



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/labour/labbrd

DISMISSAL NO. 1913

Case No. 396/08/LRA

C/R Case No. 327/08/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An Application by

Marielle Huguette Marie Rowan,

Applicant,

- and -

**GOVERNMENT OF MANITOBA – MANITOBA CIVIL
SERVICE COMMISSION “CSC”**

ORGANIZATION & STAFF DEVELOPMENT “OSD”,

Employer/Respondents,

- and -

Manitoba Government and General Employees’ Union,

Interested Party.

BEFORE: W. D. Hamilton, Chairperson

SUBSTANTIVE ORDER

WHEREAS:

1. On December 19, 2008, the Applicant filed an unfair labour practice application (the “Application”) with the Manitoba Labour Board (the “Board”) seeking remedies against the Respondents for alleged unfair labour practices contrary to Sections 5(1) and 5(3) of the *The Labour Relations Act* (the “Act”). The Applicant asserts that the Respondents interfered with her right to be a member of a union, namely, the Manitoba Government and General Employees’ Union (the “Union”) and thereby denied her the right to be represented by the Union in respect of certain events described in Paragraph 2 of the Application while she was employed in an OSD Clerk 3 position at the Civil Service Commission on a term basis from April of 2007 to on or about June 30, 2008. As to remedial relief, the Applicant requests that the Board order one of the following remedies, namely, that the Respondent Government of Manitoba employ the Applicant in an equivalent or higher position; that the Respondents pay the Applicant compensation for diminution of income; or that the Respondents cease providing unfair and uncorroborated work references.

2. On January 6, 2009, the Union, through counsel, requested that the Board provide the Union with copies of the pleadings in Case No. MLB 327/08/LRA.
3. On January 9, 2009, the Board advised the parties that, having regard to the particular circumstances of this case, copies of the pleadings in Case No. 327/08/LRA will be provided to the Union.
4. On January 13, 2009, following an extension of time, the Union, through counsel, filed its Reply, in which it stated that the staff of the Manitoba Civil Service Commission are specifically excluded from the terms of the Master Agreement between the Union and the Province of Manitoba (see Appendix "A" to the Master Agreement). The Union says that, while the Applicant was covered by the Master Agreement in a prior position, once she became employed by the Civil Service Commission she was employed in a non-unionized position outside of the scope of the Master Agreement.
5. On January 13, 2009, following an extension of time, the Respondents, through counsel, filed their Reply disputing the Application and asserting, *inter alia*, that staff employed by the Civil Service Commission, which includes OSD, are excluded under the Master Agreement, as bargained, and are therefore not entitled to union representation. The Respondents request that the Board decline to take any further action on the Application pursuant to Section 30(3)(c) of the *Act* and dismiss the Application.
6. On January 28, 2009, the Applicant filed a reply responding to the Replies of the Union and the Respondents.
7. On January 29, 2009, the Union, through counsel, objected to the reply filed by the Applicant on January 28, 2009, asserting that it should not be considered by the Board because the filing of a reply to a reply is not sanctioned by the Rules of the Board.
8. On January 30, 2009, the Respondents, through counsel, asserted that the Rules of the Board do not permit "replies" to a Reply and, therefore, the Respondents are not required to file a response to the Applicant's "reply".
9. The Board, following consideration of the material filed by the parties, has determined the following:
 - a. A hearing is not necessary in that the issues raised in the Application can be determined by a review of the written material filed by the parties.
 - b. After the Applicant accepted the term position with the Civil Service Commission in April of 2007 as an OSD Clerk 3, she was excluded from the terms of the Master Agreement between the Union and the Province of Manitoba covering the term March 18, 2006 to March 26, 2010 by reason of Appendix "A" to the Master Agreement.

- c. Appendix "A" to the Master Agreement excludes many classifications from the scope of the Master Agreement on the basis that such exclusions are "...mutually agreed to between the parties as managerial and/or confidential exclusions". One of the listed exclusions is "...Staff of the Civil Service Commission".
- d. In accordance with well-accepted labour relations principles, the Applicant was not entitled to union representation, as a matter of right, in respect of her dealings with the Respondents at the material times referred to in the Application and while she was employed as an OSD Clerk 3 by the Civil Service Commission. In the result, the Applicant has not established a *prima facie* case that the Respondents interfered with one or more of the rights referred to in subsection (1) of Section 5 of the *Act*.

Accordingly, the Board declines to take any further action on the Application pursuant to Section 30(3)(c) of the *Act*.

T H E R E F O R E

The Manitoba Labour Board **HEREBY DISMISSES** the Application filed by Marielle Huguette Marie Rowan on December 19, 2008.

DATED at **WINNIPEG**, Manitoba, this **17th** day of **June 2009** and signed on behalf of the Manitoba Labour Board by

"W.D. Hamilton"

W. D. Hamilton, Chairperson

WDH/mr

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.

Xpress Post to:

- Marielle H. M. Rowan
- Mr. D. Cieszynski, Director of Labour Relations, Province of Manitoba, Treasury Board Secretariat, 811-155 Carlton Street, Winnipeg MB R3C 3H8
- Manitoba Civil Service Commission, Organization & Staff Development, 935-155 Carlton Street, Winnipeg MB R3C 3H8
- Mr. Robert W. Olson, Thompson Dorfman Sweatman LLP, Barristers and Solicitors, 2200-201 Portage Avenue, Winnipeg MB R3B 3L3
- Mr. D. Lewis, Manitoba Government and General Employees' Union, 601-275 Broadway, Winnipeg MB R3C 4M6