

DISMISSAL NO. 1918

CASE NO. 131/09/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An Application by

Darren Berg,

Applicant,

- and -

THE CITY OF WINNIPEG,

Employer,

- and -

Canadian Union of Public Employees, Local 500,

Respondent/Union.

SUBSTANTIVE ORDER

WHEREAS:

1. On May 7, 2009, the Applicant filed an Application (the "Application") with the Manitoba Labour Board (the "Board") seeking various remedies for an alleged unfair labour practice contrary to Section 20 of *The Labour Relations Act* (the "Act"). The Applicant alleges that, in respect of a number of events relating to the reclassification of certain persons, including himself, from the Utility "C" classification to the Building Services I classification, pursuant to a supplementary agreement reached between the Employer, The City of Winnipeg (the "City") and the Respondent Union (the "Union") in 2001, the Union, for the reasons outlined in the Application, breached the provisions of Section 20(b) of the *Act*. The Applicant's basic assertion is that, from January 2001, when the reclassification(s) occurred, up to and including November 27, 2006, when the Applicant attempted to file a grievance concerning the previous reclassification of the Utility "Cs," the Union or various of its representatives acted in a discriminatory manner and in bad faith.
2. As to remedial relief, the Applicant requests that the RCMP be contacted and that an audit be performed on "gag orders" relating to certain payments which were allegedly made to individuals for other than medical purposes; that charges be laid against "... the appropriate individuals that have made these payments and received them" and that, in

the event the Union is found to be corrupt, that the Union be decertified. Further, the Applicant offers various explanations/reasons for "... the delay in filing this complaint."

3. On May 25, 2009, following an extension of time, the Union, through counsel, filed its Reply, asserting that the Application is untimely and ought to be dismissed for undue delay, pursuant to Section 30(2) of the *Act*. The Union asserts that the Applicant has not provided any rational basis for the delay in filing the Application and noted that the most recent allegation against the Union occurred more than two years ago.
4. On May 20, 2009, the City advised the Board that it took no position regarding the Application.
5. Based on a review of the Application and the Reply of the Union, the Board has determined, to its satisfaction, the following:
 - a. A hearing is not necessary in that the issues raised can be determined by a review of the written materials filed by the parties.
 - b. The core events upon which the Applicant relies crystallized in 2001 after the Supplementary Agreement was concluded between the City and Union in January 2001 [Ex. "A" to the Application]. The other events to which the Applicant refers in the Application occurred in 2003 and 2004, and the latest event occurred on or about November 27, 2006, when the Applicant prepared a grievance [Exhibit "D" to the Application]. This grievance, on its face, referred to the events which had transpired from 2001 to 2005.
 - c. The explanations offered by the Applicant for what is admitted to be a delay are inadequate in that all of the events upon which the Applicant relies, commencing in 2001, were clearly known to the Applicant at those times and he was aware of his rights under the applicable collective agreement.
 - d. In all of the circumstances, the Board finds the Applicant has unduly delayed the filing of the Application. In reaching this conclusion, the Board has relied on its decisions as to what constitutes "unreasonable delay" under Section 30(2) of the *Act* [see the summary of these decisions in *James Kepron - and - Brandon University Faculty Association - and - Brandon University* (2004), M.L.B. Case No. 468/03/LRA, pp. 36 - 40]. The last event upon which the Applicant relies occurred more than two years prior to the filing of the Application.
 - e. Accordingly, the Board declines to take any further action on the Application, pursuant to Section 30(3) of the *Act* on account of unreasonable delay in the filing of the Application. In the result, the Application is to be dismissed.

T H E R E F O R E

The Manitoba Labour Board **HEREBY DISMISSES** the Application filed by Darren Berg on May 7, 2009.

DATED at **WINNIPEG**, Manitoba, this **22nd** day of **July 2009** and signed on behalf of the Manitoba Labour Board by

"W.D. Hamilton"

W.D. Hamilton, Chairperson

WDH/dr

NOTES

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:

Board review.

143(3) 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.