

ORDER NO. 1469

Case No. 271/09/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An Application by

Dave Yallits,

Applicant,

- and -

**United Association of Journeymen and
Apprentices of the Plumbing and Pipefitting Industry
of US and Canada, Local 254,**

Respondent.

BEFORE: W.D. Hamilton, Chairperson

SUBSTANTIVE ORDER

WHEREAS:

1. On October 1, 2009, the Applicant filed an application (the “Application”) pursuant to Section 132.1 of *The Labour Relations Act* (the “Act”) seeking an order of the Board requiring the Respondent Union (the “Union”) to provide him with the financial statement of the Union for the year ending May 31, 2009. The Applicant asserts that the Union responded to him on September 29, 2009, denying his request for a copy of the said financial statement, but advising the Applicant that he could make an appointment to attend at the Union’s office to review the financial statement.
2. On October 7, 2009, the Union filed its Reply to the Application asserting that the Union had not denied access to any financial statements to any member and that the past practice of the Union is to the effect that any member could arrange to attend at the Union’s office to view and review any prepared financial statement. The Union further asserts that any member may ask questions regarding the financial statement(s) of the Union at any monthly regular membership meeting.
3. The Board, following consideration of the 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) There is no dispute that the Union's financial statement for the year ending May 31, 2009 has been prepared and that the Applicant has requested a copy of this statement be provided to him.
- (c) The relevant provisions of the *Act* governing the disposition of this Application are Sections 132.1(1) and 132.1(2) of the *Act*, which provide 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. (Emphasis added).

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.”

- 4. Based on these express provisions of the *Act*, the Board is satisfied that the Union has failed to provide the Applicant with a copy of the Union's financial statements for its latest fiscal year ending on May 31, 2009, as required by Section 132.1(1) of the *Act*. Section 132.1(1) states that there is a mandatory obligation on a union to provide any member who requests same with an actual copy of the financial statement of the union containing the information outlined in Section 132.1(2) of the *Act*. Accordingly, whatever past practice may have been or is in existence, the Union must comply with the requirements of Section 132.1 and simply advising a member that he/she may arrange to attend at the Union's offices to review a prepared financial statement is not in compliance with the *Act*.
- 5. Based on the foregoing, it follows that the Application is allowed.

T H E R E F O R E

- 1) The Board **DECLARES** that the Union has failed to comply with the mandatory requirements of Section 132.1(1) of the *Act* by having failed to provide the Applicant, at his request, with a copy of the financial statement of the Union's affairs to the end of its last fiscal year.

- 2) Pursuant to Section 132.1(3) of the *Act*, the Board **DIRECTS** the Union to:
- (a) file with the Board, not later than ten (10) days from the date of this Order, a copy of the financial statement of its affairs to the end of its last fiscal year, verified by its treasurer or another officer responsible for handling and administering its funds; and
 - (b) provide a copy of the foregoing financial statement to the Applicant not later than ten (10) days from the date of this Order.

DATED at **WINNIPEG, Manitoba** this 15th day of October, 2009, and signed on behalf of the Manitoba Labour Board by

“W.D. Hamilton”

W. D. Hamilton, CHAIRPERSON

WDH/ar

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.