

Manitoba Labour Board

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DISMISSAL NO. 1809
CASE NO. 832/06/LRA
C/R CASE NO. 677/06/LRA

IN THE MATTER OF: THE LABOUR RELATIONS ACT

- and -

IN THE MATTER OF: An Application by

J.A.,

Applicant,

- and -

MNU Local 10 at HSC,

Respondent/Union,

- and -

HEALTH SCIENCES CENTRE,

Employer,

This Decision/Order has been edited to protect the personal information of individuals by removing personal identifiers.

WHEREAS:

1. On December 29, 2006, the Applicant filed an application with the Manitoba Labour Board (the "Board") seeking various remedies for an alleged unfair labour practice (the "Application") contrary to Section 20 of *The Labour Relations Act* (the "Act"), arising out of his contention that on December 20, 2006, the Respondent failed to fairly represent him. In particular, the Applicant complains that the Respondent has refused to file a grievance on his behalf against his former Employer (the "HSC") for a wrongful termination of employment. The Applicant seeks general but unspecified remedies pursuant to section 31(4) of the *Act* and, in addition, seeks various other remedies which had previously been claimed in an application filed by the Applicant in Case No. 677/06/LRA (the "first application").
2. On January 22, 2007, following an extension of time, the Respondent, through counsel, filed its Reply disputing the Application and asserting that it has not violated Section 20 of

the *Act*. The Respondent claims that the Application is frivolous and an abuse of process because it revisits and repeats matters raised in the first application. The Respondent further states that the Applicant has failed to demonstrate a breach of Section 20 of the *Act* on the material filed and that the Board ought to dismiss the Application without a hearing.

3. On January 22, 2007, following an extension of time, the HSC, through counsel, filed its Reply disputing the Application and asserting, *inter alia*, that the Applicant has failed to demonstrate a *prima facie* case and the Board ought to summarily dismiss the Application without a hearing pursuant to Section 140(8) of the *Act*, or, in the alternative, that if a hearing is held it should be limited in the first instance to the question of whether the Application should be dismissed for failure to disclose a *prima facie* case.
4. Based upon a review of the Application and the Replies, the Board has determined, to its satisfaction, the following:
 - a. The core issue raised in the Application relates to the Applicant's contention that the Respondent has failed to file a grievance on his behalf relating to his termination of employment by the HSC on October 18, 2006.
 - b. The critical date in the Application is December 20, 2006, because, by letter dated December 20, 2006, the Applicant wrote to the Respondent reminding the Respondent of its obligation to file a grievance on his behalf against the HSC for wrongful termination of employment; stating that he had written to the Respondent in the past regarding this issue; and noting the Respondent itself had advised him, in writing, that it would be filing a grievance in respect of the wrongful termination issue. Finally the Applicant complains that he had not received any confirmation that this step had been undertaken by the Respondent.
 - c. In Paragraph 12 of its Reply, verified by statutory declaration, the Respondent states:

In or around December 20th, 2006 the Applicant retained counsel and the Union corresponded with counsel for the Applicant to facilitate the filing of Step II of the wrongful dismissal grievance, pursuant to the governing Collective Agreement. There was no response to such until recently. *On January 17th, 2007 a Step II grievance was filed by the Union as the Applicant has finally signed the said Step II grievance.* At no time did the Union ever ignore the Applicant's requests.

(Italics added.)
 - d. For the purposes of disposing of this Application, the Board accepts the facts pleaded in Paragraph 12 of the Respondent's Reply and, therefore, finds that the Respondent

- has, to the knowledge of the Applicant, filed a grievance challenging the termination of the Applicant's employment.
- e. The Board notes that many issues raised in the Application (aside from the termination of employment issue itself) were raised in the first application (Case No. 677/06/LRA) and, as such, these matters are improperly before the Board. The Board has disposed of the first application by Dismissal No. 1800, and that Order covers all matters as they existed on November 3, 2006.

Based on the Reply filed by the Respondent, the Board is satisfied that the Respondent has filed a grievance on behalf of the Applicant relating to the issue of his termination of employment on October 18, 2006, meaning that the grievance/arbitration procedure has not been exhausted. Therefore, the Application is premature and ought to be dismissed on that basis.

T H E R E F O R E

The Manitoba Labour Board **HEREBY DISMISSES** the Application filed by J.A. on December 29, 2006, for the reason that it is premature.

DATED at **WINNIPEG**, Manitoba, this 8th day of February 2007 and signed on behalf of the Manitoba Labour Board by

"Original signed by"

William D. Hamilton, Chairperson

WDH/dr/rb-s