

ORDER NO. 1463
Case No. 204/09/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An Application by

**United Food and Commercial Workers Union, Local No. 832,
Applicant,**

- and -

**HOWARD JOHNSON HOTEL,
Employer/Respondent.**

BEFORE: W. D. Hamilton, Chairperson

SUBSTANTIVE ORDER

WHEREAS:

1. On July 2, 2009, the Applicant filed an application (the "Application") with the Manitoba Labour Board (the "Board") seeking various remedies for alleged unfair labour practices committed by the Respondent, contrary to Section 26 of *The Labour Relations Act* (the "Act"). The Applicant alleges that since at least November of 2008 and continuing to the date of the Application, the Respondent has failed to meet and commence collective bargaining; has failed to bargain in good faith and has failed to make a reasonable effort to conclude a renewal of the collective agreement between the parties (the "Agreement") which expired on October 31, 2008. As to remedies, the Applicant seeks various orders, as outlined in Paragraph 17 of the Application.
2. The Application was served on the Respondent on July 10, 2009 together with a Notice of Hearing setting Friday, August 7, 2009 as the hearing date.
3. In accordance with Rule 22(1) of the Board's Rules of Procedure (the "Rules"), a party wishing to reply to the Application must file a reply, verified by statutory declaration, within 7 days after service of the Application.
4. In the normal course, the Respondent was required to file a reply to the Application on or before Tuesday, July 21, 2009, unless an extension of time was sought and granted by the Board.

5. No reply to the Application was filed by the Respondent and the Board has received no verbal or written communication from the Respondent.
6. On July 29, 2009, the Board, by letter of some date, advised the parties that the hearing set for August 7, 2009 was cancelled. The Board noted that no reply had been filed by the Respondent nor had the Respondent returned telephone messages left by the Registrar of the Board, to enquire into the filing of said reply. The Board advised the parties that, in the absence of the Respondent filing a reply, specifically admitting, denying or explaining each of the statements made in the Application, as contemplated by Rule 22(2) of the Rules, the matter would be placed before the Board for its consideration, based on the material filed and, further, that the Board may conclude that the Application is not disputed or opposed.
7. The Respondent did not respond to the Board's letter of July 29, 2009.
8. Based on a review of the Application, and noting that no Reply has been filed by the Respondent opposing or disputing the allegations raised, an oral hearing will not be convened as the facts recited in the Application, verified as they are, by statutory declaration, stand uncontested.
9. In summary form, the Application records and the Board accepts the following facts:
 - (i) the Applicant gave proper notice to negotiate a renewal of the Agreement;
 - (ii) the Applicant sent the Respondent a copy of the Applicant's proposals on or about November 4, 2008;
 - (iii) the Applicant made numerous attempts throughout December, 2008 and January, 2009 to contact the Respondent to schedule dates to begin negotiations, without receiving any response from the Respondent;
 - (iv) attempts by the Applicant to schedule negotiations with the Respondent during February, 2009 were unsuccessful;
 - (v) at the request of the Applicant, a conciliation officer was appointed on March 2, 2009;
 - (vi) after the conciliation officer did not receive any response from the Respondent, despite several attempts by the officer to contact the Respondent, the conciliation officer scheduled May 7, 2009 for a conciliation meeting with both parties;
 - (vii) on May 11, 2009, the conciliation officer attended at the Respondent's premises and was advised by a representative of the Respondent that the

Respondent would contact the Applicant directly to resolve all outstanding issues in the current round of bargaining and that the Respondent was not interested in scheduling a meeting through Conciliation and Mediation Services. In response, the conciliation officer gave the Respondent until May 13, 2009 to contact the Applicant. The Respondent never contacted the Applicant at all;

- (viii) on May 14, 2009 the conciliation officer, in a letter sent to the Applicant and the Respondent, confirmed that the Respondent refused to cooperate in the scheduling or the attendance of any further scheduled conciliation meetings.
10. In the context of the material facts recited in Paragraph 9, verified, as they are, by statutory declaration and which facts stand uncontested, the Board has determined that, in failing to respond to or meet with the Applicant and/or the conciliation officer, the Respondent has failed to bargain collectively in good faith and make every reasonable effort to conclude a renewal or revision of the Agreement, contrary to Section 63(1) of the *Act*;

T H E R E F O R E

1. The Board **DECLARES** that the Respondent has committed an unfair labour practice, contrary to Section 26 of the *Act*, by having failed to meet at all with the Applicant or its duly authorized representatives and, by reason thereof, has failed to bargain collectively in good faith and make every reasonable effort to conclude a renewal or revision of the Agreement.
2. The Board **DIRECTS** that the Respondent forthwith but, in any event, not later than 10 days from the date of this Order, meet with the Applicant and commence collective bargaining in good faith and make every reasonable effort to conclude a renewal of the Agreement.
3. The Board **ORDERS** that the Respondent pay to the Applicant the sum of \$2,000.00 pursuant to Section 31(4)(e) of the *Act*.
4. The Board **ORDERS** that the Respondent forthwith cease and desist the conduct that has been determined by the Board to constitute an unfair labour practice.
5. The Board **ORDERS** that a copy of this Order be posted at its premises in a conspicuous location which is accessible to all employees in the bargaining unit covered by the Agreement.

DATED at WINNIPEG, Manitoba, this **10th** day of **August 2009** and signed on behalf of the Manitoba Labour Board by

"W.D. Hamilton"

W. D. Hamilton, Chairperson

WDH/mr

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:

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.