

**IN THE TRADE DISPUTES PANEL
SOLOMON ISLANDS**

CASE NO. L9/3/2018

BETWEEN:

Workers Union of Solomon Islands (WUSI)

(COMPLAINANT)

AND:

Bank of South Pacific (BSP)

(RESPONDENT)

Panel: 1. Willy Vaiyu - Deputy Chairman
2. Brain Ulufia - Employer Representative
3. Edward Bamu - Employee Representative

Appearances: John Taupongi for the Complainant

Andrew Radclyffe for the Respondent

Date of Hearing: 06/09/2019

Date Finding Delivered: 12/03/2021

Ruling on Preliminary Issue

1. This is the Panel's ruling on a preliminary issue that was raised by the Respondent during a hearing on the 06/09/2019 on "*Whether or not the employees of BSP or similar non-industrial sector can be financial members of the Union (WUSI) when not complying with its own Constitution?*"
The originating issue in this case was "*Recognition*" which the Panel will deliberate on later after its deliberations on this preliminary issue.
2. The Panel made an order that parties submit written submissions within 21 days on the preliminary issue.
3. The noncompliance of the Union's constitution issue was raised by the Respondents' counsel. This is in relation to *Article 4.1* of WUSI's Constitution.
4. Mr. Radclyffe behalf of the Respondent submitted that *Article 4.1* of WUSI's Constitution states that any resident of Solomon Islands who is 21 years of age and over and employed in any of the industrial sectors of employment specified in Article 6.1 (b) (v) is eligible to be a member of the Union (WUSI).

5. The industrial sectors referred to in Article 6.1 (b) (v) are
 - i. Fishery,
 - ii. Agriculture/plantations,
 - iii. Forestry and;
 - iv. Others.

6. The Constitution and Rules of WUSI (2014), Article 6 refers to National Council, Establishment and Composition of the Council. The composition of the Council members are those referred to Article 6 .1 (b), (v) (1), (2), (3) & (4). Article 6 .1 (b) (v) (4) uses the word “OTHERS” as being a member of the Council.

7. Article 4.1 (a) outlines those who are eligible for membership of the WUSI and states;
 - (a) *Any resident of Solomon Islands who is 21 years of age and over and employed in any of the industrial sector specified in Article 6 (1) (v) is eligible to be a member of the Union.*

8. Unfortunately there is no such Article 6 (1) (v) but there is Article 6.1 (b) (v) which refers to the industrial sectors mentioned in paragraph 5 above. Therefore BSP as a Commercial Bank and an employer is not among the list of industries and its employees cannot be members of WUSI by virtue of this provision. If WUSI accepts the membership of the employees of BSP who is not one of those industries listed then they are not complying with their Constitution, these are the bases of the Respondents argument.

9. In order to answer the question whether WUSI is complying with its Constitution or not the Panel must first ask the question, “who is the word “OTHERS” referring to in Article 6.1 (b) (v) (4) of WUSI’s Constitution? And then determine whether or not to confirm BSP’s employees’ membership with WUSI.

10. Mr. Radclyffe, counsel for the Respondent submitted that *ejusdem generis* rule of construction should be applied to the list of industrial sectors of employment in interpreting of the word “OTHERS”. The *ejusdem generis* says that where particular words are followed by general words, in this case “OTHERS”, the general words are limited to the same kind as the particular words. These particular words are, fishery, agriculture/plantations and forestry.

11. Mr. Taupongi, counsel for the Applicant submitted that a constitution contains both the rules and aspirations of an entity. It should not be construed too literally and strictly in the same way the courts interpret an Act of Parliament.

12. The Panel takes the same view taken by Mr. Taupongi and finds the following in the WUSI Constitution which will assist the Panel in making its ruling on this issue.

13. The Preamble of the Constitution and Rules of WUSI (2014) states;

“Recognising the overall aim of the trade union movement in Solomon Islands to

protect and advance the interest of workers throughout the whole nation
(bold, underline & italic, Panel emphasis)

The objects of WUSI are set out in Article 2.1 (a) (b) (c) (d) (e) and states;

“The object of the Union are:

- (a) To secure the complete organisation in the Union of all persons employed as workers or **employees of any skill level in any entity, firm or other undertaking**, or for which there is no recognised trade union representation;*
- (b) To negotiate, secure and maintain fair and just terms and conditions of employment for union members, and to protect and advance their interests;*
- (c) To regulate relationships amongst Union members and between members and employers, and settle disputes arising therefrom through amicable agreement whenever possible;*
- (d) To promote a spirit of mutual respect and understanding between employers and the union, and to secure the establishment of recognised and permanent machinery for negotiation with employers;*
- (e) To provide the opportunity for members to participate in the Union;”*
(bold, underline & italic, Panel emphasis)

WUSI Constitution Schedule Interpretation has this meaning for “member”;

“means a person who is registered as a member of the Union in the register of members maintained under Article 4(3).” (Italic Panel emphasis)

14. With the above citations of WUSI’s Constitutions, the Preamble, Objects and Schedule the Panel has noted that WUSI;
 - i. Recognises the overall aim of the trade union movement in Solomon Islands to protect and advance the interest of workers throughout the whole nation,
 - ii. Secures the complete organisation in the Union of all persons employed as workers or employees of any skill level in any entity, firm or other undertaking, or for which there is no recognised trade union representation,
 - iii. Membership is by registration through paying of a prescribed fee.
15. The Panel has also noted from WUSI’s Constitution that the criteria for becoming a member are as follows;
 - a) Resident in Solomon Islands (Art. 4.1(a),
 - b) 21 years old and over (Art. 4.1(b),

- c) Employed or employee of any skill level in any entity, firm or other undertaking (Art. 2.1(a),
- d) Paid prescribed fee (Art. 4.2(a).

16. The Panel is now able to answer the question “who is the word “OTHERS” referring to in Article 6.1 (b) (v) (4) of WUSI’s Constitution? The answer to the question is found in Article 2.1(a) which uses the word “other” to refer to other types or forms of undertaking or employment and as the following;

“The object of the Union are:

*(a) To secure the complete organisation in the Union of all persons employed as workers or employees of any skill level in any entity, firm or **other undertaking**, or for which there is no recognised trade union representation;*

17. The word “others” in Article 6.1 (b) (v) (4) must therefore refer to the word “other undertaking” in Article 2.1(a) who are employed in any skill level in any entity, firm or other undertaking to mean other members who can be elected to be members of the WUSI National Council.

18. Therefore any person employed in any skill level in any entity, firm or other undertaking in Solomon Islands are eligible for membership of WUSI according to WUSI Constitution and Rules (2014).

19. The question “Whether or not the employees of BSP or similar non-industrial sector can be financial members of WUSI when not complying with its own Constitution?” the Panel answers it in an affirmative form and affirm that WUSI is complying with its Constitution and BSP or similar non-industrial sector employees can be financial members of WUSI after fulfilling the criteria set out above in paragraph 15.

FINDING

- i. WUSI recognises the overall aim of the trade union movement in Solomon Islands to protect and advance the interest of workers throughout the whole nation.
- ii. Panel finds WUSI as complying with its Constitution.
- iii. Any person employed in any skill level in any entity, firm or other undertaking in Solomon Islands are eligible for membership of WUSI if;
 - (a) Resident in Solomon Islands,
 - (b) 21 years old and over,
 - (c) Employed or employee of any skill level in any entity, firm or other undertaking,
 - (d) Paid prescribed fee,

- iv. Employees of BSP or similar non-industrial sector can be financial members of the Union (WUSI).

On behalf of the Panel,

Willy Vaiyu.
Deputy Chairman
Trade Dispute Panel