

ORDER NO. 1457

CASE NO. 157/09/LRA

C/R CASE NO. 130/09/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An Application by

The Construction & Specialized Workers' Union, Local 1258,

Intervenor/Applicant,

- and -

International Union of Operating Engineers, Local 987,

Respondent,

- and -

LOCKERBIE & HOLE EASTERN INCORPORATED,

Employer.

WHEREAS:

1. By letter dated May 20, 2009, the Manitoba Labour Board (the "Board"), issued certain rulings in respect of the Application for Certification and the Notice of Intervention filed by the International Union of Operating Engineers, Local 987, (the "IUOE") and The Construction & Specialized Workers' Union, Local 1258, (the "Labourers"), respectively, in Case No. 130/09/LRA, one of which rulings (hereinafter referred to as the "Ruling") stated as follows:

As to the Intervenor's alternative assertion that the Applicant "... engaged in or committed acts of fraud, intimidation or coercion to compel or induce ..." persons to join the Applicant, the Board notes that no particulars of this alleged misconduct meeting the requirements of Rules 3(1) and 3(2) of the *Manitoba Labour Boards Rules of Procedure* have been provided. Therefore, the Board accepts the Applicant's position that no *prima facie* case has been established and these assertions are dismissed.

2. On May 29, 2009, the Labourers, through counsel, filed an application for review and reconsideration (the "Review Application") of the Ruling on various grounds and sought alternative remedies from the Board.

3. On June 9, 2009, following an extension of time, the IUOE, through counsel, filed its Reply, contesting the Review Application on various grounds and requesting an order of the Board dismissing the Review Application and upholding the Ruling without the holding of a hearing.
4. The Employer did not file a reply to the Review Application.
5. The Board, having reviewed the Review Application and the Reply of the IUOE, has **DETERMINED** the following:
 - a. The Review Application can be disposed of on the basis of the written material filed by the parties without the necessity of an oral hearing.
 - b. Although the Board has concerns respecting the manner in which the general allegations of fraud, coercion and intimidation were raised as an "alternative" position in the Labourers' Notice of Intervention in Case No. 130/09/LRA, the Board, in the particular circumstances of this case, is prepared to accept the essence of the Labourer's explanation that many of the particulars of the alleged conduct complained of were not available until the afternoon of May 14, 2009.
 - c. In the particular circumstances of this case, the Board is satisfied that the requirements of Rules 17(1)(a) and (b) of the *Manitoba Labour Boards Rules of Procedure* have been met and that the Board ought to review the Ruling in Case No. 130/09/LRA where it found that no *prima facie* case has been established and that the general assertions ought to be dismissed on that basis. Further, the Board is also satisfied that Rule 17(c) would be a basis to review the Ruling.

T H E R E F O R E

The Board:

- a. **RESCINDS** the Ruling made in its letter of May 20, 2009, to the effect that the Labourers' assertion the IUOE, "... engaged in or committed acts of fraud, intimidation or coercion to compel or induce..." persons to join the IUOE be dismissed on the basis that no *prima facie* case has been established;
- b. **RULES** that the Labourers be and are hereby allowed to amend its Notice of Intervention in Case No. 130/09/LRA to include the particulars contained in its Review Application and that the Labourers shall be limited to proving its assertions based on the particulars now provided;

- c. **RULES** that the IUOE is entitled to rely on its answers to the allegations, as contained in paragraphs 8 to 13 of its Reply to the Review Application or, alternatively, it may provide a more complete answer to the Board **on or before July 10, 2009**; and
- d. in making the foregoing determinations, the Board is allowing these allegations, for which particulars have now been provided, to be placed before it at the hearing in Case No. 130/09/LRA, scheduled to proceed on August 12 and 13, 2009, (to be continued on September 30, 2009, and October 1 and 2, 2009) on the basis that the onus to prove said allegations rests with the Labourers.

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

“original signed by”

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.