



Manitoba Labour Board

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ORDER NO. 1465

Case No. 379/08/LRA

C/R Case Nos. 359/08/LRA

362/08/LRA and 34/09/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An Application by

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

Applicant/Union,

- and -

**TRIPLE SEAL LTD., t/a
NORTHWEST GLASS PRODUCTS,**

Respondent/Employer.

**BEFORE: W.D. Hamilton, Chairperson
R. Glass, Board Member
G. Rodgers, Board Member**

SUBSTANTIVE ORDER

WHEREAS:

1. On November 27, 2008, the Applicant/Union (the “Union”) filed a Cross-Application Seeking Remedy for Alleged Unfair Labour Practice (the “Application”), contrary to Section 5(1), 5(3), 6(1) and 17 of *The Labour Relations Act* (the “Act”). In particular, the Union alleged that the posting of a memorandum by the Respondent/Employer (the “Employer”) in the workplace on or about November 15, 2008 (the “Memorandum”) [attached to the Cross Application as Appendix “A”] went beyond what is acceptable communication with employees and constituted an improper attempt by the Employer to unduly influence any certification vote that the Board may order.
2. On December 8, 2008, the Employer, through Counsel, filed its Reply, denying that it acted improperly or inconsistent with the *Act*, and further requested that a representation vote be held.

3. On January 5, 2009, the Board, by way of letter, determined that this matter would be heard together with the Application for Certification (Case No. 359/08/LRA) and the Employer's Application seeking Remedy for Alleged Unfair Labour Practice (Case No. 362/08/LRA) and that the hearing would be held on February 25, 26 and 27, 2009, as then currently scheduled.
4. 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).
5. 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) did, in fact, overlap with the matters raised 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.
6. 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.
7. 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.
8. The Board, following consideration of material filed, evidence, and argument presented, determined that the posting of the Memorandum constitutes an unfair labour practice by the Employer contrary to Section 6(1) of the *Act*. The statements and views expressed by the Employer in the Memorandum are not a form of communication protected by Section 6(3)(f) of the *Act* and, further, the Memorandum goes beyond the permissible limits of freedom of speech contemplated by Section 32(1) of the *Act*. The statements made in the Memorandum, including the clear exhortation to employees to vote "no", in anticipation of a potential vote to be ordered by the Board, constitutes a violation of Section 6(1) of the *Act*.

T H E R E F O R E

1. The Board **DECLARES** that the Employer has committed an unfair labour practice, contrary to Section 6(1) of the *Act* by having posted the Memorandum in the workplace.
2. The Board **ORDERS** that the Employer pay to the Union the sum of \$2,000.00 pursuant to Section 31(4) (f) of the *Act*.
3. The Board **ORDERS** that the Employer forthwith cease and desist from issuing such communications to its employees.
4. The Board **ORDERS** that a copy of this Order be posted at a conspicuous location in its workplace which is accessible to all employees in the bargaining unit covered by Certificate No. MLB-6742.

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

“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.