

DISMISSAL NO. 1922
CASE NO. 193/09/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An Application by

Michael Chartrand,

Applicant,

- and -

Amalgamated Transit Union, Local 1505,

Respondent,

- and -

CITY OF WINNIPEG AND EMPLOYEE BENEFITS BOARD,

Employer.

BEFORE: W.D. Hamilton, Chairperson

SUBSTANTIVE ORDER

WHEREAS:

1. On June 25, 2009, the Applicant filed an application (the "Application") with the Manitoba Labour Board (the "Board"), alleging that the Respondent Union (the "Union") has breached Section 20 of *The Labour Relations Act*, (the "Act"). The essence of the Applicant's claim is that, after a settlement was concluded with the Employer, the City of Winnipeg (the "City"), in respect of a grievance filed by the Applicant and which was processed through to a settlement with the assistance of the Union, the Union has failed to assist the Applicant in filing and processing a new application for long-term disability benefits with the Employee Benefits Board (the "EBB"). As to remedial relief, the Applicant asserts that the Union should be held responsible, "... to get me a hearing with the E.B.B. including a proper assessment of further medical information that was observed by WCB and HRC." Further, the Applicant asserts that the Union should be held financially responsible for any loss of remuneration he ought to have received from the EBB since 2006. The Applicant also requests that it should be made clear to all employees past and present that they are entitled to apply for disability insurance and that they have legal options available if entitlement to benefits is denied.

2. On July 6, 2009, the EBB filed its Reply asserting that it should be removed as a party from the Application because it is the City and not EBB which is the Employer. The EBB administers the Winnipeg Civic Employees Program through an independent board of trustees, whose role it is to administer pension and disability plans. The EBB states that it does not intend to appear at any proceeding as it is not the employer.
3. On July 3, 2009, the City filed its Reply advising that it took no position in respect of the Application. The City stated that the EBB is not the employer of the Applicant.
4. On July 14, 2009, following an extension of time, the Union, through counsel, filed its Reply, denying that it had violated Section 20 of the *Act* as alleged or at all and, further, asserting that the Applicant is not entitled to any of the remedies sought. The Union says that it filed a grievance on behalf of the Applicant in December 2003 [Attachment "A" to the Reply] in respect of an alleged failure by the City to properly accommodate the Applicant and that, following the appointment of an arbitration board and the scheduling of hearing dates in March and April 2008, a settlement was concluded between the City, the Union and the Applicant whereby the grievance was withdrawn upon certain payments being made (the "Settlement Agreement"). The Applicant signed a release in favour of the City in relation to the period 2003 to 2005 as part of the resolution of the grievance. Further, the Union alleges that, by the time the Settlement Agreement was executed on May 23, 2008, the Applicant had been accommodated into Clerk A position with the City and, as such, was no longer a member of the Union. Rather, from and after that time, the Applicant has been a member of the Canadian Union of Public Employees, Local 500 ("CUPE"), which represents employees of the City who are in the Clerk A classification. As to the Applicant's claim for assistance from the Union regarding the claiming of long-term disability benefits, the Union asserts that any long-term disability benefits to which any employee, including the Applicant, may be entitled are separate benefits provided to all City employees, as administered by the EBB. Such benefits are not provided under the terms of the collective agreement to which the Union is a party with the City.
5. On July 22, 2009, the Applicant filed a reply to the Replies of the Union and the EBB.
6. On July 27, 2009, the Board advised the parties that the *Manitoba Labour Board Rules of Procedure* do not provide for the filing of a reply to a Reply and that the Board will determine what weight, if any, ought to be placed on the reply filed by the Applicant.
7. On August 5, 2009, the Union, through counsel, requested that the Board reject the Applicant's reply filed on July 22, 2009, and that it not be taken into account when considering whether the matter warrants further action by the Board other than a dismissal.
8. Based on a review of the Application and the Replies of the parties, the Board has determined, to its satisfaction, the following:
 - a. A hearing is not necessary and the issues raised can be determined by a review of the written materials filed by the parties.

- b. Based on admissions made and documentation contained in the Application itself, the Applicant does not dispute that, in 2006, he was accommodated from his transit-operator position to a Clerk A position due to his being unable to continue to function as a transit operator. The Applicant admits that he was, "... accommodated into another position as a Clerk A ...," and there is no dispute that such a position would fall within the jurisdiction of CUPE under its collective agreement with the City.
- c. That the Applicant is now represented by a union other than the Union, the Applicant, when answering the following question in the Application, "When did the bargaining agent's alleged violation come to your attention?" asserts that:
- Sometime in March I asked my new union what to do and they said I needed a new application form. I requested the form but Pat Sawka refused to send it.
- (Emphasis added by the Board.)
- d. The material filed with the Application reveals that the Applicant was accommodated in 2006 based upon a recognition by the HRC and WCB that he was unable to drive transit buses.
- e. When the Applicant was a member of the Union, as a transit driver, the Union filed a grievance on his behalf on December 12, 2003, in respect of the Applicant's request for accommodation and the issues raised by that grievance were ultimately resolved by the Settlement Agreement between the City, the Union and the Applicant, signed on March 23, 2008. Part of the Settlement Agreement was the execution of a release in favour of the City by the Applicant [see Attachment "B" to Union's Reply].
- f. The Board accepts that the primary position being advanced by the Applicant is that he ought to have the right to return to a hearing before the EBB, where new medical evidence relating to his disability claim and his current medical condition can be filed and assessed by the EBB. These requests have been denied by the EBB.
- g. The Board is satisfied that the EBB is not the employer of the Applicant and that the EBB functions as an independent entity for the purposes of administering various City benefit programs including the long term disability plan. Whatever remedies and/or rights of appeal the Applicant may have in respect of the administration of such employee benefit plan by the EBB, such rights do not arise under the terms of the *Act* or the collective agreement and the Board has no jurisdiction in respect of proceedings that may be brought before the EBB.
- h. The Applicant is no longer a member of the bargaining unit under the collective agreement between the City and the Union and has not been a member of that bargaining unit since May 2008 (at the latest).

- i. In respect of the claims being advanced in the Application, the Union does not owe the Applicant a duty pursuant to Section 20 of the *Act* as it is no longer his bargaining agent. As the long term disability plan for City employees is administered by the EBB and as the Applicant has not been a member of the Union's bargaining unit since his transfer to the Clerk A position, it cannot be said that the Applicant is asserting any rights under the terms of the collective agreement between the Union and the City and, for there to be a violation of Section 20, even in a *prima facie* sense, the Union must be representing the rights of the Applicant under the collective agreement between the Union and the City.
 - j. The Applicant has failed to establish a *prima facie* case in that, in respect of the matters of which he complains in the Application, there are no facts pleaded in the Application, which, if proven, could lead the Board to conclude that the Union has acted in a manner which was discriminatory, arbitrary or in bad faith in representing the Applicant regarding any rights arising under the Union's collective agreement with the City.
9. Based on the foregoing findings, the Board declines to take any further action on the Application pursuant to Section 30(3) of the *Act*. 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 Michael Chartrand on June 25, 2009.

DATED at **WINNIPEG**, Manitoba, this **19th** day of **August 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.