

# EMPLOYMENT RELATIONS TRIBUNAL

## ORDER

ERT/RN 48/2024

*Before:*

<b>Shameer Janhangeer</b>	-	<b>Vice-President</b>
<b>Atchanah P. Ramasawmy</b>	-	<b>Member</b>
<b>Awadhkoomarsing Balluck</b>	-	<b>Member</b>
<b>Venusha Autar Hemrazsing (Mrs)-</b>		<b>Member</b>

*In the matter of:*

**Union of Artisans and Allied Workers of Cane Industry (UAAWCI)**

*Applicant*

and

**Terragen Management Ltd**

*Respondent*

The present matter is an application made by the UAAWCI under *section 36 (5)* of the *Employment Relations Act* (the “*Act*”) for an Order under *section 38 (1)* directing the Respondent to recognise the Applicant as sole bargaining agent. The Applicant Union claims to have the support of 31 workers in the bargaining unit. The Respondent is resisting the application.

The Applicant Union was assisted by its Negotiator, Mr A. Subron; whereas, Mr M. Oozeer appeared instructed by Mr A. Robert, SA for the Respondent. The Respondent did submit a Statement in Reply to the application made by the Union.

## THE EVIDENCE OF WITNESSES

Mr A. Subron, Negotiator, adduced evidence on behalf of the Applicant Union. He notably stated that the Union applied for recognition as sole bargaining agent and the Respondent refused to recognise as per its letter dated 15 April 2024. The Applicant, not being satisfied with the reasons for refusal, has made the present application for the Tribunal to determine whether the Applicant has the support of more than 50% of workers in the bargaining unit. A bundle of 31 membership forms each with a photocopy of the identity card of the workers was produced (bundle marked as Document A and numbered as F1 to F31). As per the information submitted by the Respondent in its Statement in Reply, the overall number of employees is 45, which would give 83.78% representation. When the category of *cadre* is deducted, the Union's support would be 68.89%, which is well above the 50% threshold.

As regards the objections raised by the Respondent, Mr Subron notably stated that the *comité d'entreprise* is not a legal reason for an objection, the right of employees to unionise is guaranteed under the Constitution and is mandatory under law. The existence of a *comité d'entreprise* does not impact on the exercise of this right. The second objection relates to the contention that the Applicant cannot by its rules and regulations represent the Respondent's workers, which are in a completely different economic sector. He believes that as per their rules and regulations, they are fully entitled to represent the Respondent's employees as the Applicant is a union historically involved in representing non-agricultural workers of the sugar industry. The industry has known important mutations in the last twenty years and is now a sugar and cane related activity which includes distilleries, sugar refineries and power generating plants co-generated with bagasse and other like industries.

Mr Subron stated that in light of these mutations, the Applicant has amended its rules and regulations. A certificate of registration of change of name of the trade union was produced to this effect (Document B) as well as a certificate of registration of amendment of rules of the trade union (Document C). The Respondent enterprise is a cane related co-generating power plant and forms part of the Terra Group. An extract of the annual integrated report of the activities of Terra Mauricia Ltd of 2022, explaining the business model of the power plant in question and how cane is connected to the production of electricity, was produced (Document D). An extract of the digest of agricultural statistics issued by Statistics Mauritius was also produced (Document E) for the years 2015 to 2017. An official public notice from the National Remuneration Board ("NRB") dated 31 March 2017 titled '*Regulation of Wages and Conditions*

*of Employment in the Cane Industry'* was also produced (Document F). Thus, the Applicant is fully entitled to represent the employees of Terra Management Ltd as per its rules and regulations.

Mr Subron was questioned by Counsel for the Respondent. He notably agreed that the information collected and processed by Statistics Mauritius is for statistical reasons only as per their requirements. Document F proves that power generating plants are part and parcel of the cane industry. Regarding Document C, he stated that it is the latest available and existing document on the amendment of rules and there is no amendment of rules on this issue. He is aware that Independent Power Producers are regulated by a regulator for the purpose of selling electricity, the purpose being the production of electricity. The Respondent's name is not mentioned in the extract of the annual report produced but it explains how electricity is generated. He agreed that the proportion of bagasse used in the production of electricity is no more than 20% and that charcoal is also used to produce electricity. He did not agree that production of electricity falls under the energy or electricity sector for the purpose of work conditions.

Regarding the pay slips attached to the membership forms (Document A), Mr Subron agreed the document does not mention any date but that they are within the last years. He did not check the worker's contract of employment to ascertain if they are the Respondent's employees as the pay slip is crystal clear on this issue. He did ascertain that all the persons mentioned in Document A are still employees of the employer. The categories mentioned in Annex C of the application come from the pay slip of the workers.

The Respondent's Human Resource ("HR") Manager, Mr P. R. Larose was called to adduce evidence on behalf of the Respondent. He confirmed as to the correctness of the Respondent's Statement of Reply dated 20 May 2024. Upon being shown Document D, he stated that he is only aware of the Respondent. He agreed that the application concerns the Respondent's employees. The Respondent is mainly concerned with the production of electricity and supplies around 20 % of the country's overall electricity production. For the production of electricity, use of charcoal is about 77 %; and when in the crop season from July to December, bagasse is used and represents at most 20 % and roughly around 3 % *la paille de cane* is used. Should there be no bagasse, the Respondent will be solely reliable on charcoal to produce electricity. Regarding Annex C of the application, the job titles have been mentioned and there are only three main categories of employees at the Respondent: *employé, agent de maitrise et cadre*. Annex C is job titles at Terra Management Ltd and not categories as such.

The Respondent's representative was questioned by the Applicant's Negotiator. He notably stated that as per Document D, to his knowledge, electricity is produced by the Respondent but not solely on bagasse and the most of it comes from coal. He is the HR manager for Terragri Ltd and leads the HR function for the Respondent. Referring to the categories in his Statement in Reply, *cadre* are managerial positions and the rest are not managerial, many of them being common staff. The job titles mentioned in Annex C of the application forms part of the *employé* and *agent de maîtrise* categories. He is not aware that the Applicant Union is recognised at one of the distilleries owned by Terra.

#### *THE SUBMISSIONS OF THE PARTIES*

The Applicant's Trade Union Negotiator has put in written submissions in support of his case. Three grounds of objection have been identified as per the Respondent's letter of refusal to recognise dated 15 April 2024. It was notably submitted, regarding the Respondent's first ground of objection, that it was not a legal requirement for the Union to submit the names of its members to the employer when applying for recognition. In submitting the membership forms of its 31 members to the Tribunal, the Applicant has addressed and rebutted this ground of objection. It has also been established that the category of employees defined by their respective job titles are part of the bargaining unit for which sole recognition is being sought. It has also been submitted that the third ground of objection raised by the Respondent disputing the categories of the bargaining unit has failed. Moreover, the Respondent's objection regarding representativeness cannot stand as the Applicant has a membership of 83.78% in the bargaining unit.

The Applicant has also submitted that the employer cannot, after having stated its reasons for refusing to recognise a trade union, submit new reasons when the matter has been brought before the Tribunal. Despite this, the Applicant has addressed the objections raised in the Respondent's Statement in Reply. It was notably submitted that the existence of a *comité d'entreprise* is not a legal reason to object to recognition of a trade union, the right of a worker to belong to a trade union being a Constitutional right. Regarding the objection that the Applicant cannot represent the workers which are in a completely different economic sector, the Applicant has referred to the amendment made to its rules and the various documents produced to show that it can duly represent the workers in the bargaining unit concerned. Reference has also

notably been made to fundamental right under *section 13* of the *Constitution* and the right of workers to freedom of association under *section 29* of the *Act*. Finally, it has been submitted that the Applicant has fulfilled the criteria specified in *section 37* of the *Act*.

Counsel for the Respondent, in his written submissions, has notably stated that the Respondent does not carry its activities in a cane related industry, using mainly charcoal to produce electricity. It has not been disputed that the Respondent uses 77% of charcoal and 20% of bagasse as raw material in the production of electricity. Referring to the extract of the Digest of Agricultural Statistics 2015 to 2018 produced by the Applicant, it was submitted that, despite the document mentioning production of electricity in the sugar industry, this does not mean that the electricity sector is a cane related industry. Regarding the communiqué from the NRB, it cannot be evidence that the Respondent is in the cane related industry. It was further submitted that workers in the energy industry do not have the same interests as workers in the cane industry or any cane related industry and the Respondent invited the Tribunal to take judicial notice that the nature of work is different in the energy industry and in the cane and cane related industry. The words '*cane related industry*' cannot be read in isolation and an activity in the cane related industry must be predominantly in the cane industry; this is not the case regarding the Respondent, which can operate and produce electricity in the absence of bagasse.

On the issue of category of workers, the Respondent is denying that the Applicant has 31 members in the categories mentioned in the application. Reference has been made to check-off agreements which have allegedly been produced signed since last year when the application for recognition is dated March 2024 and is thus not contemporaneous. The front pay slips do not contain reliable information confirming that all these persons are employed by the Respondent. It is therefore submitted that the Applicant has not produced reliable evidence in support of the membership it is claiming. Reference has also been made to the *Sugar Industry (Agricultural Workers) (Remuneration) Regulations 2019* and the *Sugar Industry (Non-Agricultural Workers) (Remuneration) Regulations 2019* wherein there is no a single mention of the categories of workers employed by the Respondent, except for the category of electrician mentioned in the *Second Schedule* of the latter regulation. The workers employed by the Respondent are not workers in the sugar industry, whether they be categorised as sugar industry agricultural or non-agricultural workers.

## THE TRIBUNAL'S CONSIDERATIONS

The Applicant Union has made the present application for recognition as sole bargaining agent for workers in the bargaining unit employed at the Respondent company. As per its application to the employer dated 6 March 2024, the number of workers in the bargaining unit is 31 in the following categories:

*Agent d'exploitation, Aide mécanicien, Assistant chimie, Assistant Storekeeper, Assistant Chimie Polyvalence, Chef de quart, Conducteur de chargeuse, Electricien, Gratteur, Ouvrier électricien, Ouvrier exploitation, Préparateur électrique, Préparateur mécanique, and Storekeeper.*

Pursuant to the Union's application, the Respondent replied by letter dated 15 April 2024 stating that they are unable to consider the application as it cannot be determined that the 31 members of the Applicant are indeed 31 employees of the Respondent; whether the percentage of representativeness is more than 50% as is being claimed; and the categories of members mentioned in the application are not categories employed by the Respondent but are positions held by employees. Not being satisfied with the Respondent's refusal to recognise, the Applicant has entered the present application.

It is therefore incumbent on the Tribunal to determine, where the application is one for recognition as sole bargaining agent, whether the Applicant has the support of more than 50% of the workers in the bargaining unit. As per the Respondent's Statement in Reply, there are three categories of workers in employment at the Respondent: 19 *employé*, 18 *agent de maîtrise* and 8 *cadre*. The Respondent's Human Resource Manager did acknowledge that the category of *cadre* are managerial positions with the remaining two categories not being managerial, many of them being common staff. He did recognise that the job titles mentioned in the application made to the employer forms part of the *employé* and *agent de maîtrise* categories. Thus, the total number of employees in the non-managerial categories is 37.

The Respondent has contended, in its submissions, that the Applicant has not produced reliable evidence in support of the membership it claims. It must be noted that the Applicant's Negotiator did produce 31 membership forms of the workers forming part of the bargaining unit. However, no check-off agreements have been produced in the present matter as has been

allured to by Counsel for the Respondent in his written submissions. The membership forms have come attached with the job title of the workers as per their payslips.

Moreover, the Applicant's Negotiator was clear that he did ascertain that all the persons mentioned in the membership forms are still employees at the Respondent. It was also open to the Respondent to verify the membership forms once they were produced if ever any of the workers therein were no longer in the employment of the Respondent. It can also be noted that the Respondent's Human Resource Manager did not raise any issues regarding the membership forms produced or their reliability when adducing evidence. The Tribunal cannot therefore find that the Applicant has not produced any reliable evidence in support of the membership it claims.

The Respondent has also raised the issue that it does not operate in the cane related industry and thus the Applicant, by virtue of its rules, cannot represent its workers. Although, this particular ground, which has been raised in the Respondent's Statement in Reply and substantiated in its written submissions, does not form part of the objections initially raised in the Respondent's letter dated 15 April 2024, the Tribunal shall address same for the sake of completeness in this matter.

It has not been disputed that the Applicant's rules have been amended pas per Document C, whereby a new provision in its rules notably provide that '*Membership is opened to any person of either sex who is employed in the sugar industry or in any Cane related Industry*';'. Thus, it cannot therefore be said that the Applicant Union cannot represent workers employed in the cane related industry.

Although the Respondent is contending that, being an electricity producer, it operates in the energy sector and that its use of bagasse is at 20% of its production of electricity, it is pertinent to note the following from the notice produced from the NRB (Document F):

***Regulation of Wages and Conditions of Employment in the Cane Industry***

*Following mutation that have occurred in the Sugar Industry with the coming into operation of sugar refineries and power generating plants and other allied industries, the Minister of Labour, Industrial Relations, Employment and Training, being satisfied that it is expedient to regulate the wages and conditions of employment in respect of*

*employees in the Cane Industry, has referred the matter to the National Remuneration Board for consideration.*

It is thus clear to see, from the above extract of the notice, that the coming into operation of power generating plants is part of the mutation that has occurred in the sugar industry and that consequently it has been deemed expedient to regulate of wages and conditions of employment accordingly in the cane industry.

Moreover, as per the Applicant's written submissions, the *Sugar Industry Efficiency Act 2001 (Act No. 20 of 2001)* has been amended in 2016 by adding the following provision as regards the mandate of the Mauritius Cane Industry Authority ("MCIA"):

**13B. Renewable National Biomass Framework**

*(1) The Mauritius Cane Industry Authority shall develop and monitor a framework to be known as the Renewable National Biomass Framework to promote production of energy from such sources of biomass as may be prescribed, including sugar cane, cane trash, high fibre cane, fuel canes, gramineae and other related biomass, generated by the sugar cane industry.*

It is useful to note that the MCIA has as object to monitor, oversee and coordinate all activities relating to, and to ensure a fair, efficient and effective administration and operation of, the cane industry as per its act. In the context of the present application, it has not been disputed that the Respondent produces electricity from bagasse among other raw materials.

It cannot also be disputed that a worker has the right to join a trade union of his own choice pursuant to *section 29 (1)* of the Act without discrimination as to his, *inter alia*, occupation. This aforesaid *section* reads as follows:

**29. Right of workers to freedom of association**

*(1) Every worker shall have the right –*

*(a) subject to subsection (1A), to establish or join, as a member, a trade union of his own choice, without previous authorisation and without distinction whatsoever or discrimination of any kind including*



*discrimination as to occupation, age, marital status, sex, sexual orientation, colour, race, religion, HIV status, national extraction, social origin, political opinion or affiliation;*

...

(1A) *A worker shall have the right to join only one trade union, of his own choice, in the enterprise where he is employed or his bargaining unit.*

It can also apposite to note that it is a fundamental right of the worker to join a trade union for the protection of his interests as is embodied in *section 13* of the *Constitution*.

The Respondent also invited the Tribunal to take notice that the nature of work is different in the energy industry as compared to the cane or cane related industry. It must, however, be noted that no evidence has been adduced to this effect and that it would not be proper for the Tribunal to take judicial notice of same. Thus, the argument put forward by the Respondent that as it does not operate in the cane related industry and subsequently the Applicant cannot represent its employees cannot stand. It must also be noted that Respondent has not submitted regarding the other grounds of objections raised in its letter dated 15 April 2024 in its written submissions.

The Respondent has also referred to the *Sugar Industry (Agricultural Workers) (Remuneration) Regulations 2019* and the *Sugar Industry (Non-Agricultural Workers) (Remuneration) Regulations 2019* in submitting that the categories of employees it employs are not mentioned therein, save for electrician, and that the workers employed by it are not workers in the sugar agricultural or non-agricultural sector. It should be noted that the category of workers mentioned in the aforementioned Remuneration Regulations are not exhaustive and it does not necessarily mean that persons employed in the sugar agricultural or non-agricultural sector are not capable of being employed although they do not fall among the categories of workers mentioned in the aforesaid Remuneration Regulations.

Regarding the membership forms of 31 of the Respondent's employees in the bargaining unit, the Respondent has confirmed that their job titles, as listed in an annex to the application made to the Respondent in March 2024, pertain to the categories of *employé* and *agent de maitrise*. Having perused the membership forms, the Tribunal has found that four workers included therein do not form part of the bargaining unit. The Applicant's membership in the bargaining unit would therefore be 27 workers. When considering that the Respondent has 37

workers in the two aforementioned non-managerial categories, the Applicant Union would thus have the support of 73% of workers in the bargaining unit. In view of the criteria set in *section 37* of the Act, the Applicant would therefore be entitled to be recognised as sole bargaining agent.

The Tribunal therefore orders that the Union of Artisans and Allied Workers of Cane Industry (UAAWCI) be recognised as sole bargaining agent by Terragen Management Ltd in respect of the bargaining unit, in the Respondent's categories of *employé* and *agent de maîtrise*, comprised as follows:

*Agent d'exploitation, Aide mécanicien, Assistant chimie, Assistant Storekeeper, Assistant Chimie Polyvalence, Chef de quart, Conducteur de chargeuse, Electricien, Gratteur, Ouvrier électricien, Ouvrier exploitation, Préparateur électrique, Préparateur mécanique, and Storekeeper.*

The Union and the Respondent are to meet at specified intervals or at such time and on such occasions as the circumstances may reasonably require for the purpose of collective bargaining.

The Tribunal orders accordingly.

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**(SD) Shameer Janhangeer**  
**(Vice-President)**

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**(SD) Atchanah P. Ramasawmy**  
**(Member)**

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**(SD) Awadhkoomarsing Balluck**  
**(Member)**

.....  
**(SD) Venusha Autar Hemrazsing (Mrs)**  
**(Member)**

**Date: 2<sup>nd</sup> July 2024**