

EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN 94/13

ORDER

Before:

Rashid Hossen	-	President
Raffick Hossenbaccus	-	Member
Desire Yves Albert Luckey	-	Member
Triboohun Raj Gunnoo	-	Member

In the matter of:-

Union of Bus Industry Workers

(Applicant)

And

UBS Transport Ltd

(Respondent)

In presence of: - (1) United Bus Service Employees Union

(Co-Respondent No. 1)

(2) Association Travailleurs Transport Autobus

(Co-Respondent No. 2)

Mr Imzad Beeharry, the President of the Union of Bus Industry Workers is applying to the Tribunal by virtue of **Section 37 (Savings and transitional provisions) (4) (a) (ii)** of the **Employment Relations Act (Amendment) Act 2013** for a determination as to which trade union the workers in the bargaining unit wish to be their bargaining agent. In his written application he mentioned the name and address of the Applicant trade union i.e. Union of Bus Industry Workers (UBIW). The employer is referred to as UBS Transport Ltd of Le Cassis, Port Louis. The bargaining unit consists of bus conductors, drivers, traffic officers, workshop mechanic employees and cleaners employed by the above employer. He also mentioned other bargaining agents in the bargaining unit namely:-

- (i) United Bus Service Employees Union (UBSEU) and
- (ii) Association Travailleurs Transport Autobus (ATTA).

For ease of reference, we reproduce the last paragraph of his application.

“SUMMARY OF THE APPLICATION

- i. The *Union of Bus Industry Workers (UBIW)* is a recognized union representing employees of the bargaining unit consisting of bus conductors, drivers, traffic officers, workshop mechanic employees and cleaners employed by the employer
- ii. It obtained recognition before the commencement of the *Employment Relations Act 2008*, and before the commencement of the *Employment Relations (Amendment) Act 2013 – Act No. 5 of 2013, Government Gazette of Mauritius No. 41 of May 2013. Proclamation No. 29 of 2013 – 11.06.13.*

- iii. In March 2013, two trade unions (*Association Travailleurs Transport Autobus and the United Bus Service Employees Union*), also bargaining agents within the same enterprise, made an application to the Employment Relations Tribunal under *Section 39 (1) (a) of the Employment Relations Act of 2008* for the revocation of recognition of the UBIW. The application was finally withdrawn. **[Ref RT/RN 23/13]**

- iv. In May 2013, the same two above unions, this time in the presence of the employer, entered a new application *Section 39 (1) (a) of the Employment Relations Act of 2008* for the revocation of recognition of the UBIW. The second application too was finally withdrawn. **[Ref ERT/RN 38/13]**

- v. At no moment after the commencement of the *Employment Relations (Amendment) Act 2013 – Act No. 5 of 2013, Government Gazette of Mauritius No. 41 of May 2013. Proclamation No. 29 of 2013 – 11.06.13*, the UBIW was called to form a joint negotiating panel under *Section 37 (4) (a) (i) of the law* by the employer or any of the existing trade unions recognized as bargaining agents.

- vi. In a letter dated 6th of August 2013, in the context of correspondences in view of the signature of a collective agreement to grant UBS transport workers a salary increase, the UBIW was officially informed by the Managing Director of the UBS Transport Ltd, that the employer has granted sole recognition to the *United Bus Service Employees Union*. We quote “...*the United Bus Service Employees Union which represent 56.83% of the workers has already written to us to request for Sole Bargaining Agent in accordance with the Employment Relations (Amendment) Act Sec 37 (2) (a) and which we have accepted.* **[Annex I]**

- vii. In another letter dated 16th August 2013, the employer confirmed the fact that the *United Bus Service Employees Union* obtained sole recognition and that “*three other unions which have recognition at the United Bus Service have agreed to join force with the United Bus Service Employees Union to form a bargaining unit (sic)*”. [Annex 2]

- viii. In the light of the above, and given:
 - a. the fact that the validity of the recognition of the *UBIW* is protected, and remains affected, as per Section 37 (3) of the act;

 - b. and given the fact that more than two trade unions are already recognized in the enterprise and one of the trade unions had recognition as a sole bargaining agent, the *UBIW* is making an application to the Employment Relations Tribunal under *Section 37 (Savings and transitional provisions) (4) (a) (ii) of the Employment Relations (Amendment) Act 2013*, to determine as to which trade union the workers in the bargaining unit wish to be their bargaining agent.

- ix. The applicant moves that the Tribunal, as per Section 37 (4) (b) of the law, organize and supervise a secret ballot in the bargaining unit in order to determine which trade union the workers in the bargaining unit wish to be their bargaining agent.

Mr Imzad Beeharry stated before the Tribunal that there were two other unions in the same enterprise that had requested the revocation of his union in the past. It is for this reason that he is asking the Tribunal to go for a secret

ballot in order to determine which union is to represent the workers. According to him, the employer is no more interested to negotiate with his union. The witness at the very outset of his deposition stressed that he will not divulge the identity of his members. Members of his union are paying through the banks instead of by check off for fear of retaliation. He claims he has 499 members that contribute to check off, some 76 members paid directly through check off whereas some 146 by standing orders at the Mauritius Commercial Bank (MCB) and 140 by standing orders at the State Bank of Mauritius (SBM). He averred he had in his possession 137 receipts. He added that he was never invited to be part of the Joint Negotiating Panel (JNP). The witness confirmed that he has representativeness which is higher than 30% but below 50%.

Mr Yousouf Sairally deponed on behalf of the Respondent. He stated that United Bus Service Employees Union (UBSEU) applied for recognition as sole bargaining agent to which the employer accepted. As at August 2013 when the application was made the United Bus Service Employees Union (UBSEU) had 840 members and after effecting verification, the employer concluded that the Union had more than 50% i.e. 56.83% representativeness and this is in accordance with the law. The witness denies that the Union of Bus Industry Workers (UBIW) has 499 members based on the check off list.

The application to the Tribunal to organize and supervise a secret ballot to determine which trade union workers wish to be their bargaining agent cannot be granted by the mere asking. The applicant must pass the threshold of

satisfying the Tribunal that there is sufficient evidence that would justify such course. The applicant chose to withhold information regarding representativeness of his trade union membership and which issue is hotly contested by the respondent. We are aware of the legal provision that protects the interest of members of union who do not wish to reveal their identity. That should in no way be interpreted as an obligation on the Tribunal to proceed for secret balloting by the mere asking.

The application is set aside.

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(Sd)Rashid Hossen
(President)

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(Sd)Raffick Hossenbaccus
(Member)

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(Sd)Desire Yves Albert Luckey
(Member)

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(Sd)Triboohun Raj Gunnoo
(Member)

7 March 2014