

**EMPLOYMENT RELATIONS TRIBUNAL**

**ORDER**

**ERT/ RN 110/23**

**Before**

<b>Indiren Sivaramen</b>	<b>Acting President</b>
<b>Greetanand Beelattoo</b>	<b>Member</b>
<b>Awadhkoomarsing Balluck</b>	<b>Member</b>
<b>Divya Rani Deonanan</b>	<b>Member</b>

**In the matter of:-**

**Private Sector Employees Union (Applicant)**

**And**

**Wecycle Limited (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 sole bargaining agent in a bargaining unit consisting of manual employees in employment at the Respondent. The Applicant made an application dated 24 June 2023 as per section 36 of the Act to the Respondent seeking for sole recognition for the said bargaining unit. As per paragraph 5 of the application before us, there was no response from the Respondent to this application. The Respondent is now resisting the application before the Tribunal. Applicant was represented by its Secretary before the Tribunal whilst the Respondent was assisted by Counsel.

The representative of Applicant deposed before the Tribunal and he produced copies of “Admission Form Membership Application” forms (with copies of national identity cards or passports) (Docs A to A15). He stated that the Applicant had 16 members in the bargaining unit. He stated that, based on the own figure submitted by Respondent

(copy of letter was marked Doc X), the Applicant thus enjoyed a representativeness of 16 workers over 29 workers in the bargaining unit, that is, a representativeness of 55%.

The support enjoyed by the Applicant among the workers in the bargaining unit was at issue. Counsel for Respondent moved for a secret ballot to be carried out in the interest of good industrial relations. The representative of Applicant left the matter in the hands of the Tribunal as to whether a secret ballot exercise should be carried out in the present case. It is apposite to note that Counsel for Respondent stated, to a question from the Tribunal when the matter was being heard on the merits, that he did not have with him the names of the employees in the relevant bargaining unit. 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 workplace of the Respondent at Rue Desbouchers, Mer Rouge on Friday 20 October 2023. 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 twenty-nine (29) employees in the relevant bargaining unit as agreed by the parties and all the 29 employees participated in the secret ballot. Twenty-two (22) employees were in favour of the recognition of Applicant as their sole bargaining agent in the bargaining unit at the Respondent whilst seven (7) employees were against the recognition of the Applicant as their sole bargaining agent at the Respondent. There was no void ballot paper. The Applicant thus secured the support of 75.9 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 sole bargaining agent with sole bargaining rights in the bargaining unit consisting of manual employees in employment at 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 of the Ministry of Labour, Human Resource Development and Training for record purposes.

**(SD)Indiren Sivaramen**

**Acting President**

**(SD)Greetanand Beelattoo**

**Member**

**(SD)Awadhkoomarsing Balluck**

**Member**

**(SD)Divya Rani Deonanan**

**Member**

**24 October 2023**