ballot result. The Court will then either declare the union to be recognised, or issue a declaration that the union is not recognised. In order for a trade union to be recognised for collective bargaining purposes following a ballot, a majority of those voting, and at least 40% of the workers in the bargaining unit, must vote in favour of recognition. The same level of support is required for derecognition of a trade union.
- 1.7** An example notice to workers in a bargaining unit that a ballot is being held is set out at Appendix 1.

The Court's statutory Recognition Guidance and copies of the legislation are included in Annexes 1-4.

CONTACT DETAILS FOR THE INDUSTRIAL COURT

Address: The Industrial Court
Room 203
Adelaide House
39/49 Adelaide Street
Belfast
BT2 8FD

Tel: 028 9025 7599 (9.00am-5.00pm – Monday to Friday)

Fax: 028 9025 7555

E-mail: enquiries@industrialcourt.gov.uk

Web-site: www.industrialcourt.gov.uk

Contact names:

Secretary:	Alan Scott
Senior Case Manager:	Paul Lyons
Case Manager:	Maria Cummins
Head of Administration:	Paul Cassidy
Administration Support:	Alan Finlay

STATEMENT OF PURPOSE

- 2.1** The purpose of these Guidelines is to:
- a) set out criteria for appointing a QIP when the Court calls for a ballot;
 - b) set out means by which balloting organisations may provide estimates of costs to the Court for each ballot;
 - c) set out the respective roles of the QIP and of the Court in recognition ballots.
- 2.2** The Guidelines apply to all the organisations named in the Recognition and Derecognition Ballots (Qualified Persons) (Amendment) Order (NI) 2004.
- 2.3** Following the principles laid down in this code should help to ensure problems are minimised during a ballot. Failure to follow these guidelines may impact on the validity of the ballot. The Guidelines may be reviewed from time to time by the Court.
- 2.4** The Guidelines do not commit the Court to offer any business to any of the organisations concerned.
- 2.5** The requirements of Recognition and Derecognition Ballots are set out in full at Schedule 1A of the Trade Union and Labour Relations (NI) Order 1995, as amended, while the Code of Practice on Access and Unfair Practices During Ballots for Trade Union Recognition or De-recognition sets out guidance on the practical issues that arise concerning access by a trade union to workers at the employer's premises. The provisions of the Order and the Code as summarised in these Guidelines and the Annexes are intended as a practical guide and should not be relied on as a definitive statement of the law.

GUIDELINES FOR BALLOTING ORGANISATIONS

Preamble

- 3.1** Under the provisions in Schedule 1A, the Court in certain circumstances must order a ballot asking all the workers in the bargaining unit “whether they want the union/s to conduct collective bargaining on their behalf” or “whether the bargaining arrangements should be ended.”
- 3.2** The ballot is conducted by a Qualified Independent Person (QIP).

Appointment

- 3.3** The Panel is responsible for deciding which balloting organisation to use as the QIP for a particular ballot. This decision will be primarily on the basis of competence, expertise, experience, and independence, together with value for money. However the need to encourage competition will also be taken into account.
- 3.4** The QIP chosen will be one of the organisations listed in the Recognition and Derecognition Ballots (Qualified Persons) Order (NI) 2001, (Amendment) Order (NI) 2004.
- 3.5** The Court will invite estimates from a number of the organisations named in the Recognition and Derecognition Ballots (Qualified Persons) Order (NI) 2001, (Amendment) Order (NI) 2004. The choice of which organisations to invite for tender will be made by the Court on the basis of experience and expertise (e.g. organisations that have not previously carried out a Court ballot will normally be invited to send estimates for smaller, postal ballots in the first instance, while more experienced organisations will be invited to provide estimates for all types of ballots). The invitation will give details of the location and size of the bargaining unit and, in most cases, the form of ballot (see paragraphs 5.1 to 5.9, Duties of the Case Manager).
- 3.6** The balloting organisation will notify the Court if they have in the past 12 months carried out any work for either the union/s or employer involved in the ballot and will also notify the Court whether the identities of the parties to the ballot present the QIP with a conflict of interest or anything that might be perceived as a conflict of interest.
- 3.7** All interested organisations should provide a written estimate promptly. It may be necessary to request the delivery of an estimate within 24 hours of the invitation to submit one.
- 3.8** The estimate should include details of such costs that are incurred in connection with the ballot by the QIP together with the QIP’s charges for their services. Estimates should include a breakdown of costs on the basis of the different activities involved (eg printing, postage, despatch, verifying lists of workers, attending the ballot (if appropriate), counting the votes, providing a report to the Court, storage of ballot papers, travel time, staff costs etc).

3.9 Both the invitation and the estimate may be sent by fax or email as well as by post.

3.10 All balloting organisations submitting estimates will be informed of the Panel's decision as soon as possible.

Relationship of Parties

3.11 These Guidelines are not intended to create a contractual relationship between the Court and the QIP.

Withdrawal from ballot

3.12 The Court will promptly inform the QIP of the union's (or both parties') decision to withdraw from the ballot.

Confidentiality- Data Protection Act 1998

3.13 The Data Protection Act 1998 applies to information regarding individuals passed by the parties to the Court and by the Court to the QIP. Under the Data Protection Act 1998, the QIP will be performing the role of a data processor, while the Court will perform the role of a data controller. The Court and the QIP will abide by the Act's requirements, in particular the requirements for security in Principle 7¹.

3.14 The QIP should take note of its responsibilities under the Data Protection Act.

The QIP must not:

- a) make further use of the personal information it receives or generates in carrying out its responsibilities under this agreement beyond that necessary for carrying out the recognition or derecognition ballot, nor
- b) disclose this personal information to any third party.

Requirements of the Schedule and Code of Practice

3.15 The QIP must carry out its duties in accordance with the requirements of the Schedule and taking proper account of the Code of Practice: Access and Unfair Practices During Ballots for Trade Union Recognition or Derecognition, summarised at Annex 4. In addition to the statutory duties, the QIP should also take account of the Best Practice that QIPs are expected to follow set out in paragraphs 4.7 to 4.28.

¹ For further information on the Data Protection Act, consult the Assistant Information Commissioner's Office (tel 028 9051 1270) www.informationcommissioner.gov.uk

DUTIES OF THE QIP

Statutory Duties

- 4.1 The QIP must carry out its functions competently and with independence.
- 4.2 The QIP must conduct the ballot in accordance with the method specified by the Court, which may decide that the ballot will take place at a workplace or workplaces specified by the Court, by post, or by a combination of these methods.
- 4.3 The QIP must conduct the ballot within 20 working days of the day after its appointment. Note however that the Court may extend this period.
- 4.4 The Court will provide the QIP with the details of workers' names and addresses, including details of workers subsequently joining or leaving the bargaining unit. The QIP must not amend the list of names and addresses nor despatch duplicate ballot papers at the request of anyone other than the Case Manager. If the QIP is approached by either of the parties or by any individual worker, for the purposes of ballot papers then they must be referred directly to the Case Manager by the QIP.
- 4.5 The QIP will send the worker's information, supplied by the trade union, if asked to do so by the union. Such information must not be sent in the same envelope as the ballot paper or any duplicate ballot paper. Note that the union bears the cost of sending the information.
- 4.6 The QIP will bill the parties for costs and fees incurred in conducting the ballot. The Case Manager will send to the employer and the union a copy of the estimate provided by the appointed QIP. From the date of its appointment the QIP must ensure that it notifies the Court and each of the parties of any changes to the original, or last updated, estimate as soon as reasonably practicable making clear the reasons for those changes. A party may appeal to an Industrial Tribunal if it disputes the invoice (see paragraphs 8.9 to 8.12).

Best Practice QIPs Are Expected To Follow

General Principles

- 4.7 The QIP will ensure as far as possible that the names and addresses of the workers comprising the balloting constituency are accurate (e.g. by making amendments as soon as any are notified by the Court). Where there is more than one list of workers, the QIP should ensure that the most recent is used.
- 4.8 The QIP must ensure that the ballot is conducted properly and in secret.
- 4.9 The QIP must promptly inform the Court of the ballot result. The QIP must not communicate the results of the ballot to either party; this is the responsibility of the Case Manager once authorised to do so by the Panel.

Complaints and Irregularities

- 4.10** The QIP must inform the Court immediately of any complaints or malpractice by either party or workers that are made known to them at any time during and following the ballot. Having arranged for a ballot to be conducted by the QIP the Court is responsible for ensuring that all the workers in the bargaining unit have a fair opportunity to vote in secret.
- 4.11** The QIP should inform the Court of any irregularity or error in the balloting procedure as soon as this becomes apparent so that the Court panel can decide what, if any, remedial action needs to be taken and by whom.
- 4.12** In the event of a failure by the employer to fulfil any of its statutory duties (see paragraphs 6.1 to 6.5), the Court may order the employer to take steps to remedy the failure. (This is discretionary - see paragraph 6.6).

Ballot Papers

- 4.13** The QIP will send the Court a proof copy of the ballot paper for approval.
- 4.14** All ballot papers used in Court ballots should have a unique number, assigned by the QIP, and the identity of the worker to whom the number applies should be known only by the QIP and not revealed to anyone else.
- 4.15** The QIP will use first class post for all ballot papers (both sending ballot papers by first class post, and enclosing a first class reply paid envelope).
- 4.16** The QIP should keep a record of the date when each ballot paper was sent out, ***and date stamp and state the time received on all returned ballot papers.***
- 4.17** When the QIP receives a request from the Case Manager for a duplicate ballot paper, the paper should be despatched in the next post. All duplicate papers should be numbered, so that if any worker in the bargaining unit attempts to vote twice, this will be apparent to the QIP.
- 4.18** The QIP should inform the Case Manager of any requests for duplicate ballot papers. The QIP must not despatch a duplicate ballot paper unless requested or authorised to do so by the Case Manager.
- 4.19** The QIP should inform the Case Manager of any changes in the balloting arrangements requested by either party, (including changes to names and addresses). No changes should be made by the QIP unless authorised by the Case Manager

Despatch of Material on Behalf of the Union

- 4.20** Where the union asks the QIP to send out information to the workers in the bargaining unit, the QIP must endeavour to do so within one working day of receipt of the material or otherwise as agreed with the union. The QIP should inform the union that the material has been despatched.
- 4.21** The QIP must not despatch any information on behalf of the union or any other party in the same envelope as any ballot paper.
- 4.22** The QIP should ensure, where possible, that any information supplied by the union is

sent to workers so that it is received prior to the receipt of the ballot paper.

Cover For QIP

4.23 If the individual acting as QIP is absent on any day during the period of the ballot, s/he (or a representative at the organisation concerned) should inform the Court of another, named individual at the same organisation who will carry out the QIP's duties during his/her absence. The named individual should have access to the QIP's e-mail and post, and should ensure that his or her organisation's switchboard route all relevant calls to him/her.

QIP's Written Report

4.24 Following the ballot the QIP should prepare a written report and send it to the Case Manager. The report should set out the actions taken, with dates, and should note any requests or complaints received and any irregularities, unusual occurrences or causes for concern.

4.25 In the absence of any irregularities, unusual occurrences or causes for concern the QIP's written report should include a statement to the effect that the QIP is satisfied that to the best of his/her knowledge and belief the ballot was conducted fairly.

4.26 The written report should be issued to the Court within 24 hours of the results being counted. The Case Manager will pass the report to the Panel.

4.27 Once the Panel has considered the QIP's report it will authorise the Case Manager to inform the parties of the ballot result.

4.28 The QIP must not inform the parties of the ballot result nor send them a copy of the report.

DUTIES OF THE INDUSTRIAL COURT CASE MANAGER

- 5.1** Before seeking estimates for the costs of a ballot the Case Manager will ask the employer and the union to provide any information that might assist the accuracy of the estimates. Such information might include the hours of any shifts, the number of workers on each shift, changeover periods between shifts and the number of sites where ballot stations might be required. Any information gathered will be included with the request for an estimate and should be taken into account by the QIP.
- 5.2** The Case Manager will seek estimates of costs for the ballot from a number of balloting organisations.
- 5.3** All organisations responding to the invitation to submit an estimate, will be informed by the Case Manager whether or not they have been appointed as QIP.
- 5.4** The Case Manager may seek the QIP's advice as to the practicalities of different forms of the ballot. Alternately this advice may be sought before the invitation to submit an estimate is issued. Either way the decision as to the form of the ballot is for the Panel and not the Case Manager or QIP.
- 5.5** If the Case Manager makes a site visit to the workplace, they will inform the QIP of the visit and (if the QIP does not participate in the visit), will inform the QIP of any issues relevant to the balloting process.
- 5.6** The Case Manager will inform the parties (i.e. the union and the employer) about the balloting process, and the identity and role of the QIP.
- 5.7** The Case Manager will send to the union and the employer a copy of the estimate given by the appointed QIP (see paragraph 4.6).
- 5.8** The Case Manager will pass the names and addresses of workers in the bargaining unit to the QIP as soon as is practical after they are received. After this, the Case Manager will pass to the QIP the names and addresses of any workers who join or leave the bargaining unit. The Employer is under a continuing duty to provide these to the Court as soon as is reasonably practicable.
- 5.9** In the event of a complaint about the ballot, or about access arrangements, which requires a hearing and an extension to the ballot period, or a suspension or cancellation of the ballot, the Case Manager will inform the QIP immediately.

DUTIES OF THE EMPLOYER

- 6.1 To co-operate generally, in connection with the ballot, with the union/s and the QIP.
- 6.2 To give the union(s) reasonable access to the workers in the bargaining unit in accordance with the Code of Practice: Access and Unfair Practices During Ballots for Recognition or Derecognition. This Code is set out at Annex 4. It is expected that access arrangements will be agreed in the 10 working day period following notification of the ballot.
- 6.3 To give the Court, within 10 working days of being notified of the ballot, the names and addresses of all those working in the bargaining unit. If the employer has previously provided the Court with names and addresses of workers for the purposes of a Suitable Independent Person's (SIP) activities then the employer's duty is to update the earlier list. ***(A SIP is appointed by the Panel following a request received from the union, to handle communications from it to the relevant workers in the bargaining unit. Further information on this can be found in the Court's guide "Statutory Recognition - Guidelines for the Suitable Independent Person (SIP)".*** The Court will then pass these on to the appointed QIP. The employer also has the duty to give the Court the names and addresses of any workers joining or leaving the bargaining unit, as soon as is reasonably practical. The Court expects that employers will take steps to ensure, as far as possible, that the names and addresses supplied are accurate.
- 6.4 The employer should refrain from making offers to any workers in the bargaining unit that are likely to induce them to not attend any of the union's access meetings.
- 6.5 The employer should refrain from taking or threatening to take any action against any workers who attend/participate, or indicate that they wish to attend/participate in any of the union's access meetings.
- 6.6 If the Panel decide that the employer has failed to perform any of the duties above, they can order the employer to remedy the failure within a set timescale. In the event of the failure of the employer to remedy a failure, the Panel can declare the union recognised regardless of level of support or ballot result.
- 6.7 **Note:** Further detail on the employer's duties can be found at Schedule 1A of the Trade Union and Labour Relations (NI) Order 1995 as amended, and in the Code of Practice: Access and Unfair Practices During Ballots for Recognition or Derecognition (see Annex 4). The employer will be asked by the Court to put up a **Court approved** notice at the workplace giving details of the ballot to the workers in the bargaining unit. The notice will inform the workers of the contact details for the Case Manager and of what to do in the event that a replacement ballot paper is required (see Annex 1).

UNFAIR PRACTICES

7.1 Once informed of the QIP's appointment, both the union and employer must refrain from using any unfair practice with a view to influencing the result of the ballot.

7.2 Unfair practices are: –

- offers to pay money or give money's worth to a worker or workers in return for agreement to vote in a particular way or to abstain;
- offers to pay money or give money's worth to a worker or workers that is conditional on a specific Court declaration (recognition/non recognition);
- coercing, or attempts to coerce, a worker or workers to disclose either their voting intention or how they have voted;
- dismissals, or threats to dismiss, a worker;
- taking, or threatening to take, disciplinary action against a worker;
- subjecting, or threatening to subject, a worker to any other detriment;
- using, or attempting to use, undue influence on a worker.

7.3 A complaint that an unfair practice has been used must be made to the Case Manager on or before the first working day after the date of the ballot. If the complaint is made before the ballot, the Court can postpone the ballot.

7.4 If the Court upholds the unfair practice complaint (finds it to be "well founded"), the Court may issue a remedial order detailing what steps must be taken to mitigate the effect of the unfair practice and by when and/or it may give notice of a new ballot (to take the place of the tainted one). The Court can take one or both of these steps either at the same time as the unfair practice complaint is declared well founded or at any time up to its notification of a ballot result and final declaration. The Court can issue more than one remedial order.

7.5 If an unfair practice consists of the dismissal of a union official or the use of violence the Court may cancel the ballot and issue a declaration for or against the union (depending on who used the unfair practice).

7.6 Where an unfair practice complaint leads to a fresh ballot being ordered, the ballot arrangements will be modified in the following ways –

- the notice period to the parties will be 5 days (rather than 10);
- the employer only needs to update names and addresses; and
- any ballot remedial orders stay "live" and must be acted on.
- the Court will decide who pays what proportions of the ballot's costs.

TREATMENT OF BALLOTING COSTS UNDER THE PROVISIONS OF SCHEDULE 1A

- 8.1** The costs of the ballot are to be shared equally between the employer and the union.
- 8.2** If two or more unions are involved, they must divide their half into equal shares, unless they have jointly indicated to the QIP that some other arrangement is to apply.
- 8.3** The QIP may send to the employer and union(s) an invoice stating both the gross costs of the ballot, and the amount of the costs payable by the party concerned.
- 8.4** These costs may be borne by the parties even where the ballot is cancelled before it can be held.
- 8.5** The bill for the costs of the ballot must be settled by the parties in full within 15 working days starting with the day after that in which the bill is received.
- 8.6** In the event of the non-payment of the bill, the QIP is entitled to apply to the county court for an order enforcing payment (see paragraphs 8.9 to 8.12 below).
- 8.7** The costs of the ballot are limited to those costs wholly, exclusively and necessarily incurred in connection with the ballot by the QIP, such reasonable amount as the QIP charges for their services, and such other costs as the employer and the union (or unions) agree.
- 8.8** Where the QIP is asked to circulate material to workers in the bargaining unit by the union or unions, they should charge the party concerned directly.

Right of the Parties to Appeal Against Costs

- 8.9** Either of the parties may appeal against the QIP's invoice for costs. The Case Manager will send a copy of the ballot costs estimate that is provided by the QIP to each of the parties so they are aware of the expected cost. QIPs are asked to keep both parties and the Court updated with any changes in the cost so that challenges to the final invoice are minimised.
- 8.10** Any appeal must be made to an Industrial Tribunal within 4 weeks starting with the day after the party receives the QIP's invoice and whilst there is an outstanding appeal the invoice issued by the QIP will not be enforceable.
- 8.11** The Industrial Tribunal will dismiss the appeal unless it is satisfied that:-
 - a) The amount specified in the invoice as being the gross costs of the ballot is too great, or
 - b) The amount specified in the invoice as the amount of the gross costs to be borne by the recipient is too great.
- 8.12** If the Tribunal allows the appeal it will amend the invoice and the amended invoice will be the amount to be paid by the recipient to the QIP.



APPENDIX 1

Workplace notice for workers in the bargaining unit

BALLOT ON TRADE UNION RECOGNITION – IMPORTANT INFORMATION FOR WORKERS IN THE BARGAINING UNIT

This ballot is being held to decide whether the *[name of Union]* is to be recognised by your employer*[name]*, for collective bargaining on pay, hours and holidays. The ballot is being organised by *[name of QIP]*, which has been appointed by the Industrial Court (the Court), as part of a statutory process under the legislation covering trade union recognition.

You are entitled to vote if you are a worker in *[description of bargaining unit]*.

You can vote whether or not you are a union member. Please note the union does not have the names and addresses of non-members.

If postal ballot

Ballot papers must be returned to be received by the *[name of QIP]* by 2pm on *[date]*.

*If workplace ballot**

Voting takes places from *[time/date]* to *[time/date]* at *[workplace]*. If there are circumstances that will prevent you from voting in the workplace ballot, then you can request a postal vote if you do so far enough in advance for it to be practicable (normally at least.....). Such a request should be made to the Case Manager (see contact details below).

*If combination ballot**

Voting takes places from *[time/date]* to *[time/date]* at *[workplace]*. If you have a postal ballot, this must be returned by *[date]*

* *delete as appropriate*

If you consider that you are eligible to vote and have not received a ballot paper by *[date - 5 days after ballot papers are sent out]* or if you think that you are not eligible

to vote but do receive a ballot paper please contact *[name of Case Manager]* on *[telephone number]*.

The ballot papers are numbered to ensure fair conduct of the ballot but the ballot is completely secret. Only the *[name of QIP]* has a record of the numbers (any duplicate ballot paper that is issued will have a different number). Neither the employer nor union will know how you have voted.

If you require further information on the background to this ballot you can read the full text of the Panel's decisions on the Court's website (www.industrialcourt.gov.uk). The statutory rules under which this ballot are taking place are set out in Schedule 1A to the Trade Union and Labour Relations (NI) Order 1995, as amended, and in the Code of Practice on Access and Unfair Practices During Ballots for Trade Union Recognition or Derecognition; both documents are accessible through the Department for Employment and Learning website (www.delni.gov.uk).



- ANNEX 1** [*The Trade Union and Labour Relations \(NI\) Order 1995*](#)
- ANNEX 2** [*Statutory Recognition Guide for the Parties*](#)
- ANNEX 3** [*Recognition and Derecognition Ballots \(Qualified Persons\) Order \(NI\) 2001 and Recognition and Derecognition Ballots \(Qualified Persons\) \(Amendment\) Order \(NI\) 2004*](#)
- ANNEX 4** [*Code of Practice: Access and Unfair Practices During Ballots for Trade Union Recognition and Derecognition Ballots*](#)



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