

IN THE TRADE DISPUTES PANEL  
SOLOMON ISLANDS

Case No. L9/7/09

Between: S.I. National Union of Workers

(Applicant)

And: Tongs Corporation Ltd

(Respondent)

FINDING

By letter dated 20<sup>th</sup> May 2009, the Assistant General Secretary of Solomon Islands National Union of Workers, Mr. Barry Samson referred a trade dispute to the Trade Disputes Panel pursuant to the provisions of the **Trade Disputes Act, Cap 75**.

The dispute was over recognition, in which, the respondent company refused to recognize or to grant recognition to the union to represent the employees on matters concerning their terms and conditions of employment.

On 9/7/2009, the Panel, inter-alia, ordered that a secret ballot be conducted to find out what support the union has on the workers.

Following that order, a secret ballot was conducted on 12/8/09. The secret ballot showed that, out of the 201 employees, 101 voted in favour of the union; 22 in favour of in-house union; 26 abstain; 34 absent and 18 ballot papers spoilt.

At a later further preliminary hearing, however, the respondent submitted that this secret ballot was not properly conducted on the basis that it was not done "secret" as workers were advising each other during the process of voting and that certain workers who were not supposed to vote were allowed to cast their votes. The Panel after hearing submissions from both parties ruled that the secret ballot was flawed and ordered that it be re-done again.

Following that ruling, the Panel secretary organized another secret ballot which was eventually conducted on 6/5/10. The result of that secret ballot was as follows:

Total no. of workers at the time of the secret ballot	137
In favour of S.I.National Union of Woirkers (SINUW)	63
Not in favour of SINUW	36
Spoilt ballot papers	1
Total	100

Based on the outcome of that secret ballot, the respondent refused to grant recognition. This is because, as shown on the table, the union does not have the majority support of the workers. The number of workers that voted in favour of the union was less than half of the total work force. Only 63 out of 137 workers voted in favour of the union.

Mr. Sika Manuopangai, on behalf of the company also submitted that the union's own standard recognition agreement provides that in event that the number falls below 50%, recognition shall be withdrawn. He submitted that in this case, the union's support on the workers falls below 50% right from the beginning, and therefore the union does not have any basis for seeking recognition from the company.

In his submission, however, Mr. Tony Kagovai submitted that considering the total work force of 137 workers, the number that had voted for the union, which was 63, is in fact, substantial, as warranting a grant of recognition under section 6 (5) of the **Trade Disputes Act (cap 75)**. The Panel however finds it difficult to accept that argument.

Section 6 (5) of the **Trade Disputes Act (cap 75)** are in these words:

"Where the dispute involves a recognition issue, the Panel shall, in deciding whether by their award to grant recognition, consider-

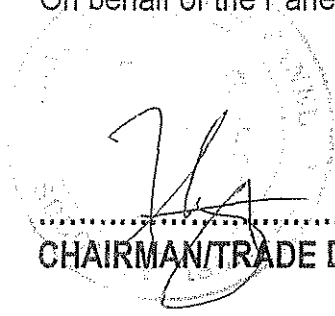
- (a) Whether the trade union would have the support of a substantial proportion of the employees in respect of whom recognition is sought to be granted (underlining ours).
- (b) Whether the resources and organization of the trade union are such as would enable it to represent those employees effectively."

This provision gives a guideline to the Panel when determining the issue of recognition. Paragraph (a) is plain and clear. In determining whether or not to grant recognition, the Panel must consider whether the trade union (in this case, Solomon

Islands National Union of Workers) has the support of a substantial proportion of the employees. In other words, in granting recognition, the Panel must consider whether the union in this case has a support of a bigger proportion of the 137 employees. The secret ballot has proved otherwise. Only less than half of the employees showed their support to the union. On that basis, clearly, the union does not have a basis to seek recognition from the company.

Accordingly, the Panel refuses to grant recognition to the union as sought.

On behalf of the Panel.



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**CHAIRMAN/TRADE DISPUTES PANEL**