



Manitoba Labour Board

Suite 500, 5th Floor - 175 Hargrave Street, Winnipeg, Manitoba, Canada R3C 3R8

T 204 945-2089 F 204 945-1296

www.manitoba.ca

DISMISSAL NO. 1924

Case No. 362/08/LRA

C/R Case Nos. 359/08/LRA

379/08/LRA and 34/09/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An Application by

TRIPLE SEAL LTD.,

Applicant/Employer,

- and -

**United Food and Commercial
Workers Union, Local No. 832,**

Respondent/Union.

BEFORE: W.D. Hamilton, Chairperson

R. Glass, Board Member

G. Rodgers, Board Member

SUBSTANTIVE ORDER

WHEREAS:

1. On November 17, 2008, the Employer filed an Application Seeking Remedy for Alleged Unfair Labour Practice (the "Application"), contrary to Section 19 of *The Labour Relations Act* (the "Act"). The essence of the Employer's complaint is that the Respondent/Union (the "Union"), through its representatives in the workplace, intimidated, coerced, and threatened employees during the organizational campaign. In particular, the Employer relied on an incident between two employees which occurred on November 14, 2008. The Employer alleged that David Strickland ("Strickland"), a union organizer, physically assaulted a fellow employee, Mike Seitz ("Seitz") and threatened him and his family for the purposes of preventing employees not supporting the union from freely exercising their rights under the *Act*. As to remedial relief, the Employer seeks various monetary payments from the Union, payable either to Seitz, the Employer, or other employees and also seeks an order of the Board dismissing the Application for Certification due to the Union's illegal conduct or, alternatively, a declaration that the Union's membership support evidence was obtained in violation of the *Act* and not representative of the true wishes of the employees.

2. On November 27, 2008, the Union, through Counsel, filed its Reply, which, in addition to responding to certain of the allegations contained in the Application, requested that the Board order the Employer to provide particulars of certain allegations and, further, be required to specify the source of its information and other particulars, in compliance with the Board's *Rules of Procedure* (the "*Rules*").
3. On December 3, 2008, the Employer, through Counsel, filed a response to the Union's Reply, responding to the particulars requested by the Union in respect of paragraphs 10 to 13 of the Application.
4. On December 9, 2008, the Union, through Counsel, filed documentation asserting that the particulars filed by the Employer did not meet the requirements of the *Rules* and requested that the Board direct the Employer to provide particulars of certain allegations contained in paragraphs 10, 11, 12 and 13 of the Employer's initial Application as well as particulars regarding the allegations contained in paragraphs 4, 5, 6, 8 and 9 of the Employer's letter to the Board dated December 3, 2008.
5. On December 11, 2008, the Board ordered the Employer to file certain particulars on or before December 22, 2008, meeting the requirements of Rules 3(1) and 3(2)(a) of the *Rules*, supported by statutory declaration.
6. On December 23, 2008, the Employer, through Counsel, filed the additional particulars, supported by statutory declaration.
7. On December 30, 2008, the Union, through Counsel, filed a reply to the additional particulars filed by the Employer.
8. On January 5, 2009, the Board advised the parties that the matter shall proceed to hearing on the basis that the further particulars provided by the Employer on December 23, 2008 reflect the extent of the material facts, actions or omissions upon which the Employer intends to rely in support of the general allegations contained in paragraphs 10 and 11 of the Application. The Board therefore accepted that the particulars provided were consistent with the Board's rulings of December 11, 2008. The Board confirmed that this matter would to be heard together with the Application for Certification (Case No. 359/08/LRA) and the Cross-Application seeking remedy for alleged unfair labour practice filed by the Union (Case No. 379/08/LRA) and that the hearing would be held on February 25, 26 and 27, 2009, as then currently scheduled.
9. On February 11, 2009, the Union, through Counsel, on behalf of certain Persons Concerned filed an application seeking various remedies for alleged unfair labour practices committed by the Employer (Case No. 34/09/LRA).

10. On February 19, 2009, the Board determined that the matters raised by the Union in its application filed on February 11, 2009 (Case No. 34/09/LRA) do, in fact, overlap with the existing matters in Case No. 362/08/LRA and Case No. 379/08/LRA, and accordingly, all matters would be heard together in order to avoid unnecessary duplication and a prolonging of the proceedings. In the result, the hearing dates of February 25, 26 and 27, 2009 were adjourned and new dates were set, following consultation with the parties.
11. On June 15, 16, 17, 18, 2009 and August 17, 2009, the Board conducted a hearing, at which time both parties appeared before the Board and presented evidence and argument through their respective Counsel.
12. At the outset of the hearing on June 15, 2009, the Board, having regard to the numerous applications before it, and noting the submissions of Counsel, determined the order of proceedings.
13. The Board, following consideration of material filed, evidence, and argument presented, **DETERMINED** that:
 - a) the Employer has not satisfied its onus to establish, on the balance of probabilities, that the Union either before or after the filing of the Application for Certification on November 13, 2008 (Case No. 359/08/LRA), engaged in either any or a pattern of intimidation, coercion or threats, contrary to Section 19(d) of the *Act*, for the purpose of preventing employees not supporting the Union from freely exercising their rights under the *Act*; and
 - b) in particular, the incident which occurred between the employees Seitz and Strickland on November 14, 2008, shortly after both employees had left work, was an isolated incident between two individual employees. There was no evidence whatsoever of any pattern of misconduct on the part of the Union pre dating the filing of the Application for Certification which would cast any doubt on the membership evidence filed by the Union on November 13, 2008 in support of the Application for Certification. The Board also notes that no employee filed any objection under Section 47(2) of the *Act*.

Accordingly, the Board found that the Application should be **DISMISSED**.

T H E R E F O R E

The Manitoba Labour Board **HEREBY DISMISSES** the Application Seeking Remedy for Alleged Unfair Labour Practice filed by Triple Seal Ltd. on November 17, 2008.

DATED at **WINNIPEG, Manitoba** this 2nd day of October, 2009, and signed on behalf of the Manitoba Labour Board by

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“*W.D. Hamilton*”
W. D. Hamilton, CHAIRPERSON

“*R. Glass*”
R. Glass, Board Member

“*G. Rodgers*”
G. Rodgers, Board Member

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N O T E S

REQUEST FOR REVIEW BY MANITOBA LABOUR BOARD OF A DECISION, ORDER, ETC. OF THE BOARD

- (a) Subsection 143(3) of *The Labour Relations Act of Manitoba*, C.C.S.M. Chapter L10 provides:

The board or a panel of the board may

- (a) review and vary or rescind any decision, order, direction, declaration or ruling that it or another panel has made; and
- (b) rehear a matter that it has heard or that another panel has heard.
- (b) Request for review by the board of its decision, order etc. must be made by application to the board, within ten days of the making of the board decision, order, etc.

Section 17 of the *Manitoba Labour Board Rules of Procedure* (being Manitoba Regulation 184/87R, published in the Manitoba Gazette Part II) provides:

Application for Review of Board Decision

17(1) Where an application is made to the board under subsection 143(3) of the *Act*, to review, rescind, amend, alter or vary any decision, order, direction, declaration or ruling made by it, the applicant, in addition to the material required to be filed under section 2, shall

- (a) file a concise statement of any new evidence with such evidence being verified by statutory declaration;
- (b) file a statement explaining when and how the new evidence became available and the applicant's reasons for believing that the new evidence so changes the situation as to call for a different decision, order, direction, declaration or ruling; and
- (c) in the absence of any new evidence, file a concise statement showing cause why the board should review or reconsider the original decision, order direction, declaration or ruling.

Time Limit for Review

17(2) Except by leave of the board, no application under subsection 143(3) of the *Act* for a review of any decision, order, direction, declaration or ruling made by the board shall be reviewed by the board after more than 10 days have elapsed following the date of the making of the decision, order, direction, declaration or ruling.

JUDICIAL REVIEW OF FINAL DECISION OF THE MANITOBA LABOUR BOARD

Subsection 143(6) of *The Labour Relations Act of Manitoba* provides:

Judicial Review of Final Decision

143(6) Notwithstanding any other Act, a final decision, order, direction, declaration or ruling, but not a procedural, interim or any other decision, order, direction, declaration or ruling, of the board or a panel of the board may be reviewed by a court of competent jurisdiction solely by reason that the board or the panel failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction, if

- (a) the applicant for review has first requested the board or the panel, as the case may be, to review its decision under subsection (3), and the board or the panel has decided not to undertake a review, or has undertaken a review and rendered a decision thereon, or has failed to dispose finally of the request to review within 90 days after the date on which it was made;

- (b) the board has been served with notice of the application and has been made a party to the proceeding; and
- (c) no more than 30 days have elapsed from, as the case may be, the decision by the board or panel not to undertake a review, or the date of the decision rendered by the board or panel on the review, or the expiration of the 90 day period referred to in clause (a).

REASONS FOR DECISION

It is the policy of the Manitoba Labour Board that where a party to the proceedings is adversely affected by an Order or by a decision of the Board, within ten (10) calendar days of the date on which the Board's Order or decision was signed, that party may request the Board in writing to furnish written reasons for its Order or decision. The Board then may consider such request for reasons for its Order or decision and shall notify the requesting party as to whether reasons will be provided.