

Manitoba



MANITOBA LABOUR BOARD

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DISMISSAL NO. 1923

Case No. 227/09/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An Application by

Bryan McDonald,

Applicant,

- and -

**United Steel, Paper and Forestry, Rubber, Manufacturing,
Energy, Allied Industrial and Service Workers International
Union (United Steelworkers) Local 9074-33,**

Respondent/Certified Bargaining Agent,

- and -

BUHLER TRADING INC.,

Employer.

BEFORE: C.S. Robinson, Vice-Chairperson

SUBSTANTIVE ORDER

WHEREAS:

1. On July 30, 2009, the Applicant filed an Application Seeking Cancellation of Certificate No. MLB-6703, issued May 4, 2009.
2. On August 6, 2009, the Employer filed its Nominal Roll in accordance with Rule 12(3) of the *Manitoba Labour Board Rules of Procedure*.
3. On August 14, 2009, the Applicant filed correspondence with the Board, taking issue with the Employer's Nominal Roll, in particular, contesting the number of employees noted on the Employer's Nominal Roll. The Applicant further stated that a number of employees' names noted on the Employer's Nominal Roll were not employed on the date of Application and may be on lay-off status.

4. On August 14, 2009, the Certified Bargaining Agent, through Counsel, following an extension of time, filed its Reply contesting the application on the basis that the Applicant's petition demonstrates support of fewer than 50% of the members of the bargaining unit and therefore the Application should be dismissed.
5. On August 18, 2009, the Applicant filed correspondence with the Board in response to the Certified Bargaining Agent's correspondence dated August 14, 2009.
6. On August 19, 2009, the Certified Bargaining Agent, through Counsel, filed further correspondence with the Board stating that the laid-off employees have a continuing interest in the bargaining unit, and have significant rights under the collective agreement (including rights of recall and continuing seniority rights) and maintained its position that these employees should be considered to be within the bargaining unit represented by the Certified Bargaining Agent for the purposes of subsection 49(1) of *The Labour Relations Act*.
7. On August 25, 2009, the Certified Bargaining Agent, through Counsel, filed further correspondence with the Board, including a copy of the dues check-off list information, and maintained that the Application should be dismissed.
8. On August 27, 2009, the Applicant filed further correspondence with the Board in reply to the Certified Bargaining Agent's correspondence of August 25, 2009.
9. The Board, following consideration of all material filed, 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. The Employer's Nominal Roll lists 59 employees as of the date of the Application, 25 of whom are on "lay-off status";
 - c. In *Aspen Industries Manitoba and Industrial, Wood and Allied Workers, Local 324 and Hyshka*, Case No 374/99/LRA, the Board determined that "employees, who were on layoff and who had recall rights under the collective agreement", as of the date of filing a Decertification Application, are "employees for the purposes of determining the level of support" pursuant to *The Labour Relations Act*;
 - d. The individuals listed as being on "lay-off status" in the Employer's Nominal Roll all maintain rights under the collective agreement in force between the Union and the Employer, including seniority rights under Article 10 and rights relating to recall under Article 11;
 - e. The above-noted individuals on lay-off status have a continuing interest under the collective agreement and they remain "employees" in the bargaining unit, as of the date of the Application, for the purposes of subsection 49(1) of the *Act*;

- f. The Applicant has failed to demonstrate the support of a majority of the employees in the bargaining unit;
- g. Accordingly, pursuant to subsection 50(1) of the *Act*, the Application is dismissed.

T H E R E F O R E

The Manitoba Labour Board **HEREBY DISMISSES** the Application filed by Bryan McDonald on July 30, 2009.

DATED at **WINNIPEG**, Manitoba, this 28th day of August, 2009, and signed on behalf of the Manitoba Labour Board by:

“original signed by”

C.S. Robinson, Vice-Chairperson

LSC*jjb

N O T E S

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.