

EMPLOYMENT RELATIONS TRIBUNAL

ORDER

ERT/ RN 75/20

Before

Indiren Sivaramen	Acting President
Francis Supparayen	Member
Karen K. Veerapen	Member
Ghianeswar Gokhool	Member

In the matter of:-

Farm Workers Union (Applicant)

And

Poulet Arc en Ciel Ltee (Respondent)

The present matter is an application made by the Applicant union under section 36(5) of the Employment Relations Act, as amended (the “Act”), for an order directing the Respondent to recognise the Applicant as the bargaining agent in a bargaining unit consisting of workers in the following categories: factory operators, factory attendants, unskilled employees, watch persons, drivers, helpers, loaders, attendants, cold room workers, farm workers and maintenance workers excluding those in managerial posts employed by the Respondent. The Applicant sent a letter dated 19 June 2020 to the Respondent (copy produced and marked Doc A) seeking for recognition for the said bargaining unit. The Respondent replied to the Applicant by way of two letters and in the last letter dated 3 August 2020, Respondent informed Applicant that management was unable to grant recognition to the Applicant on the ground that the “*union does not satisfy the criterion in regards to its representativeness*”. The Respondent is resisting the application. Applicant was assisted by Counsel before the Tribunal whilst Respondent, which was represented by the Group Human Resources Manager, did not wish to be assisted by Counsel.

The representative of Applicant deponed before the Tribunal and he produced copies of relevant correspondences exchanged between the parties. He stated that when the application was made, the Applicant had 33 members and now this figure has gone up to 47. He produced 47 'Confirmation Union Membership Forms' (Docs D to D46). He stated that the Applicant has the support of not less than 20 per cent and not more than 50 per cent of the employees in the bargaining unit.

The representative of Respondent stated that Respondent is still resisting the application. To a question from the representative of Respondent, the representative of Applicant replied that the Confirmation Union Membership Forms had not been signed in the presence of an officer from the Ministry.

The support the Applicant had among the workers in the bargaining unit was at issue. Both parties, as represented before us, were agreeable to a secret ballot being carried out. Following the evidence adduced before the Tribunal, the Tribunal was satisfied that a secret ballot should be held in the interest of good industrial relations. The Tribunal thus ordered that a secret ballot be held in the relevant bargaining unit.

The secret ballot was organised and supervised by the Tribunal at the Respondent at Beau Vallon, Mahebourg on Wednesday 9 September 2020. The list of employees in the relevant bargaining unit was agreed by both parties and the representatives of both parties signed the said list. There was a total number of one hundred and twenty-five (125) employees in the relevant bargaining unit as agreed by the parties and one hundred and seven (107) employees participated in the secret ballot. Fifty (50) employees were in favour of the recognition of Applicant as their bargaining agent in the bargaining unit at the Respondent whilst fifty-seven (57) employees were against the recognition of the Applicant as their bargaining agent at the Respondent. There was no void ballot paper. The Applicant thus secured the support of 40 per cent of the workers in the bargaining unit.

Section 36(5) of the Act reads as follows:

“(5) Where –

- (a) an employer fails to respond to an application under subsection (3);*
- (b) an employer refuses to recognise a trade union or group of trade unions as a bargaining agent;*
- (c) an employer fails to state the reasons for refusing to recognise a trade union or group of trade unions as a bargaining agent; or*
- (d) a trade union or a group of trade unions is not satisfied with the reasons for refusal given under subsection (3)(b),*

the applicant trade union or group of trade unions may apply to the Tribunal for an order directing the employer to recognise the trade union or group of trade unions as a bargaining agent, in accordance with the criteria specified in section 37.”

Section 38(1) of the Act reads as follows:

“(1) The Tribunal shall, on an application made under section 36(5), determine whether the trade union or group of trade unions, as the case may be, has the support of at least 20 per cent of the workers forming part of the bargaining unit, or where the application is for recognition as a sole bargaining agent, has the support of more than 50 per cent of the workers in the bargaining unit, or otherwise.”

In the light of all the evidence on record including the results of the secret ballot and as there was no other point in dispute between the parties, the Tribunal orders that the Respondent is to recognise the Applicant as bargaining agent, with bargaining rights in the bargaining unit consisting of workers in the following categories: factory operators, factory attendants, unskilled employees, watch persons, drivers, helpers, loaders, attendants, cold room workers, farm workers and maintenance workers excluding those in managerial posts employed by the Respondent. The Respondent and the Applicant are to meet at such time and on such occasions as the circumstances may reasonably require for the purpose of collective bargaining.

By virtue of section 38(15)(b) of the Act, as amended, a copy of this order shall also be submitted to the supervising officer for record purposes.

SD Indiren Sivaramen

Acting President

SD Francis Supparayen

Member

SD Karen K. Veerapen

Member

SD Ghianeswar Gokhool

Member

10 September 2020