

**Manitoba Labour Board**

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**ORDER NO. 1405**

**CASE NO. 85/07/LRA**

**IN THE MATTER OF: *THE LABOUR RELATIONS ACT***

**- and -**

**IN THE MATTER OF: An Application by**

**National Automobile, Aerospace, Transportation and General  
Workers Union of Canada (CAW-Canada), Local 144,**

**Applicant,**

**- and -**

**WINNIPEG SOUTH OSBORNE LEGION BRANCH #252  
(Formerly Fort Rouge and Imperial Veterans Legion  
Branch #252),**

**Employer/Respondent.**

<p><b>This Decision/Order has been edited to protect the personal information of individuals by removing personal identifiers.</b></p>
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**WHEREAS:**

1. On February 19, 2007, the National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 144, (the "Union") filed an Application with the Manitoba Labour Board (the "Board") for settlement of a Subsequent Collective Agreement, pursuant to Section 87.1(1) of *The Labour Relations Act* (the "Act").
2. On February 21, 2007, the Board requested certain information from the parties pursuant to Section 87.1(3) of the *Act*, as follows:
  - a. the position of the parties as to whether or not the parties are bargaining in good faith in accordance with Section 63(1) of the *Act*;
  - b. the position of the parties as to whether or not they are likely to conclude a Collective Agreement within thirty (30) days if they continue bargaining; and
  - c. any pertinent documents that may be taken into consideration in accordance with Section 87.1(3) of the *Act*.

3. On March 7, 2007, following an extension of time, the parties, through their respective counsel, filed written submissions with the Board.
4. On March 16, 2007, the Board, following consideration of the Application and the material filed by the parties, advised that:
  - a. the Board was not in a position to make the determinations required by Section 87.1(3) of the *Act* within the mandated 21 day period, based solely on the material filed;
  - b. the Board was exercising its discretion under Section 87.1(4) of the *Act* and delaying making the determination required under Section 87.1(3) of the *Act* until it was satisfied that the party making the Application has bargained sufficiently and seriously with respect to those provisions of the Collective Agreement that are in dispute between the parties;
  - c. the Board wished to hear from the parties on the issue raised under (b); and
  - d. the Application should proceed to hearing on an expedited basis.
5. On March 21 and 22 and April 4, 5 and April 17, 2007, the Board conducted a hearing, at which time both parties appeared before the Board with their respective counsel and presented evidence and argument.
6. The Board, following consideration of material filed, evidence and argument presented, made the following findings in Paragraphs 6, 7 and 8 of Order No. 1397, namely:
  6. The Board, following consideration of material filed, evidence and argument presented satisfied itself of the following:
    - a. the conditions outlined in Sections 87.1(1)(a), (b) and (c) of the *Act* have been met;
    - b. having inquired into the negotiations between the parties, pursuant to Section 87.1(3) of the *Act*, the Board has determined, for the purposes of this Application only, the following:
      - i. the Employer is not bargaining in good faith in accordance with Section 63(1) of the *Act*;
      - ii. the Union is bargaining in good faith in accordance with Section 63(1) of the *Act*; and,

- iii. the parties are unlikely to conclude a collective agreement within thirty days if they continue to bargain; and,
  - e. having exercised its discretion under Section 87.1(4) of the *Act*, the Board determined that, in the factual circumstances prevailing in this case, the Union has bargained sufficiently and seriously with respect to those provisions of the collective agreement that are in dispute between the parties.
7. The Board further determined that, pursuant to Section 87.3(1) of the *Act*, the Union, as the party making the Application, has bargained in good faith in the factual circumstances prevailing in this case.
8. The determinations made by the Board in the foregoing paragraphs on the issue of whether or not either or both parties is/are bargaining in good faith are for the purposes of this Section 87.1 Application only. The unfair labour practice complaints filed by the Union in Case Nos. 799/06/LRA and 7/07/LRA and by the Employer in Case No. 235/07/LRA, under Section 30(1) of the *Act*, alleging, *inter alia*, a failure to bargain in good faith under Section 63(1) of the *Act* on the part of the Employer or the Union, as the case may be, will be determined on the basis of the evidence adduced and argument presented in those proceedings.
7. As a result of the foregoing findings, the Board, on May 15, 2007, issued Order No. 1397, allowing the Application and ordered that:
  1. the Employer shall immediately terminate the lockout which commenced on December 18, 2006;
  2. the Employer shall reinstate the employees who were locked out in the employment they had at the time the lockout commenced in accordance with Section 87(5) of the *Act*, the operative portion of which Section provides:

*...the employer shall reinstate the employees in the unit in the employment they had at the time the strike or lockout commenced*



- c. any pertinent documents that may be taken into consideration in accordance with Section 87(6)(a) of the *Act*; and
  - d. any other matters which, in the opinion of each party, might assist the Board in determining the terms and conditions to be included in the Collective Agreement, which would be fair and reasonable in the circumstances.
9. On June 28, 2007, following an extension of time, the parties, through their respective counsel filed written submissions with the Board in which each of them identified the provisions from the previous Collective Agreement that were not in dispute and could be incorporated into the new Collective Agreement.
  10. On July 6, 2007, the Employer, through counsel, filed its Reply to the Applicant's submission.
  11. Based on the material filed by the parties, the following issues remained in dispute:
    - Article 3 - Union Security - 3:08**
    - Article 5 - Grievance Procedure - 5.06 and 5.16**
    - Article 6 - Seniority - 6.02 and 6.05(d)**
    - Article 8 - Hours of Work - 8.02, 8.05(c), 8.12 and 8.14**
    - Article 9 - Wages**
    - Article 12 - Vacations - 12.08**
    - Article 15 - Union Business - 15.04, 15.05 and 15.06**
    - Article 18 - Safety - 18.01**
    - Article 19 - Closure - 19.01**
    - Article 21 - General 21.04**
    - Article 22 - Benefits 22.01, and 22.02**
    - Article 23 - Termination and Renewal - 23.01**
    - Schedule "A" - Rates of Pay**
    - Letter of Understanding - Human Rights Training Program**
    - Letter of Understanding - Summer Hours**
  12. On July 17, 2007, counsel for the Employer advised the Board that he would not be attending the hearing scheduled by the Board and that the Employer would be appearing and making representations on its own behalf.
  13. On July 18 and 19, 2007, the Board conducted a hearing, at which time the Applicant and the Employer appeared before the Board, the Applicant being represented by counsel, and presented their submissions and arguments.

14. The Board, following consideration of all material filed, submissions and argument presented, **DETERMINED** the following:
- a. As the previous Collective Agreement expired on August 31, 2005, and the parties did not agree on a term for the Subsequent Collective Agreement for a period longer than one (1) year, the Board, pursuant to Section 87.3(5.1) of the *Act*, is restricted to settling a Subsequent Collective Agreement for a fixed term of six (6) months following the date of settlement.
  - b. The Board accepts all terms and conditions from the previous Collective Agreement which the written submissions of the parties revealed were agreed to by both parties and can, therefore, be incorporated, without change, in the Subsequent Collective Agreement. Further, the Board accepts the revised list of arbitrators (Article 5.06) agreed to by the parties during the hearing.
  - c. As to the issues which remain in dispute, as identified in Paragraph 11 above, the Board is satisfied that, **except for settling new or revised terms for Article 3.08; Articles 21.04(a) and (b); Articles 22.01 to 22.06 (Benefits); and Article 23.01**, the remaining issues referred to the Board are, in the circumstances of this case, deemed to be inappropriate for inclusion in the Subsequent Collective Agreement. Accordingly, the Board adopts the terms and conditions from the previous Collective Agreement as the basis for settling these remaining issues in dispute.

**T H E R E F O R E**

The Manitoba Labour Board **HEREBY IMPOSES** the terms and conditions of a Subsequent Collective Agreement between National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 144, and Winnipeg South Osborne Legion, Branch #252, for the term August 7th, 2007, to February 6th, 2008. A copy of the Subsequent Collective Agreement is attached to and forms part of this Order.

**DATED** at **WINNIPEG**, Manitoba, this 7th day of August 2007 and signed on behalf of the Manitoba Labour Board by

*"Original signed by"*

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**William D. Hamilton, Chairperson**