

DISMISSAL NO. 1920
CASE NO. 195/09/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An Application by

Fred Tait,

Applicant,

- and -

**INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 987,**

Respondent Union.

SUBSTANTIVE ORDER

WHEREAS:

1. On June 29, 2009, the Applicant filed an Application (the "Application") with the Manitoba Labour Board (the "Board"), pursuant Section 131.1(5) of *The Labour Relations Act* (the "Act"), alleging that the financial statement (the "Statement") furnished to him by the Respondent Union (the "Union"), on or about May 8, 2009, is inadequate in that it did not contain an attachment signed by the Auditor describing the method of audit and, therefore, the Applicant considered the Statement to be unverified. The Applicant alleges that the Statement did not provide a list of the Union's assets or the appreciated or depreciated value of such assets or liabilities. Further, in view of the delay in providing the Statement, the Applicant has requested that the Board establish a time frame for the Union to provide to its members a copy of the financial statement for the 2008 calendar year.
2. On July 13, 2009, following an extension of time, the Union, through counsel, filed its Reply disputing the Application and requesting that it be dismissed. The Applicant says that, on or about May 8, 2009, a copy of the Statement outlining the Union's affairs to the end of the 2007 fiscal year was, as required by the *Act*, furnished to the Applicant and that the Statement was certified to be true by the Financial Secretary and the Treasurer of the Union. The Union asserts that Section 132.1(1) of the *Act* does not require that a financial statement must be signed by a union's auditor or that the method of audit must be described. The Union asserts that the Statement complies with the requirements of the *Act*. The Union further submits that an annual financial statement does not have to list of all assets owned by a union; disclose which assets were bought and sold in each year; or contain a summary of the appreciation or depreciation of assets. As to the Applicant's request that the Board establish a time frame for the furnishing of the 2008 financial statement, the Union says that there is no jurisdiction in the Board to deal with this issue as the only complaint filed by the Applicant was in respect of the 2007 Statement.

3. The Board, following consideration of material filed by the parties, has determined the following:
 - a. An oral hearing is not necessary as this matter can be determined by a review of the written material filed by the parties.
 - b. Pursuant to a request made by the Applicant, there is no dispute that, on May 8, 2009, the Applicant received a document entitled, *Financial Statement of the Union Income and Expenditures for the Year Ended December 31, 2007 Net Financial Position* (i.e. the Statement), in which revenues and expenses were listed. The Statement discloses the net asset position of the Union at the beginning and end of 2007. The Statement is signed by the Financial Secretary and Treasurer of the Union and is certified to be a, "... true and correct statement of the Union's income and expenditures including net financial position for the year ending December 31, 2007."
 - c. The matters at issue fall to be determined by Sections 132.1(1) and 132.1(2) of the *Act*, which state, as follows:

Union to give financial statement to members
132.1(1) At the request of a member, every union shall give the member, at no charge, a copy of a financial statement of the union's affairs to the end of its last fiscal year. The statement must be certified to be a true copy by the union's treasurer or other officer responsible for handling and administering its funds.

Content of financial statement
132.1(2) A union's financial statement must set out its income and expenditures for the fiscal year in sufficient detail to disclose accurately the union's financial condition and operation and the nature of its income and expenditures.
 - d. There is no requirement in Section 132.1 of the *Act* that a union's financial statement must be signed by an auditor and/or that the method of audit must be described. The *Act* requires that a statement must be certified to be a true copy by the union's treasurer or other officer responsible for handling and administering its funds. In this regard, the Board is satisfied that the Statement, as certified by the Financial Secretary and Treasurer of the Union, fulfills this requirement of the *Act*.
 - e. The Board is further satisfied that the Statement adequately sets out the Union's income and expenditures for its 2007 fiscal year and adequately discloses the Union's financial condition and operation and the nature of its income and expenditure, as required by Section 132.1(2) of the *Act*. The Statement is not inadequate by reason of the fact that it does not disclose a full list of the Union's assets or the appreciated or depreciated value of such assets or liabilities.

- f. Based on the foregoing, the Board is satisfied that the Statement provided to the Applicant meets the requirement of Section 132.1(2) of the *Act*.
4. In respect of the Applicant's request that the Board establish a time frame for the Union to provide its members with a copy of the financial statement(s) for the 2008 calendar (fiscal) year, the Board declines to do so because the basis of the Application is related to the adequacy of the (2007) Statement provided by the Union and this issue has been addressed by the Board in Paragraph 3 of this Order.

T H E R E F O R E

The Manitoba Labour Board **HEREBY DISMISSES** the Application filed by Fred Tait on June 29, 2009.

DATED at **WINNIPEG**, Manitoba, this **24th** 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 any panel of the board may review, rescind, amend, alter or vary any decision, order, direction, declaration or ruling made by it, and may rehear any matter if it considers it advisable to do so.
- 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.