

A MESSAGE FROM THE CHAIRPERSON OF THE MANITOBA LABOUR BOARD

I am pleased to submit the 2007-2008 Annual Report outlining the activities of the Manitoba Labour Board for the period April 1, 2007, to March 31, 2008.

During this reporting period, the Board successfully fulfilled its mandate and met its immediate objectives. The Staff of the Board will continue to focus on the activities and strategic priorities which are highlighted in this Report.

During this reporting period, the Board issued a number of important decisions under *The Labour Relations Act*. This is evident from the decisions which are summarized in this Report.

Two significant events occurred during this year and each merits specific mention. First, on May 15 and 16, 2007, a seminar for Board Members and Board Officers was held in Gimli, Manitoba. A wide range of topics was discussed including a review of the significant amendments to *The Employment Standards Code*, which became effective on April 30, 2007, and a review of the new jurisdiction of the Board under *The Public Interest Disclosure (Whistleblower Protection) Act*. Other presentations were specifically geared to the adjudicative responsibilities of Board Members. The seminar was an unqualified success. It provided a meaningful opportunity for all Members to interact in a non-adjudicative setting.

Second, the Board moved to its new premises at 175 Hargrave Street on March 28, 2008. The expanded and improved facilities will enhance the Board's ability to fulfill its mandate in an efficient and professional environment. This move was the end product of a joint effort of many individuals of the Department of Labour and Immigration and the Ministry of Infrastructure and Transportation. This joint commitment started with Ministers Nancy Allan and Ronald Lemieux.

On behalf of the Members and Staff of the Board, I would like to express my sincere gratitude for the time and effort expended by the two departments in bringing this undertaking to such a successful conclusion. I would be remiss if I did not express my profound "thank you" to the Staff of the Board for all of their assistance in making the move a success. At a time of disruption, they continued to ensure that the work of the Board continued.

In August 2007, the Board Registrar and I attended at the Annual Labour Relation Boards Chairpersons' Conference. This year the conference was hosted by the Alberta Labour Relations Board. The conference was most instructive and provided the Registrar and me with an opportunity to exchange ideas with other jurisdictions on a number of topics.

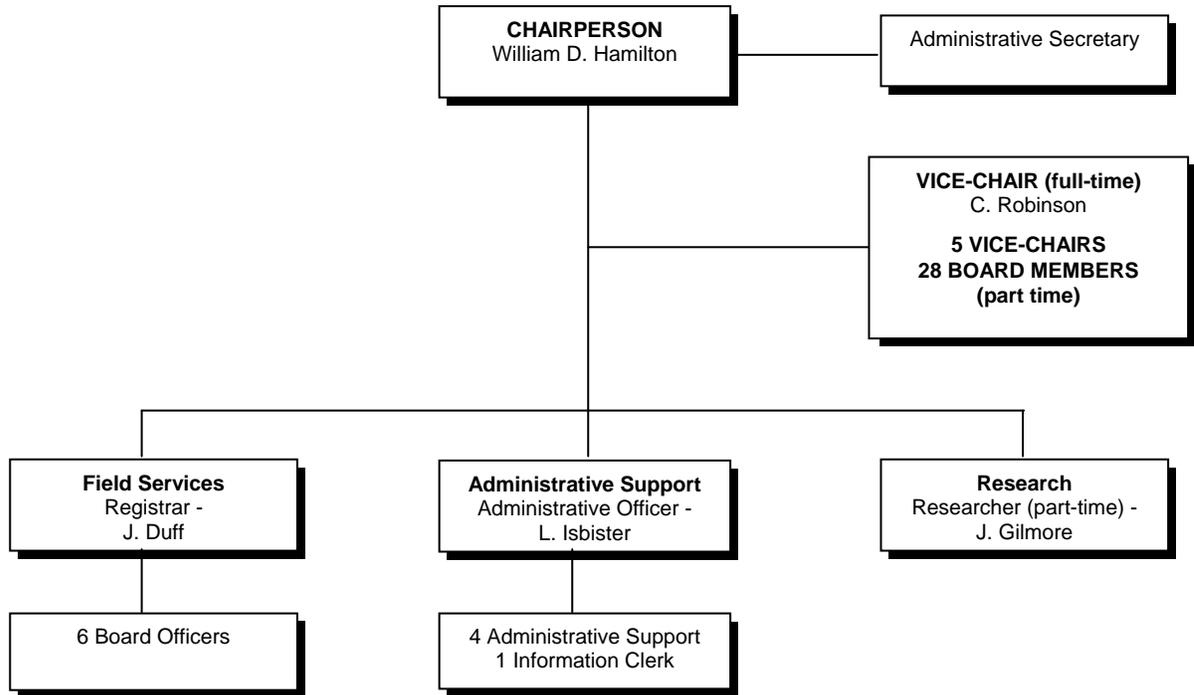
As I have done in previous years, I would like to express my appreciation and gratitude to the Vice-Chairpersons, Members and Staff for their dedication and service to the Board. We all look forward to improving our service to the labour relations community in our new premises.

William D. Hamilton,
Chairperson

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**Manitoba Labour Board
Organization Chart
as of March 31, 2008**



The Manitoba Labour Board

INTRODUCTION

Report Structure

The Manitoba Labour Board (the Board) annual report is prepared pursuant to Subsection 138(14) of *The Labour Relations Act*.

"The report shall contain an account of the activities and operations of the board, the full text or summary of significant board and judicial decisions related to the board's responsibilities under this and any other Act of the Legislature, and the full text of any guidelines or practice notes which the board issued during the fiscal year."

Vision and Mission

To further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and unions as the freely designated representatives of employees.

Objectives

- to resolve labour issues fairly and reasonably, and in a manner that is acceptable to both the labour and management community including the expeditious issuance of appropriate orders;
- to assist parties in resolving disputes without the need to proceed to the formal adjudicative process; and
- to provide information to parties and/or the general public regarding their dealings with the Board or about the Board's activities.

Role

The Board is an independent and autonomous specialist tribunal responsible for the fair and efficient administration and adjudication of responsibilities assigned to it under *The Labour Relations Act* and any other Act of the Consolidated Statutes of Manitoba.

The majority of the applications are filed under *The Labour Relations Act (L10)* and *The Employment Standards Code (E110)*. The Board is also responsible for the administration and/or adjudication of matters arising under certain sections of the following Acts:

The Construction Industry Wages Act (C190)
The Elections Act (E30)
The Essential Services Act (E145)
The Pay Equity Act (P13)
The Public Interest Disclosure (Whistleblower Protection) Act (P217)
The Public Schools Act (P250)
The Remembrance Day Act (R80)
The Victims' Bill of Rights (V55)
The Workplace Safety and Health Act (W210)

The Labour Relations Act

The Board receives and processes applications regarding union certification, decertification, amended certificates, alleged unfair labour practices, expedited arbitration, first contracts, board rulings, duty of fair representation, successor rights, religious objectors, and other applications pursuant to the Act.

The Employment Standards Code

As the wage board appointed pursuant to the *Code*, the Board hears complaints referred to it by the Employment Standards Division regarding wages, statutory holiday pay, vacation pay and wages in lieu of notice, including provisions pursuant to ***The Construction Industry Wages Act*** and ***The Remembrance Day Act***. Until the April 30, 2007 amendment to the *Code*, the Board also handled hours of work exemption requests and applications for exemption from the weekly day of rest.

The Elections Act

A candidate, election officer, enumerator or an election volunteer for a candidate or a registered political party may file an application relating to requests for leave from employment under Section 24.2 of the *Act*. An employer may apply to the Chairperson of the Board to request an exemption from the requirement to grant a leave under Section 24.2 of the *Act*, if the leave would be detrimental to the employer's operations.

The Essential Services Act

The Board receives and processes applications from unions for a variation of the number of employees who must work during a work stoppage in order to maintain essential services.

The Pay Equity Act

If parties fail to reach an agreement on an issue of pay equity, within the time frames stipulated in the *Act*, any party may refer the matter to the Board for adjudication.

The Public Interest Disclosure (Whistleblower Protection) Act

Proclaimed April 2007, the *Act* is an addition to the statutes administered by the Board during the reporting period. Pursuant to Section 28 of the *Act*, an employee or former employee who alleges that a reprisal has been taken against them may file a written complaint with the Board. If the Board determines that a reprisal has been taken against the complainant contrary to Section 27, the Board may order one or more of the following measures to be taken:

- (a) permit the complainant to return to his or her duties;
- (b) reinstate the complainant or pay damages to the complainant, if the board considers that the trust relationship between the parties cannot be restored;
- (c) pay compensation to the complainant in an amount not greater than the remuneration that the board considers would, but for the reprisal, have been paid to the complainant;
- (d) pay an amount to the complainant equal to any expenses and any other financial losses that the complainant has incurred as a direct result of the reprisal;
- (e) cease an activity that constitutes the reprisal;
- (f) rectify a situation resulting from the reprisal;
- (g) do or refrain from doing anything in order to remedy any consequence of the reprisal.

The Public Schools Act

Certain provisions of *The Labour Relations Act* apply to teachers, principals, bargaining agents for units of teachers and school boards.

The Victims' Bill of Rights

Victims of crime may file applications with the Board relating to requests for time off work, without pay, to attend the trial of the person accused of committing the offence, for the purpose of testifying, presenting a victim impact statement or observing any sentencing of the accused person.

The Workplace Safety and Health Act

Any person directly affected by an order or decision of a safety and health officer may appeal the order or decision to the Director of Workplace Safety & Health. The Director may decide the matter or refer the matter to the Board for determination. Any person affected by an order or decision of the Director of Workplace Safety & Health may also appeal to the Board to have the order or decision set aside or varied.

MANITOBA LABOUR BOARD MEMBERS

In the year under review, the Board consisted of the following members.

Chairperson

William (Bill) D. Hamilton

Appointed as full-time Chairperson in 2005, he has been a part-time vice-chairperson since 2002. He holds a Bachelor of Arts degree from the University of Winnipeg and a Bachelor of Laws degree from the University of Manitoba. Mr. Hamilton, for some years, has carried on an active practice as an interest and grievance arbitrator/mediator in Manitoba.

Vice-Chairpersons

A. Blair Graham, Q.C.

Appointed on a part-time basis in 2006, he holds a Bachelor of Arts degree and a Bachelor of Laws degree from the University of Manitoba. Mr. Graham practices law as a partner in the law firm of Thompson Dorfman Sweatman LLP with an emphasis on civil litigation and labour and commercial arbitration as a chairperson. He was appointed a Queen's Counsel in December 1992, and inducted into the American College of Trial Lawyers in October 2004. He has been active as a chairperson in labour arbitration matters since 1997.

Diane E. Jones, Q.C.

Appointed on a part-time basis since 1985, she holds a Bachelor of Arts degree (Honours) from the University of Winnipeg and a Bachelor of Laws degree from the University of Manitoba. Ms. Jones is currently active as a chairperson in arbitration matters.

Arne Peltz

Appointed on a part-time basis in 2002, he is a chartered arbitrator and carries on an active practice as an interest and grievance arbitrator/mediator in Manitoba. Mr. Peltz has also served as an adjudicator under the *Manitoba Human Rights Code* and the *Canada Labour Code*. He was the director of the Public Interest Law Centre for 21 years and entered private practice in 2003 as counsel to the firm of Gange Goodman & French, with an emphasis on aboriginal law and civil litigation.

Colin Robinson

Appointed to the Board as full-time vice-chairperson in 2003, he holds a Bachelor of Arts (Honours) degree from the University of Manitoba and a Bachelor of Laws degree from Osgoode Hall Law School. Mr. Robinson was called to the Bar in 1995 and practiced primarily in the fields of labour and administrative law.

Michael D. Werier

Appointed on a part-time basis in 2006, he is a partner in the Winnipeg law firm of D'Arcy Deacon LLP. Mr. Werier carries on a practice as an arbitrator/mediator in Manitoba and as a civil litigator. He is currently chairperson of the Labour Management Review Committee of the Province of Manitoba.

Gavin M. Wood

Appointed on a part-time basis in 2006, he holds a Bachelor of Laws degree from the University of Manitoba and a Masters of Law degree from Columbia University in New York City. Mr. Wood is presently practicing as a sole practitioner under the firm name of Gavin Wood Law Office. He is currently active as a chairperson in arbitration matters.

Employer Representatives

Jim Baker,

Appointed in 2000, he is president and CEO of the Manitoba Hotel Association (MHA). Prior to his employment with the MHA, Mr. Baker was a partner in a chartered accountancy firm for 20 years. He is a past executive member of the Hotel Association of Canada and past chair of the Manitoba Tourism Education Council. He was co-chair of the athletes' villages during the 1999 Pan Am Games and has been active as a community volunteer.

Victor W. Becker

Appointed in 2006, he had been vice president of Empire Iron Works Ltd. for 20 years and had worked in the steel industry for 38 years with Dominion Bridge and Empire Iron. Mr. Becker graduated from the University of Manitoba with a Bachelor of Science degree in Civil Engineering and is a member of the Association of Professional Engineers and Geoscientists of Manitoba. He is presently on the board of directors for the Construction Labour Relations Association of Manitoba and has been past chairman of the Manitoba Erectors Association. Mr. Becker had been on the board of directors of the Canadian Institute of Steel Construction for 28 years and on its executive committee for 20 years.

Elizabeth M. (Betty) Black

Appointed in 1985, she is a Fellow, Certified Human Resource Professional and holds a Certificate from the University of Manitoba in Human Resource Management. Ms. Black has been employed in senior human resource management positions in a variety of organizations since 1972. She is a member of the Human Resources Management Association of Manitoba and has served as president and chair of the Strategic Advisory Council. She has also instructed in the Human Resource Management Certificate Program at the University of Manitoba.

Christiane Devlin

Appointed in 2002, she has held senior management positions in which she integrated human resource management with business needs including communication and printing, agriculture, manufacturing, health care retail and co-operatives businesses. She has recently joined Kleysen Group as the Human Resources Manager. Ms. Devlin's human resource management experience includes both unionized and non-unionized workplaces.

Colleen Johnston

Appointed in 1993, she is the Manager, Human Resources for the Manitoba Liquor Control Commission and the president of Integre Human Resource Consulting. Mrs. Johnston is a graduate of the University of Manitoba with a Bachelor of Education and is a Fellow of the Certified Human Resource Professionals. She is a past president of the Human Resource Management Association of Manitoba (HRMAM), a founding director of the Canadian Council of Human Resource Associations and a former member of the Regulatory Review Committee of the *Canada Labour Code* in Ottawa. She has represented Canadian employers at the United Nations in Geneva and is currently an active member of the Designation Review Committee of the HRMAM as well as a member of the National Professional Practice Examination Committee.

Paul J. LaBossiere

Appointed in 1999, he is currently president of P.M.L. Maintenance Ltd. Mr. LaBossiere is past co-chair of the Employers Task Force on Workers Compensation, a member of the Winnipeg Chamber of Commerce, parliamentarian and past president of the Building Owners and Managers Association, a member of the Manitoba Employers Council and is a frequent international speaker on issues pertaining to the maintenance and service industries. He is the Board President of the Prairie Theatre Exchange. His past affiliations include vice-chair and treasurer of the Winnipeg Chamber of Commerce and on the Advisory Committee for the Continuing Education Department at the University of Manitoba.

Chris Lorenc, B.A., LL.B.

Appointed in 2003, he is currently president of the Manitoba Heavy Construction Association, president of the Infrastructure Council of Manitoba, president of the Western Canada Roadbuilders and Heavy Construction Association and founding member and chair of the Western Canada Transportation System Strategy Group. He has an extensive background in public policy and writing related to trade and transportation, infrastructure, workplace safety and health. A lawyer by background, Mr. Lorenc graduated from the University of Manitoba with Bachelor of Arts and LL.B (law) degrees. He is a former Winnipeg city councilor having served for 9 years between 1983 and 1992. During his tenure on Council, he chaired a number of standing committees and held a variety of senior positions. He has also served and continues to serve on a number of boards of business, cultural, community and hospital organizations.

Yvette Milner

Appointed in 1996, she is president of On-Site Safety & Health Management Solutions, a consulting company specializing in assisting companies to manage the risk associated with injury and illness in the workplace. Ms. Milner has expertise and experience in human resources, safety and disability management with past work experience in the public and private sectors. Prior to her current consulting business, she led the Safety and Disability Management practice in the Winnipeg office of Deloitte & Touche. Active in the Winnipeg business community, Ms. Milner is involved in the Manitoba Employers Council and Employers Task Force on Workplace Safety and Workers Compensation. She is a board member of the Manitoba Chambers of Commerce.

Clifford O. Olson

Appointed in 2005, he had been executive vice president of Special Projects, Western Canada for Comstock Canada Ltd., for 25 years and had worked for Comstock since 1955 in many other capacities. Mr. Olson is past president of the Winnipeg Construction Association and past chairman of the Construction Labour Relations Association of Manitoba. Since his retirement, he has been consulting on a part-time basis. Mr. Olson's term expired December 2007.

David Rich

Appointed in 2005, he has been employed at Richlu Manufacturing for 39 years, most recently as the president and CEO. Mr. Rich held the position of president of the Garment Manufacturers Association of Western Canada and has been the chairman of the negotiating committee for 15 years. Mr. Rich's term expired December 2007.

Maurice D. Steele

Appointed in 1999, he was president of M.D. Steele Construction Ltd. until his retirement in May 1999. Mr. Steele is president of Logan Farms Ltd. and Stradbrook Investments Ltd. both founding partners of the Land Owners Group. He is also vice-president of the AVL Limited Partnership representing lands north and west of Winnipeg James Armstrong Richardson International Airport. He has been involved for a number of years in the construction industry in a managerial capacity.

Denis E. Sutton

Appointed in 1983, he has had extensive training in business administration and human resource management and has extensive experience in labour relations in both the private and public sectors. Mr. Sutton has served as chairperson of the Industrial Relations Committee, Manitoba Branch of the Canadian Manufacturers Association, chairperson of the Western Grain Elevator Association Human Resource Committee, chairperson of the Conference Board of Canada, Council of Human Resource Executives (West) and is an active member of many labour relations committees and associations. Mr. Sutton is presently employed as Executive Vice President of Human Resources at IMRIS Inc.

Jim Witiuk

Appointed in 2004, he is currently director of Labour Relations for Canada Safeway Limited with responsibility for labour relations matters in Manitoba, Saskatchewan and Ontario. Mr. Witiuk sits on a number of trustee health and welfare and pension plans as a management trustee and is a member of the International Foundation of Employee Benefit Plans. He is a past member of the Employment and Immigration Board of Referees. He currently serves on the provincial government's Labour Management Review Committee, serves on that group's Arbitration Advisory Sub-Committee and is an active member of the Manitoba Employers Council. He is a graduate of Carleton University in Ottawa.

Mel V. Wyshynski

Appointed in 2004, he retired from Inco Limited, Manitoba Division in late 2001 after a 40 year career in the mining industry. At the time of his retirement, Mr. Wyshynski was president of the division and had held that position since 1997. He is also past president of the Mining Association of Manitoba Inc. He is actively involved in the Dauphin community where he sits on a number of volunteer boards and is associated with many community initiatives. In addition to this, he is involved with a number of organizations. In 2006, he was appointed a director of Smook Brothers (Thompson) Ltd.

New Member:

Robert N. Glass

Appointed in 2008, he is a Labour Relations/Personnel Consultant-Negotiator with professional qualifications and extensive experience in labour/management relations including negotiation of contracts, collective agreement interpretation and an in-depth knowledge of organized labour, employment policy, hazard control and loss management. He has experience in the communications industry, government, health care and the construction industry. His educational background is from the University of Manitoba, University of Montreal, Safety Leadership Programs and Human Resource Professional Certification.

New Member:

Darcy Strutinsky

Appointed in 2008, he is currently the Director of the Winnipeg Regional Health Authority Labour Relations Secretariat, representing health care employers throughout the province in collective bargaining and other labour relations matters. Previously he was engaged in providing human resource/labour relations services at the Health Sciences Centre, Seven Oaks General Hospital and University of Manitoba. Mr. Strutinsky is a member of the Manitoba Labour Management Review Committee, Arbitration Advisory Sub-Committee and was a founding trustee of the Healthcare Employees Pension Plan. He is currently a member of that Plan's Investment Committee.

Employee Representatives

L. Lea Baturin

Appointed in 2007, she has been employed as a national representative with the Communications, Energy & Paperworkers Union of Canada (CEP) since 1995. As a national representative, she deals primarily with grievance arbitration matters, collective bargaining and steward education in the industrial sectors of telecommunications, broadcasting and manufacturing. Ms. Baturin's educational background includes a BA and Law degree from the University Manitoba. She received her call to the Manitoba Bar in 1981 and worked as a lawyer at Legal Aid Manitoba and at Myers Weinberg and Associates before joining CEP as staff.

Robert P. Bayer

Appointed in 2004, he had been a staff representative with the Manitoba Government and General Employees' Union (MGEU) since 1982. Previously, Mr. Bayer was the executive director of the Institutional Employees' Union (1975-1982), and manager of Human Resources for the Canadian Broadcasting Corporation - Winnipeg (1965-1975). He retired from the MGEU in December 2007.

Beatrice Bruske

Appointed in 2007, she has been employed since 1993 as a union representative for the United Food and Commercial Workers Union, Local No. 832 (UFCW Local 832). Ms. Bruske has worked as a servicing representative dealing with grievances, negotiations and arbitrations. She has been a full-time negotiator since 2004 and in this capacity she prepares and presents briefs on behalf of the members she represents. She represents the UFCW Local 832 on the Manitoba Federation of Labour Executive Council. She has been active on her union's Plant Closure and Lay-off Committees. Ms. Bruske is a member of the UFCW Local 832 Women's Committee. As well, she is a former member of the UFCW's National Women's Committee. She is a graduate of the University of Manitoba where she attained an Arts Degree in Labour Studies.

Clive Derham

Appointed in 1990, he was formerly employed with the City of Winnipeg. Until his retirement, Mr. Derham was employed as a staff representative with the Canadian Union of Public Employees, with primary emphasis being in the health care sector. Mr. Derham's term expired December 2007.

Irene Giesbrecht

Appointed in 2002, she was employed since 1978 by the Manitoba Nurses' Union (MNU) as Chief Negotiator until her retirement in 2008. Previous to joining the MNU, Ms. Giesbrecht was employed in the health care sector as a registered nurse.

Jan Malanowich

Appointed in 1991, she worked as a staff representative for the Manitoba Government and General Employees' Union from 1981 until her retirement in December 2007. Ms. Malanowich was actively involved in collective bargaining, grievance handling and a multitude of associated activities related to the needs of the membership.

Douglas R. McFarland

First sat as a Board member from 1988 to 1996, he was reappointed in 2000. Mr. McFarland has been actively involved in labour relations and is currently employed as a staff representative with the Manitoba Government and General Employees' Union.

John R. Moore

Appointed in 1994, he was employed as the Business Agent, Training Coordinator and Business Manager for the United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 254, from 1982-2007 and has been an active member for 41 years. Mr. Moore is also a current representative of The Trades Qualification Board of Manitoba.

Maureen Morrison

Appointed in 1983, she has a Bachelor of Arts degree from McGill University and has also completed several courses in labour relations studies. In 1980, Ms. Morrison was hired as a staff representative with the Canadian Union of Public Employees (CUPE) and, since 1987, has been employed as an equality representative with CUPE. Her work is primarily in the areas of pay equity, employment equity, respectful workplace training and other human rights issues.

James Murphy

Appointed in 1999, he is the business manager of the International Union of Operating Engineers (IUOE), Local 987, being elected to this position in 1995. Mr. Murphy held the positions of business representative of IUOE from 1987 through to 1995 and training co-ordinator from 1985 to 1987. He sits on the executive board of the Canadian Conference of Operating Engineers, is currently president of the Manitoba Building and Construction Trades Council and president of the Allied Hydro Council of Manitoba. Mr. Murphy was appointed in 2008 to the Board of Directors of the International Foundation of Employee Benefit Plans. Prior to 1985, he was a certified crane operator and has been an active member of the IUOE since the late 1960s.

Dale Paterson

Appointed in 1999, he is retired from the Canadian Auto Workers Union where he was the area director. Mr. Paterson serves on the Premier's Economic Advisory Council and is the chair of the board of the Community Unemployed Help Centre. He is also a board member of the Manitoba Public Insurance Corporation.

Grant Rodgers

Appointed in 1999, he was employed for 33 years as a staff representative with the Manitoba Government and General Employees' Union (MGEU) and specialized for a number of years in grievance arbitration matters as well as collective bargaining. Mr. Rodgers holds a B. Comm. (Honours) from the University of Manitoba and is a graduate of the Harvard University Trade Union Program. Community involvement has included membership on the Red River College Advisory Board. Mr. Rodgers retired from the MGEU in January 2008 and has since done some part time labour relations consulting.

Lorraine Sigurdson

Appointed in 1990, prior to her retirement she was employed by the Canadian Union of Public Employees (CUPE) for 20 years. Ms. Sigurdson's last position was education representative where her duties included organizing and delivering leadership training for CUPE members in areas such as collective bargaining, grievance handling, health and safety, equality issues and communications. Previously she worked for many years with health care workers, first as an activist and as a negotiator of provincial collective agreements, assisting Locals with grievance handling and Local administration. She was executive vice-president of the Manitoba Federation of Labour and was a board member of the Winnipeg Regional Health Authority for 6 years. She is a graduate of the Labour College of Canada.

Sonia Taylor

Appointed in 2005, she has been employed since 1991 as a union representative with the United Food and Commercial Workers Union, Local No. 832. Ms. Taylor is actively involved in grievance handling, negotiations and arbitrations.

New Member:**Sandra Oakley**

Appointed in 2008, she has been employed by the Canadian Union of Public Employees (CUPE) since 1981. Ms. Oakley has worked as a National Servicing Representative, dealing with negotiations, grievance arbitrations and other labour relations issues, and as an Assistant Managing Director in the Organizing and Servicing Department of CUPE at its National Office in Ottawa. Since October 2002, she has been the Regional Director for CUPE in Manitoba. Ms. Oakley is a graduate of the University of Manitoba and the Labour College of Canada. She serves on the Board of Directors of the Rehabilitation Centre for Children and on the United Way Cabinet as Co-Chair of the Health and Community Services Division.

OPERATIONAL OVERVIEW

Adjudication

During 2007/2008, the Board was comprised of a full-time Chairperson, 1 full-time Vice-Chairperson, 5 part-time Vice-Chairpersons and 28 Board Members with an equal number of employer and employee representatives. Part-time Vice-Chairpersons and Board Members are appointed by Order-In-Council and are paid in accordance with the number of meetings/hearings held throughout the year. The Board does not retain legal counsel on staff; legal services are provided through Civil Legal Services of the Department of Justice.

Field Services

Field Services is comprised of the Registrar and 6 Board Officers. Reporting to the Chairperson, the Registrar oversees the day-to-day field activities of the Board. Applications filed with the Board are processed through the Registrar's office who determines the hearing dates where required and ensures that each application is processed efficiently and in accordance with Board practice.

Reporting to the Registrar are 4 "labour relations" Board Officers responsible for processing various cases and conducting investigations pertaining to the applications filed with the Board. They can be appointed to act as Board Representatives in an endeavour to effect a settlement between parties where there has been, and not limited to, an allegation of an unfair labour practice. The resolution of complaints through this dispute resolution process reduces the need for costly hearings. The Board Officers act as Returning Officers in Board-conducted votes, attend hearings and assist the Registrar in the processing of applications. The Board Officers communicate with all parties and with the public regarding the Board's policies, procedures and jurisprudence. They play a conciliatory role when assisting parties to conclude a first collective agreement and subsequent agreements and they are mediators during the dispute resolution process. Also reporting to the Registrar are 2 "employment standards" Board Officers responsible for processing all referrals from the Director of the Employment Standards Division, requests for hours of work and weekly day of rest exemption requests. They process expedited arbitration referrals, attend hearings and also may be involved in mediation efforts in an attempt to resolve the issues.

Administrative Services

The staff of the Administrative Services and Field Services work closely to ensure the expeditious processing of applications. Administrative Services is comprised of the Administrative Officer and 5 administrative support staff. Reporting to the Chairperson, the Administrative Officer is responsible for the day-to-day administrative support of the Board, fiscal control and accountability of operational expenditures and the development and monitoring of office systems and procedures to ensure departmental and government policies are implemented.

Reporting to the Administrative Officer are 4 administrative secretaries responsible for the processing of documentation. Also reporting to the Administrative Officer is the Information Clerk who is responsible for the case management system and files and responds to information requests from legal counsel, educators and the labour community for name searches, collective agreements and certificates.

Research Services

Reporting to the Chairperson, the Researcher is responsible for providing reports, statistical data, jurisprudence from other provincial jurisdictions and undertaking other research projects as required by the Board. The Researcher summarizes and indexes Written Reasons for Decision and substantive orders issued by the Board and compiles the *Index of Written Reasons For Decision*. The Researcher is extensively involved with the development of the Board's automated case management system and web site.

Library Collection

Copies of these documents can be viewed by the public in the Board's office or made available in accordance with the fee schedule.

- Texts, journals, reports and other publications dealing with industrial relations and labour law in Manitoba and other Canadian jurisdictions
- Arbitration awards
- Collective agreements
- Certificates
- Unions' constitution & by-laws
- Written Reasons for Decision
- Board orders/decisions

Publications Issued

- Manitoba Labour Board Annual Report - a publication disclosing the Board's staffing and membership as well as highlights of significant Board and court decisions and statistics of the various matters dealt with during the reporting period. This bilingual publication may be obtained directly from the Board.
- Index of Written Reasons for Decision - a quarterly publication containing an index of written reasons categorized by topic, employer and section of the *Act* and is available on a subscription basis from Statutory Publications.

The Board distributes full-text copies of *Written Reasons for Decision*, substantive orders and arbitration awards to various publishers for selection and reprinting in their publications or on their websites.

Copies of the various statutes and regulations are available for purchase from Statutory Publications, 200 Vaughan Street, Winnipeg, Manitoba or may be viewed on their web site www.gov.mb.ca/laws.

Web Site Contents:

<http://www.gov.mb.ca/labour/labbrd>

*link to French version available

- Board Members* (list and biographies)
- Forms*
- Library* (hours)
- Publications* (list and links for convenient access, including previous annual reports)
- "Guide to *The Labour Relations Act*"* (explanations in lay persons' terms of the various provisions of the *Act* and the role of the Board and Conciliation & Mediation Services)
- Information Bulletins* (listing and full text)
- Written Reasons for Decision and Substantive Orders (full text, English only, from January 2007 to present, with key word search capability)
- *The Labour Relations Act**
- Regulations* (including *The Manitoba Labour Board Rules of Procedure*)
- Contact Us* (information and links to the Government of Manitoba Home Page*, other Department of Labour & Immigration* divisions, LexisNexis Quicklaw and Statutory Publications*)

Email Address:

mlb@gov.mb.ca

Email service is available for general enquiries and requests for information.

NOTE: The Board does not accept applications or correspondence by email.

If you wish to file an application, contact:

Manitoba Labour Board Suite 500, 5th floor
175 Hargrave Street
Winnipeg, Manitoba, Canada R3C 3R8
Telephone: (204)945-2089
Fax: (204)945-1296

Information Bulletins (the Board's practice and procedure)

- #1 Review and Reconsideration
- #2 Rule 28 – *Manitoba Labour Board Rules of Procedure*

- #3 Adjournments Affecting Continuation of Proceeding
- #4 The Certification Process
- #5 Streamlining of Manitoba Labour Board Orders
- #6 Financial Disclosure
- #7 Fee Schedule
- #8 Arbitrators' List
- #9 Filing of Collective Agreements
- #10 **Rescinded** April 2007 (formerly Steps to follow in applying for an Hours of Work Exemption Order)
- #11 **Rescinded** April 2007 (formerly Steps to follow in applying for a Meal Break Reduction)
- #12 **Rescinded** April 2007 (formerly Steps to follow in applying for a Permit to be exempted from Weekly Day of Rest)
- #13 Process for the settlement of a First Collective Agreement
- #14 Objections on Applications for Certification
- #15 Manitoba Labour Board's decision respecting Bargaining Unit Restructuring in the Urban Health Care Sector

The Board did not issue any new information bulletins during the reporting period. Copies of the information bulletins may be obtained by contacting the Board office by phone, in writing or by visiting the Board's web site.

Major Accomplishments in the reporting period

- 666 cases before the Board (pending from previous period plus new applications).
- 70% of cases disposed of/closed.
- 193 applications scheduled for hearing.
- 109 hearings conducted.
- Entered final testing stage for the comprehensive automated case management system.
- Issued 6 Written Reasons for Decision and 29 substantive orders.
- Expanded web site. Written Reasons for Decision and substantive orders now posted.
- Met statutory time requirements for 24 Board conducted votes, excluding cases granted “extenuating circumstances”.
- Updated the “Index of Written Reasons for Decision”, for subscribers.
- Chairperson and Registrar represented the Board at the annual Conference of Labour Board Chairs held August 2007 in Edmonton, Alberta.
- Manitoba Labour Board seminar, attended by Vice-Chairs, Members and Board field staff, held May 2007 in Gimli, Manitoba.
- Enhanced telephone conferencing system.
- Moved to new office location - additional space, more efficient office layout and enhanced security.
- Improved client services - hearing room design with appropriate furniture, sound system, internet access and additional meeting rooms.

Ongoing Activities and Strategic Priorities

- Update and issue Information Bulletins.
- Develop succession plan for key positions.
- Promote learning plans for staff.
- Conduct seminar for Vice-chairpersons and Board Members - tentatively scheduled for May 2009.
- Implement automated case management system.
- Process applications pursuant to *The Public Interest Disclosure (Whistleblower Protection) Act*.
- Increase mediative settlements by Board Officers.
- Evaluate forms and amend as necessary to meet *The Freedom of Information and Personal Privacy Act* (FIPPA) requirements and to meet the French language services concept of “Active Offer”.
- Appoint part-time bilingual Vice-chairperson.
- Improve practices and procedures and to increase efficiencies
- Maintain accountability for allocated budget.
- Reduce median processing times.

Sustainable Development

The Board strives to achieve the goals set out in the Sustainable Development Action Plan. In compliance with *The Sustainable Development Act*, the Manitoba Labour Board is committed to ensuring that its activities conform to the principles of sustainable development. Through internal operations and procurement practices, the Board promoted environmental sustainability and awareness within its office and continued expanding the knowledge of end-user staff.

2(e) Manitoba Labour Board Financial Information

Expenditures by Sub-Appropriation	Actual 2007/08 (\$000s)	Estimate 2007/08 FTE	Estimate 2007/08 \$(000s)	Variance Over/(Under) (\$000s)	Expl. No.
Total Salaries	1,189.3	16.50	1,303.5	(114.2)	1.
Total Other Expenditures	557.7		522.7	35.0	2.
Total Expenditures	1,747.0	16.50	1,826.2	(79.2)	

Explanation Number:

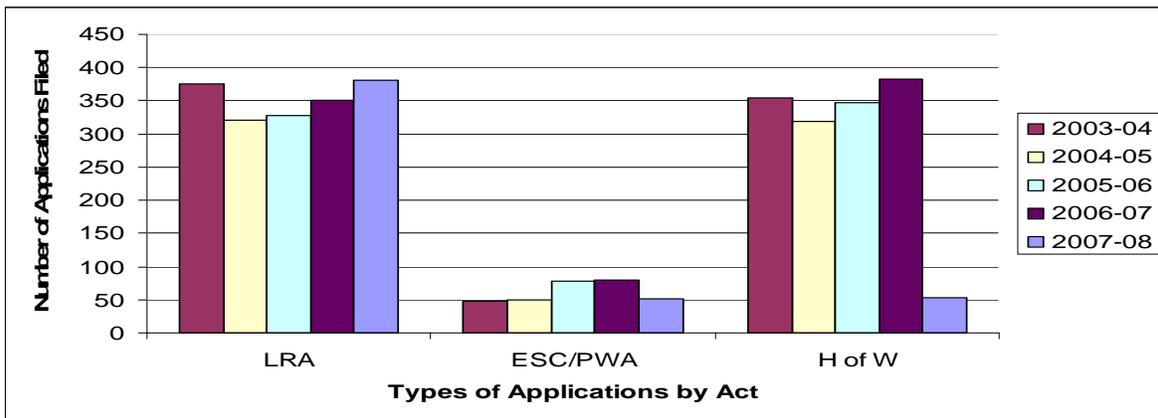
1. *Under-expenditure reflects implementation of vacancy management strategies, which included net staff turnover costs, Board member per diems, maintaining a staff vacancy and savings due to the voluntary reduced work week program partially offset by vacation payouts on resignation of two employees and General Salary Increases.*
2. *Over-expenditure reflects one-time costs related to the relocation to new premises, increased real estate rentals, increased travel costs of Board members and officers due to hearings being held in Brandon, scheduled replacement of laser printers, use of temporary employment services and increased computer related charges. These over-expenditures were partially offset by implementation of expenditure management strategies, which resulted in reductions in legal fees due to fewer appeals, mailing costs due to new system, equipment rentals, computer hardware purchases, operating supplies and telephone charges.*

SUMMARY OF PERFORMANCE

The Manitoba Labour Board adjudicated employer-employee disputes referred to it under various provincial statutes and its decisions established policy, procedures and precedent and provided for a more sound, harmonious labour relations environment. The Board conducted formal hearings, however, a significant portion of the Board's workload was administrative in nature. When possible, the Board encouraged the settlement of disputes in an informal manner by appointing one of its Board Officers to mediate outstanding issues and complaints. The Board monitored its internal processes to improve efficiencies and expedite processing of applications or referrals.

The number of applications filed with the Manitoba Labour Board during the past 5 years (for the period April 1 to March 31) are indicated in the chart below, with hours of work applications shown separately from *The Employment Standards Code*.

**Manitoba Labour Board
Number of Applications Filed**



During the reporting year the Board continued to receive a high volume of applications and complaints. Cases have increased in complexity. *The Employment Standards Code* amendments effective April 2007 eliminated applications to the Board for hours of work exemptions. Detailed statistical tables and summaries of significant Board decisions can be found later in this report.

During the past reporting year, the Board continued its initiative to measure service activities and client responsiveness.

Program Performance Measurements of the Manitoba Labour Board

April 1 - March 31

Indicator	Actual 2006-2007	Actual 2007-2008
Percentage of Cases disposed of	83%	70%
Number of Hearing dates scheduled	427	373
Percentage of Hearing dates that proceeded	35%	29%
Number of votes conducted	20	24
Median processing time (calendar days):		
<i>Labour Relations Act:</i>	50	57
<i>Workplace Safety & Health Act</i>	498 ¹	106
<i>Essential Services Act</i>	389 ¹	NA
<i>Elections Act</i>	NA	28
<i>Employment Standards Code</i> ²	7	13
<i>Employment Standards Code</i> ³	NA	125

¹ The median processing time for applications filed under *The Workplace Safety and Health Act* and *The Essential Services Act* were based on 2 and 1 cases respectively. The processing times are not indicative of the normal median processing times of the Board.

² Including Hours of Work applications.

³ Not including Hours of Work applications.

In addition to applications filed, and pursuant to *The Labour Relations Act*, the Board also received and filed copies of collective agreements and arbitration awards. In addition to the 2,664 collective agreements on file, there are 2,069 arbitration awards and 725 Written Reasons for Decision/substantive orders in the Board's collection (a 3%, 1.5% and 5% increase respectively from the previous reporting period). Copies of collective agreements, arbitration awards and written reasons are available upon request and in accordance with the Board's fee schedule. Copies of written reasons and substantive orders issued since January 2007 are posted on the Board's web site.

Performance Indicators

What are we measuring and how?	Why is it important to measure this?	What is the most recent available value for this indicator?	What is the trend over time for this indicator?	Comments/ recent actions/report links
1. We are measuring the Board's caseload by looking at the number of cases filed.	A key element in measuring the Board's workload volume is the number of applications made to the Board.	For 2007/2008, the total number of applications filed was 497. Labour Relations - 381 Employment Standards - 106 Workplace Safety & Health - 10	<i>Labour Relations Increasing. Employment Standards decreasing.</i> 9% increase in Labour Relations; 77% decrease in Employment Standards due to April 2007 amendment to the Code giving responsibility for hours of work applications to the Employment Standards Division.	The volume of applications filed has a direct impact on the medium processing days.
2. We are measuring the level of activity by looking at the percentage of cases disposed of.	The Board's objective to handle matters before it in a fair and expeditious manner can be measured by the number of cases processed and closed.	For 2007/2008, the Board disposed of 70% of its caseload.	<i>Will improve.</i> There was a 13% decrease in the number of cases processed attributable to a high volume of successorship applications which remained pending at the end of the reporting period. Further, there were 2 Board Officer vacancies during this period which impacted the Board's ability to process applications expeditiously.	The processing of the successorship applications will be reflected in the next reporting period. The Board Officer staff complement was 100% by the end of the reporting period.
3. We are measuring cases that are adjudicated by looking at the number of scheduled and actual hearing days.	As mandated by <i>The Labour Relations Act</i> for the fair and efficient administration and adjudication of responsibilities, the number of adjudicated matters is indicative of the Board's responsiveness in resolving disputes by providing decisions that enable a stable labour relations environment.	For 2007/2008 there were: 373 hearing dates scheduled, with 109 dates that proceeded.	<i>No trend yet established.</i> In 2006/2007 there were 427 hearing dates scheduled, with 150 dates that proceeded. In 2005/2006 there were 368 hearing dates scheduled, with 128 dates that proceeded	The level of adjudication is conditional upon the number of cases disposed of without the need of the formal adjudicative process. Applications may be withdrawn by the parties, resolved through mediation, or processed administratively. This indicator helps the Board assess disputes resolved with the assistance of mediation by Board Officers or with the issuance of substantive orders which illustrates the Board's progress against a desired outcome.
4. We are measuring the expeditious processing of applications by looking at the number of median processing days.	The number of median processing days is indicative of the complexity in the various types of applications dealt with by the Board.	For 2007/2008 the median processing days for Labour Relations was 57 days, during a period with 2 Board Officer vacancies.	<i>Stable for Labour Relations.</i> For 2006/2007, the median processing days for Labour Relations was 50 days <i>No trend yet established.</i> Amendments to the <i>Employment Standards Code</i> will impact the number of processing days.	Processing days for certain types of applications will vary due to circumstances beyond the Board's control. (e.g. legislative amendments, settlement discussions between the parties).

The Public Interest Disclosure (Whistleblower Protection) Act

The Public Interest Disclosure (Whistleblower Protection) Act (the "Act") came into effect in April 2007. This law gives employees a clear process for disclosing concerns about significant and serious matters (wrongdoing) in the Manitoba public service, and strengthens protection from reprisal. The Act builds on protections already in place under other statutes, as well as collective bargaining rights, policies, practices and processes in the Manitoba public service.

Wrongdoing under the Act may be: contravention of federal or provincial legislation; an act or omission that endangers public safety, public health or the environment; gross mismanagement; or, knowingly directing or counseling a person to commit a wrongdoing. The Act is not intended to deal with routine operational or administrative matters.

A disclosure made by an employee in good faith, in accordance with the Act, and with a reasonable belief that wrongdoing has been or is about to be committed is considered to be a disclosure under the Act, whether or not the subject matter constitutes wrongdoing. All disclosures receive careful and thorough review to determine if action is required under the Act, and must be reported in a department's annual report in accordance with Section 18 of the Act.

The following is a summary of disclosures received by the Manitoba Labour Board for the reporting period.

Information Reported Annually (per Section 18 of The Act)	Fiscal Year 2007-2008
The number of disclosures received, and the number acted on and not acted on. <i>Subsection 18(2)(a)</i>	NIL
The number of investigations commenced as a result of disclosure. <i>Subsection 18(2)(b)</i>	NIL

SUMMARIES OF SIGNIFICANT BOARD DECISIONS PURSUANT TO *THE LABOUR RELATIONS ACT*

Boeing Canada Technology -and- CAW, Local 2169 -and- Kelvin Dow -and- Members of CAW, Local 2169 (Persons Concerned)

Case No. 133/07/LRA

April 5, 2007

DUTY OF FAIR REPRESENTATION - PRACTICE AND PROCEDURE - JURISDICTION - Scope of Duty - Employee's unfair labour practice allegations related to collective bargaining negotiations between Employer and Union which amended shift provisions in collective agreement - Held Board did not have jurisdiction under Section 20 regarding a collective bargaining process as that process does not involve "representing the rights of any employee under the collective agreement" - Substantive Order.

The Employee filed an application seeking remedy for an Alleged Unfair Labour Practice contrary to Sections 20(b) and 6(1) of *The Labour Relations Act*.

Held: The Board, following consideration of material filed, was satisfied that, aside from speculative opinions, the application did not reveal, on its face, any facts or conduct on the part of the Employer that it acted contrary to Section 6 of *The Labour Relations Act*. Therefore, the Employee had not established a *prima facie* case. Further, the Application did not disclose a *prima facie* violation of Section 20(b) of the *Act*. The substance of the allegations related to a collective bargaining process between duly authorized representatives of the Employer and the Union which resulted in a new Shift Preference Process that amended the shift provisions in the Collective Agreement. The Board accepted that the terms of the process were taken to the membership of the bargaining unit for approval through the voting procedure implemented by the Union. The Board did not have jurisdiction under Section 20 regarding a collective bargaining process as the bargaining process does not involve "... representing the rights of any employee under the collective agreement." Therefore the application was dismissed.

AAA ELECTRIC (1988) LTD. -and- International Brotherhood of Electrical Workers, Local 2085 -and- Gary Demetriooff

Case No. 11/07/LRA

April 12, 2007

PRACTICE AND PROCEDURE - VOLUNTARY RECOGNITION - TERMINATION OF BARGAINING RIGHTS - Decision - Board ordered bargaining rights terminated but declined Applicant's request for Board to exercise its discretion to depart from its usual practice to deem that the bargaining rights of the Union has ceased to a date other than date of Board Order - Substantive Order.

The Union was the voluntarily recognized bargaining agent for all Foremen, Journeyman Electricians, Apprentices and other classifications employed by the Employer. The Employee filed an application to terminate the bargaining rights of the Union. The Union requested that the matter be dismissed as the application was untimely according to Subsections 49(2) and 35(2)(a) of *The Labour Relations Act*. The Board issued an interim order in which it determined that the application was timely and that 50% or more of the employees in the bargaining unit supported the termination of bargaining rights application. Therefore, the Board ordered that a Representation Vote be conducted to determine the true wishes of the affected employees. In light of the interim order, the Union withdrew its opposition to the application and the representation vote was cancelled. The Employee requested that the Board exercise its discretion and declare that the bargaining rights of the Union should be deemed to have ceased as of one of three alternate dates which all proceeded the date on which the interim order was issued.

Held: The Board, noting that the Bargaining Agent no longer opposed the application and had waived its right to a Representation Vote, granted the Application and terminated the bargaining rights of the Union. As well, the Board declined to exercise its discretion to depart from its usual practice and procedure to deem that the bargaining rights of the Union has ceased on a date other than the date of the Board order.

Lord Selkirk School Division -and- Lord Selkirk School Division Bus Drivers' Association -and- Donald Wither

Case No. 770/06/LRA

April 26, 2007

DUTY OF FAIR REPRESENTATION - Internal Union Affairs - Employee's removal from Union Executive was internal union matter and not subject of a Section 20 application as internal union matters do not involve representation of an employee's rights under a collective agreement - Substantive Order.

DUTY OF FAIR REPRESENTATION - Employee unilaterally submitted grievance which was drafted on basis that he had Union's support when Union was not aware of content of grievance or that Employee had filed it - Regardless of improper manner grievance was filed, Union acted in an arbitrary manner after it was filed by failing to investigate grievance to determine whether it should be supported - Union to pay Employee \$500 - Substantive Order.

The Applicant filed a duty of fair representation application seeking remedy for an alleged unfair labour practice contrary to Section 20(b) of *The Labour Relations Act*.

Held: The Board was satisfied that the events and circumstances relied on by the Employee, which pre-dated the filing of the grievance, did not disclose that the Union acted in an arbitrary or discriminatory manner or in bad faith. In addition, all matters relating to the Employee's removal from the Union Executive were internal union matters and were not properly the subject of a Section 20 application because internal union matters do not involve the representation of an employee's rights under a collective agreement. The Employee admitted that he failed to follow the requirements of the Collective Agreement when he unilaterally submitted the Grievance in question to the Employer. As well, the grievance was drafted on the basis that the Employee had the support of the Union when the Union was not aware of either the content of the grievance or that the Employee had filed it. Regardless of the improper manner in which the Employee filed the grievance, the Union had acted in an arbitrary manner during the week after the grievance was filed when it failed to investigate, in a reasonable manner or at all, the circumstances of the grievance in order to determine whether the grievance was justified and ought to receive the support of the Union. Therefore, the Union breached its obligations during that period. Despite this finding, as the Employee ultimately agreed not to proceed with the grievance, the Board was satisfied that there was no basis to order that the grievance be referred to arbitration. However, the Board did order the Union to pay the Employee \$500.

Ancast Industries Ltd. -and- United Steelworkers of America, Local 3239 -and- George Stevens, on behalf of certain employees of Ancast Industries

Case No. 181/07/LRA

May 8, 2007

DUTY OF FAIR REPRESENTATION - JURISDICTION - Application did not disclose a *prima facie* case as complaint made related to collective bargaining process and potential adjustments to collective agreement during its normal term - Board does not have jurisdiction under Section 20 as conduct complained of does not relate to Union representing rights of any employee under collective agreement - Application dismissed - Substantive Order - Reasons not issued.

Manitoba Lotteries Corporation -and- General Teamsters Local Union 979 -and- Pauline Russell

Case No. 193/07/LRA

May 10, 2007

RATIFICATION - VOTE - Employee raised concerns regarding ratification vote for "Surveillance/Administration" bargaining unit - Complaint dismissed as vote was held within 30 days of concluding tentative agreement; reasonable notice of vote was given to affected employees; reasonable opportunity was given to employees to cast a ballot; and vote was conducted by secret ballot - Substantive Order.

DUTY OF FAIR REPRESENTATION - JURISDICTION - Complaint dismissed as application did not disclose *prima facie* violation of Section 20 - Regardless, Board does not have jurisdiction under Section 20 regarding matters relating to ratification process because that process does not involve "representing the rights of any employee under the collective agreement" - Substantive Order.

The Employee filed a complaint pursuant to Sections 69, 70 and 20 of *The Labour Relations Act*. She raised various concerns regarding the ratification vote conducted by the Union for the "Surveillance/Administration" bargaining unit. The Union denied that it breached Sections 69 or 70 of the *Act*, and asserted that employees were given reasonable notice of the ratification vote and afforded a reasonable opportunity to vote by secret ballot.

Held: The application did not disclose a prima facie violation of Section 20 of the *Act*, therefore the application regarding that section was dismissed. Regardless of that finding, the substance of the allegations as a whole arose from a collective bargaining process and the related procedures to ratify a tentative collective agreement. The Board does not have jurisdiction under Section 20 regarding matters relating to the collective bargaining/ratification process because that process does not involve "... representing the rights of any employee under the collective agreement." As to the complaint relating to Sections 69 and 70 of the *Act*, the Board was satisfied that following the conclusion of collective bargaining and receipt of the Employer's final offer, the Union forwarded a notice to all members of the bargaining unit advising the employees that the Union Bargaining Committee was unanimously recommending acceptance of the Employer's final offer. The notice identified the dates and locations of information sessions where questions relating to the final offer could be raised and the date and locations where the ratification votes were to be held. For employees outside of Winnipeg, a mail-in ballot was included with the notice along with a copy of voting instructions. The notice contained detailed commentary on the changes to the collective agreement. The concerns raised by the Applicant either did not provide detailed particulars of any alleged impropriety and/or were speculative in nature. The Board was satisfied that the ratification vote was held within 30 days of concluding the tentative agreement; reasonable notice of the vote was given to the affected employees; a reasonable opportunity was given to employees to cast a ballot; and the vote was conducted by secret ballot. Therefore, there was compliance with the specific requirements of Section 69 of the *Act* and therefore, the complaint was dismissed.

Fort Rouge And Imperial Veterans Legion -and- National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 144

Case No. 85/07/LRA

May 15, 2007

COLLECTIVE AGREEMENT - PRACTICE AND PROCEDURE - Subsequent collective agreement - Board was not in a position to make determinations required by Section 87.1(3) of *The Labour Relations Act* within the mandated 21-day period, based solely on material filed. Board exercised its discretion under Section 87.1(4) and delayed making the determination required under Section 87.1(3) until it was satisfied that the party making the application has bargained sufficiently and seriously with respect to those provisions of the collective agreement that were in dispute between the parties - Substantive Order.

LOCKOUT - COLLECTIVE AGREEMENT - Subsequent collective agreement - Following consideration of material filed, evidence and argument presented at hearing, Board determined Employer was not bargaining in good faith and Union was bargaining in good faith, sufficiently and seriously - Held parties unlikely to conclude collective agreement within 30 days - Board ordered Employer immediately terminate lockout, reinstate employees who were locked out and settle a collective agreement either by an arbitrator within 60 days or failing an agreement between the parties on an arbitrator by the Board within 90 days of the date of the Order - Substantive Order.

The Union filed an Application for settlement of subsequent collective agreement, pursuant to Section 87.1(1) of *The Labour Relations Act*.

Held: The Board, following consideration of the application and the material filed by the parties, advised that it was not in a position to make the determinations required by Section 87.1(3) of the *Act* within the mandated twenty-one day period, based solely on the material filed. The Board exercised its discretion under Section 87.1(4) and delayed making the determination required under Section 87.1(3) until it was satisfied that the party making the application has bargained sufficiently and seriously with respect to those provisions of the collective agreement that are in dispute between the parties. The Board conducted a hearing at which time both parties presented evidence and argument. The Board, following consideration of material filed, evidence and argument presented was satisfied the conditions outlined in Sections 87.1(1)(a), (b) and (c) of the *Act* had been met; having inquired into the negotiations between the parties, the Board determined the Employer was not bargaining in good faith in accordance with Section 63(1) of the *Act*, the Union was bargaining in good faith

in accordance with Section 63(1) of the *Act*; and, the parties were unlikely to conclude a collective agreement within thirty days if they continue to bargain; and, having exercised its discretion under Section 87.1(4) of the *Act*, the Board determined that, in the factual circumstances prevailing in this case, the Union has bargained sufficiently and seriously with respect to those provisions of the collective agreement that are in dispute between the parties. Therefore, the Board ordered that the Employer immediately terminate the lockout; the Employer reinstate the employees who were locked out in the employment they had at the time the lockout commenced in accordance with Section 87(5) of the *Act*; the provisions of a collective agreement between the parties was to be settled by an arbitrator within the sixty days or failing an agreement between the parties on an arbitrator, by the Board, within ninety days of the date of the Order.

Red River College -and- Manitoba Government and General Employees' Union -and- Tom Harrigan, on behalf of a Group of Employees

Case No. 187/07/LRA

May 31, 2007

REVIEW AND RECONSIDERATION - Employee provided no new evidence, within the meaning of Rule 17(1) of the *Manitoba Labour Board Rules of Procedure* that would constitute a reasonable basis for review of original Dismissal Order - Improper for Employee to raise, for the first time, an alleged breach of a section *The Labour Relations Act* on an application for review and reconsideration - Substantive Order.

The Board dismissed the Employee's complaint filed pursuant to Section 70 of *The Labour Relations Act*. Subsequently, the Employee filed an application seeking review and reconsideration of the Dismissal Order alleging that new evidence had come to light after the filing of the initial complaint. The alleged new evidence demonstrated the Union failed to give proper notification of a Ratification Vote in violation of section 69(2) of *The Labour Relations Act*. Second, the Employer's initial contract offer was incomplete and open to multiple interpretations that greatly exaggerated management's position. Third, the Employer's e-mailing of two documents to union members 3 days before a strike vote and the Union's lack of authority to respond by e-mail hindered the Union's ability to respond to management's claims and thus interfered with the administration of the Union. During the strike vote, declarations from Union members would demonstrate that the Union failed to provide its members with the proper environment to ensure a secret ballot, as set out by section 6(1) of *The Labour Relations Act*.

Held: The Board determined that no new evidence, within the meaning of Rule 17(1) of the *Manitoba Labour Board Rules of Procedure* had been provided that would constitute a reasonable basis for review of the original Dismissal Order. It was improper, on an application for review and reconsideration, to raise new substantive complaints for the first time. In this regard, the Employee's allegation that the Union failed to give proper notification of a Ratification Vote was not a matter raised in the original complaint. The Board also found that no issue was raised regarding the reasonableness of the notice given to the affected employees. The Application raised, for the first time, an alleged breach of Section 6 of the *Act* by the Employer was a matter which could not be considered on a review and reconsideration application under Sections 69(2) and 93(3) of the *Act*. Therefore, the particulars provided in the Application do not reveal sufficient cause for the Board to review or reconsider its original decision and dismissed the application.

Assiniboine Regional Health Authority -and- Manitoba Nurses' Union -and- Evelyn Schoonbaert

Case No. 192/07/LRA

June 6, 2007

DUTY OF FAIR REPRESENTATION - Failure to Process Grievance - Employee on paid administrative leave pending completion of investigation had no reasonable basis to allege Union failed to represent her - Union was monitoring situation pending completion of investigation - Held application was premature and was dismissed - Substantive Order.

The Employee filed a duty of fair representation application alleging that the Union failed to assist her in a timely way or at all respecting her suspension with pay or "paid administrative leave". The Employer contented that it had not imposed any discipline on the Employee when it placed her on administrative leave with pay and full benefits. Further, the Employer said that the Union had not filed a grievance on behalf of the Employee because there were, as of the time the application was made, no grounds to do so, nor had the

Employee suffered any financial loss. The Union asserted that the Employee had no disciplinary record with respect to the matters that were under investigation; the Employee had not been reported to a professional regulatory body, which the Authority would be statutorily obliged to do, had the Employee been suspended; and there was no evidence that the investigation of the Employee had not been conducted in good faith or contrary to the spirit of the Agreement.

Held: The Board accepted the characterization of the Employer and the Union that the Employee was placed on paid administrative leave, without loss of any pay or benefits pending the completion of an investigation into certain allegations that have been made against her. Given that the Employee had been on administrative leave with full pay and benefits pending completion of the investigation, there was no reasonable basis for the Employee to allege that the Union has failed to represent her. The material before the Board did not disclose that the Union has acted in an "arbitrary" or "discriminatory" manner under Section 20(b) of the *Act*. The material revealed that the Union was monitoring the situation, pending completion of the investigation. The Application also did not recite any acts or omissions which, if proven, would establish that the Union had made any decision on the basis of irrelevant factors or that it had displayed an attitude which can be characterized as "... indifferent and summary or capricious or non-caring or perfunctory. Therefore, the Board has determined that the Employee has failed to establish a *prima facie* case in respect of the matters complained of, as those matters exist at the time the application was filed. Accordingly, the application was premature and the Board declined to take any further action on the complaint pursuant to Subsection 30(3) of the *Act*. In the result, the Application was dismissed.

Integra Castings Inc. -and- Winkler Foundry Employees Association -and- Chad Taks

Case No. 211/07/LRA

June 12, 2007

PRACTICE AND PROCEDURE - Standing - Employee had standing to make unfair labour practice complaint directly in his own right even though he was represented by employees association - Right to file is statutory right conferred on a person and organization as per subsection 30(1) of *The Labour Relations Act* regardless of individual's membership in a union or employee association.

REVIEW AND RECONSIDERATION - EVIDENCE - Witness - Employer submitted it was not aware of doctor's note Employee presented at hearing so Supervisor did not attend to testify that Employee had not given note - Parties to application are responsible to be ready to proceed when hearing convenes which includes ensuring availability of witnesses who can be reasonably expected to have knowledge of facts - Employer knew supervisor had direct knowledge of relevant facts and should have foreseen supervisor should have been available to testify at the hearing - Application for Review dismissed.

REVIEW AND RECONSIDERATION - Employer submitted that by the time Board received letter from Employee raising issues with his reinstatement, it was intending to seek Review - Held letter not relevant to Review Application - Application dismissed.

The Employee had filed an unfair labour practice application under Section 7 of *The Labour Relations Act*. The Board ordered the Employer to reinstate the Employee and to compensate him for lost income. The Employer filed an application seeking review and reconsideration of the Order. It submitted that the Employee lacked standing to make the complaint directly in his own right because, at the time the material events occurred, he was represented by the Association which should have initiated the proceedings. In addition, the Employer stated that it was unaware of, and could not have reasonably anticipated, the existence of the doctor's note presented by the Employee at the hearing. Therefore, the Employee's supervisor was not in attendance at the hearing in order to testify that the Employee had not given him the note when the Employee testified that he had. Third, a few days after the Board had issued Written Reasons for Decision, the Employee had sent a letter to the Board in which he raised issues with respect to his reinstatement. The Employer submitted that by the time the letter was received, it was intending to seek a review and reconsideration of the Board's decision, and therefore the Employee's complaint had not been finally decided.

Held: The right to file an unfair labour practice complaint is a statutory right conferred on a person and organization as per subsection 30(1) of the *Act*. The rights conferred by that section can be exercised by an individual regardless of the individual's membership in a union or employee association, and regardless of whether a certified bargaining unit exists in the workplace. Therefore, the Employee had standing to file and bring on the application and the Board had the jurisdiction to hear that Application. As to the issue regarding the doctor's note, the parties to an application before the Board are responsible to be ready to proceed when

hearings are convened. Readiness to proceed includes ensuring availability of witnesses who can be reasonably expected to have knowledge of facts and other matters relating to the issues which the Board will be required to determine. There were several issues with respect to which the only witness called by the Employer did not have direct knowledge. The Employer knew the supervisor had direct knowledge of facts relevant to the matters at issue before the Board and it was reasonably foreseeable that his evidence would be necessary. The supervisor should have been available to testify at the hearing, and it was the Employer's responsibility to ensure that he was available to do so. The evidence which the Employer sought to introduce as part of a review and reconsideration was available at the date of the hearing, and could have and should have been introduced by the Employer at that time. Finally, the letter sent by the Employee and received by the Board was not relevant to the Employer's Application for a review and reconsideration. Therefore, the Board dismissed the Employer's application.

Integra Castings -and- Winkler Foundry Employees Association -and- Chad Taks

Case No. 448/06/LRA

June 12, 2007

JURISDICTION - PRACTICE AND PROCEDURE - Stay of Proceedings - Judicial Review - Employer challenged Board's jurisdiction to deal with issue of quantum of compensation as judicial review proceedings had been commenced - Held Board had jurisdiction to proceed as commencement of judicial review does not stay Board's proceedings - Substantive Order.

REMEDY - EVIDENCE - Admissibility - Compensation - Board conducted hearing on issue of compensation due to Employee - Methods proposed by Employee and Employer based on facts and information which were not properly in evidence before Board - Board did not adopt either method proposed but instead determined quantum based on best and most reliable evidence which was introduced - Substantive Order.

By Order No. 1383, the Board had ordered the Employer to re-instate the Employee in his former employment and to compensate him for lost income, less amounts received in mitigation, from the date of termination to his date of re-instatement. The Board retained jurisdiction with respect to the issue of quantum. Subsequently, the Employee requested that the Board enforce its judgment. The Board conducted a hearing, on the sole issue of quantum. At the commencement of the hearing, the Employer raised a preliminary challenge as to the Board's jurisdiction to deal with the matter as judicial review proceedings had been commenced.

Held: The Board was satisfied that it had jurisdiction to proceed, noting that the commencement of judicial review does not stay the Board's proceedings. The Board confirmed it intended to proceed on the sole issue of quantum. Both the Employee and the Employer put forward different methods of determining the quantum of compensation. The methods proposed by both the Employee and the Employer were based, to some extent, on facts and information which were not properly in evidence before the Board relating to issues such as overtime and sick days. Accordingly, the Board did not adopt either method proposed but instead utilized a method of determining quantum which was based on the best and most reliable evidence which was introduced before the Board.

Assiniboine Regional Health Authority -and- Manitoba Nurses' Union -and -Cindy L. Perrin

Case Nos. 827/06/LRA and 107/07/LRA

June 13, 2007

DUTY OF FAIR REPRESENTATION - Contract Administration - Settlement of Grievance - Employee disagreed with Union that settlement of grievance was in her best interest, however, she did not provide any detail as to what actions Union took which allegedly ran afoul of duty of fair representation provisions - Conversely, Union's Reply detailed measures it took following Employee's termination including that it sought legal advice - Application dismissed.

The Union filed a grievance regarding the Employee's termination. The Union settled the grievance. The Employee did not accept the settlement because she was of the opinion that the settlement did not clear her name; she would no longer be able to work for the Employer; and she was not compensated for emotional abuse she claimed to have suffered. She filed an application asserting that the Union acted in violation of the duty of fair representation.

Held: Given that the Employee was dismissed from her employment, subsection 20(a) of *The Labour*

Relations Act applied. Subsection 20(a) provides that a bargaining agent must not only refrain from acting in a manner which is arbitrary, discriminatory or in bad faith, but must also exercise “reasonable care” in representing the interests of the employee under the collective agreement. “Reasonable care” is the degree of care which a person of ordinary prudence and competence would exercise in the same or similar circumstances. The Employee did not include in her Application a concise statement of material facts in support of her complaint. She disagreed with the Union’s assessment that the terms of settlement were in her best interest, however, she did not provide any detail as to what actions the Union took which allegedly ran afoul of the duty of fair representation provisions in the *Act*. Conversely, the Union’s Reply detailed the measures that it took following the Employee’s termination. Of particular significance, the Union indicated that it sought legal advice with respect to the settlement and based upon that advice determined that the settlement was in the best interests of the Employee. Following advice of legal counsel in a dismissal case will support a bargaining agent’s position that it had exercised “reasonable care” in representing the employee’s interests. The mere fact that the Employee did not agree with the settlement negotiated on her behalf by the Union did not, in itself, breach the duty of fair representation set out in the *Act*. As a result, the Board was satisfied that the Union did not breach the duty of fair representation set out in section 20 of the *Act* as alleged by the Employee. The Board determined that the Application was “without merit” and ought to be dismissed. The Employee filed an Application requesting Review and Reconsideration of that decision. With respect to that application, the documents provided did not suggest that the Union failed to discharge its duty to represent the Employee pursuant to section 20 of the *Act*. Furthermore, the Board was not otherwise satisfied that the Employee showed cause as to why the original decision ought to be reviewed and reconsidered. The Application for Review and Reconsideration was therefore dismissed.

University Of Manitoba -and- The Alumni Association -and- Karen Gamey

Case No. 324/07/LRA

June 20, 2007

UNFAIR LABOUR PRACTICE - PRACTICE AND PROCEDURE - Regulations/Rules - *Prima facie* - Employee filed unfair labour practice application for wrongful termination due to a medical disability - Application did not disclose any facts which arguably constituted prima facie case under any substantive unfair labour practice provisions of Part I of *The Labour Relations Act* as required under Section 3(2)(b) of Board’s Rules of Procedure - Application dismissed - Substantive Order.

The Employee filed an unfair labour practice application contending that the Employers wrongfully terminated her employment due to a medical disability. The Employers asserted that the application did not meet the requirements of Section 3(2)(b) of the Board’s Rules of Procedure in that it did not specify the provisions of *The Labour Relations Act* which were alleged to have been violated; the application alleged a termination of employment due to a medical disability, which did not constitute a violation of the *Act*; and the Employee admitted that she was dismissed from her employment but with notice for reasons relating to job performance.

Held: While the Employee alleged that the termination of her employment constituted an unfair labour practice, the application did not specify any provision of the *Act* that had been contravened or violated, as required by Section 3(2)(b) of the Board’s Rules. Conduct which may constitute an unfair labour practice is defined in Part I of the *Act* and the Application did not, on its face, allege a breach of any substantive provisions of the *Act* where unfair labour practices are defined. An allegation by an employee that he/she has been dismissed without just cause or for an improper reason does not, standing alone, constitute an unfair labour practice, contrary to the *Act*. While the Employee may have grounds to pursue either a complaint with the Human Rights Commission or a civil action in the Courts, the Board was satisfied that the Application as a whole did not disclose any facts which arguably constituted a prima facie case under any of the substantive unfair labour practice provisions of Part I of the *Act* and, accordingly, the Board declined to take further action on the complaint pursuant to Section 30(3)(c) of the *Act*. Therefore the Board dismissed the application.

Mayfair Farms (Portage) Ltd. -and- United Food and Commercial Workers Union, Local No. 832

Case No. 595/06/LRA

June 26, 2007

APPLICATION FOR CERTIFICATION - JURISDICTION - Majority of individuals in applied for unit were foreign seasonal agricultural workers from Mexico who worked under federal government program - Employer opposed application arguing foreign workers were aliens and therefore within federal jurisdiction as per Section 91 of the *Constitution Act, 1867* - Provincial labour relations legislation applies to aliens as they were employed on vegetable farm which is an industry within legislative authority of provincial legislature to regulate - Application properly before provincial board.

APPLICATION FOR CERTIFICATION - EMPLOYEE - Majority of individuals in applied for unit were foreign seasonal agricultural workers from Mexico who worked under federal government program - Employer opposed application arguing migrant seasonal workers were not employees within the meaning of *The Labour Relations Act* - Held workers did not fall under any exclusions set out in the *Act* - Board ordered certification to issue.

APPLICATION FOR CERTIFICATION - EMPLOYER - Majority of individuals in applied for unit were foreign seasonal agricultural workers from Mexico who worked under federal government program - Employer opposed application arguing terms and conditions of employment were set by the governments of Canada and Mexico through federal program and unalterable employment agreement - Held while Employer's discretion was somewhat fettered by Employment Agreement, it was decision-maker with respect to fundamental aspects of the work performed - Board ordered certification to issue.

The Employer operated a family farm. The Union filed an Application for Certification for an all-employee bargaining unit. The majority of the individuals in the proposed unit were foreign seasonal agricultural workers from Mexico who worked under a federal government program known as the Seasonal Agricultural Worker Program ("S.A.W.P."). The Employer opposed the application. First, it submitted that the Application was not within the constitutional jurisdiction of the Board. The Application ought to have been advanced, if at all, federally because 90% of the individuals included in the proposed bargaining unit were foreign workers or aliens. Matters relating to "Naturalization and Aliens" are referred to in Section 91 of the *Constitution Act, 1867*. Second, the Employer submitted that the migrant seasonal workers were not employees within the meaning of *The Labour Relations Act*. Third, the foreign workers were not employed by the Employer given that the terms and conditions of employment were set by the governments of Canada and Mexico through a federal program and an unalterable employment agreement that left little room for meaningful collective bargaining.

Held: Any role played by the federal government with respect to the foreign workers or the fact that they were aliens was not sufficient to justify a declaration that Parliament and not the Provincial Legislature had jurisdiction over labour relations in the present matter. Provincial labour relations legislation applies to aliens where they are employed in industries which are within the legislative authority of the provincial legislature to regulate. A vegetable farm is clearly such an industry. The basic constitutional principle is that provincial jurisdiction over labour relations is the rule, and federal jurisdiction is the exception. Therefore, the Board was satisfied that the Application was properly before it.

There is no stipulation in *The Labour Relations Act* that foreign workers are not "employees". Further, there is nothing in the *Act* to suggest that non-citizens or individuals on temporary work permits are not entitled to the benefits and protections established by the *Act*. The definition of employee is broadly expressed and includes any person who is employed to do work and does not fall within the limited managerial and confidential exclusions. There was no suggestion that any of the foreign workers fell within the exclusions set out in the definition. One of the guiding principles underlying the S.A.W.P. was that the foreign workers were to receive treatment equal to that received by Canadian workers performing the same type of agricultural work. Agricultural workers in Manitoba are permitted to join unions and seek certification. It would be contrary to the guiding principles of the S.A.W.P. to deprive the foreign workers of access to the collective bargaining regime set out in the *Act*. While the employment situation was unique, it was possible for viable and meaningful collective bargaining to transpire. There remained room even within the confines of the Agreement for meaningful collective bargaining to take place with respect to pay and hours of work and other terms and conditions of employment. The Board did not agree that the fact that the foreign workers may not return to the Employer was sufficient justification to declare that they were not employees under the *Act*. There are certain industries, principally construction, in which the workforce is mobile. The Board does not deny individuals in

such circumstances the right to access the provisions of the *Act* owing to the fact that the organization may experience significant turnover. Accordingly, the Board found that the foreign workers were “employees” within the meaning of the *Act*.

As to the argument that the Employer was not the employer of the foreign workers, it did exercise direction and control over the individuals who performed work on the farm, including those secured through its application to the S.A.W.P. While the Employer’s discretion in relation to the employment relationship was somewhat fettered by the Employment Agreement, it was the decision-maker with respect to fundamental aspects of the work performed. It determined which crops were worked and when the work was performed; and it established workplace rules of conduct by which the workers must abide. The Employer paid wages directly to the foreign workers. It had the right to impose discipline upon, and to dismiss, the foreign workers. While the Employer did not recruit and select the foreign workers in a traditional or ordinary manner, the S.A.W.P. hiring process was analogous to a hiring hall. The fact that the Employer did not “hire” the foreign workers did not require a determination that it was not the employer. Finally, the Board noted that the work performed by the employees in the proposed unit was for the benefit of the Employer, with tools and equipment supplied by the Employer, and on land owned or leased by the Employer. The Board was satisfied that Mayfair was the “employer” of the foreign workers. Also, a review of the factors and evidence did not suggest that any other entity, be it the Mexican or Canadian government, was the “employer”.

In summary, the Board ruled that it had constitutional jurisdiction to receive and determine the Application. It determined that the foreign workers were employees within the meaning of the *Act*. It was further satisfied that the Employer was the employer of the employees in the proposed unit. The Union satisfied the Board that, at the time the Application was filed, 65% or more of the employees in the unit wished to have the Union represent them. Therefore, the Board ordered certification to issue.

Province Of Manitoba, Winnipeg Child and Family Services -and- Canadian Union of Public Employees, Local 2153 -and- Jeff S. Trigg

Case No. 281/07/LRA
July 5, 2007

PRACTICE AND PROCEDURE - Undue Delay - Employee filed application 2½ years after last event unduly delayed filing application - Board applied principle that unexplained delay beyond 6 to 9 months following event complained of constitutes unreasonable/undue delay - Employee relied upon *The Limitations of Actions Act* but that *Act* had no application to Board’s proceeding- Substantive Order.

UNFAIR LABOUR PRACTICE - Prima Facie - Employee filed unfair labour practice application against Employer - Allegation of dismissal without just cause does not, standing alone, constitute an unfair labour practice - Application did not disclose *prima facie* breach of any substantive provisions in Part I of the *Act* in respect of the Employer’s conduct - Sections 8 and 20 address unfair labour practices that relate to unions and they do not apply to employers - Application dismissed - Substantive Order.

JURISDICTION - EVIDENCE - Fact that Union investigating new medical evidence to determine link to events 2 years earlier did not affect disposition of unfair labour practice application against Employer - Core issue arising from any new evidence related to Employer’s alleged obligation to reasonably accommodate Employee’s disability in 2004 - That issue not within jurisdiction of the Board - Application dismissed - Substantive Order.

The Union filed grievances relating to the Employee’s termination of employment and other disciplinary measures. Subsequently, the Union decided not to proceed with the grievances. Two and half years later, the Employee filed an unfair labour practice application on the basis that the Employer discriminated against him by failing to make any reasonable accommodation as a result of disability arising out of his employment. The Employee alleged that the actions of the Employer were in violation of Sections 20(a); 20(b); 5(3); 8; 13(1); 17; 26; 80(1); and 150(2) of the *Act*.

Held: The Board was satisfied that the Employee had unduly delayed filing the application. It applied the principle that an unexplained delay beyond 6 to 9 months following the event complained of constitutes an unreasonable/undue delay. The Employee relied upon the provisions of *The Limitations of Actions Act* but that *Act* had no application to a proceeding before the Board. Conduct which may constitute an unfair labour practice is defined in Part I of the *Act*. Regardless of the finding of undue delay, the Application did not disclose a *prima facie* breach of any substantive provisions in Part I of the *Act* in respect of the Employer’s

conduct which may constitute an unfair labour practice. Sections 8 and 20 address unfair labour practices that relate to unions and they do not apply to employers. Further, none of Section 26; 13(1), 80(1) and 150(2) had any relevance to the facts pleaded in the Application. An allegation by an employee that he/she has been dismissed without just cause or for an improper reason does not, standing alone, constitute an unfair labour practice under the *Act*. In this case, the Employee initially sought relief through the grievance/arbitration procedure. He cannot seek to enforce a purported breach of the Agreement by filing an unfair labour practice complaint. Further, the Application fails to disclose a *prima facie* case that the Union breached Sections 5(3), 8 and 20 of the *Act*. That the Employee advised the Union on or about January 18, 2007 that there was further medical information to support his claim that the Employer failed to reasonably accommodate him in 2004 and the fact that the Union was investigating the significance of the medical evidence to determine if it is linked to the events in 2003 and 2004 do not affect the disposition of the Application. The core issue arising from any new evidence still relates to the Employer's alleged obligation to reasonably accommodate the Employee's purported disability at the time of his termination in 2004 and that issue does not fall within the jurisdiction of the Board. Therefore, the Board dismissed the application.

The Salvation Army Grace General Hospital -and- Canadian Union of Public Employees, Local 1599
Case No. 681/04/LRA
July 20, 2007

BARGAINING UNIT - APPROPRIATE BARGAINING UNIT - EXCLUSIONS - Confidential Personnel - Fact that incumbents had access to "confidential" information in general sense and were expected to maintain confidentiality under their duty of fidelity to the Employer not sufficient to exclude positions from bargaining unit - Access to and the processing of salary information or disciplinary notices not reason to exclude on confidentiality criterion - Held Benefit Support Clerk and Payroll Clerk were included in the bargaining unit - Substantive Order.

BARGAINING UNIT - APPROPRIATE BARGAINING UNIT - EXCLUSIONS - Board did not accept that Union had agreed to exclusion of positions historically not covered by successive collective agreements - Parties were addressing restructuring of support unit in parallel discussions outside of the collective bargaining process - Unfair to apply "significant/material change" principle - Determination of whether positions ought to be excluded must be decided as a case of first instance and by reference to current duties - Substantive Order.

BARGAINING UNIT - APPROPRIATE BARGAINING UNIT - EXCLUSIONS - Confidential Personnel - Human Resources Clerk performed duties of Human Resource Administrative Assistant when incumbent was absent - Administrative Assistant worked directly for and reported to the Director of Human Resource Services prepared and processed correspondence for the Director - Unfair to include Human Resources Clerk in support unit as employed in confidential capacity in matters relating to labour relations to such a degree that position ought to be excluded - Substantive Order.

The Union filed an Application seeking a Board Ruling whether the positions of Benefit Support Clerk, Payroll Clerk and Human Resources Clerk in the Department of Human Resource Services fell within the scope of the support unit. The Employer argued that the case ought to be assessed in accordance with the principle that, where a position has historically been excluded from a bargaining unit covered by successive collective agreements negotiated between two parties, the onus of proof rested with the bargaining agent to satisfy the Board that there have been material or significant changes in the duties associated with the position to sustain the conclusion that the previously excluded position ought to be from then on included in a bargaining unit.

Held: The Board did not accept that the Union had, through successive collective agreements, agreed to the exclusion of positions in the support unit. The parties were addressing issues arising from the restructuring of the support unit in parallel discussions outside of the collective bargaining process. It would be unfair to the Union to apply the "significant/material change" principle. Accordingly, the determination of whether the three positions ought to be excluded must be decided as a case of first instance and by reference to the current duties performed by the incumbents. In assessing the three positions, the Board must be satisfied that the incumbents ought to be excluded on the "confidentiality criterion" based on their regular and material involvement in matters relating to labour relations and that such regular and material involvement must be the core of an individual's job functions and not merely be reflective of an incidental or isolated involvement in some aspects of matters relating to labour relations. While the Board accepted that the incumbents of the three positions had access to "confidential" information in the general sense and that there was an expectation that these employees must maintain confidentiality under their duty of fidelity to the Employer, this fact, standing alone, was not sufficient to exclude the positions from the support unit. Access to and the processing

of information, such as salary information or disciplinary notices, to which employees are entitled was not a reason to exclude them on the confidentiality criterion. The Board was satisfied that the Benefit Support Clerk, Human Resources Clerk and Payroll Clerk were not involved with the disciplinary process, the resolution/settlement of grievances (aside from communicating a decision to the employee or the Union), the development of bargaining strategies, the development of bargaining proposals, participation in the budget process or the preparation of performance appraisals. However, it would be unfair to the Human Resources Clerk to be included in the support unit because the incumbent was employed in a confidential capacity in matters relating to labour relations to such a degree that the position ought to be excluded. Of particular importance was that the Human Resources Clerk was expected to function as and perform the duties of the Human Resource Administrative Assistant when the incumbent of that position was absent. The Administrative Assistant worked directly for and reported to the Director of Human Resource Services performing a range of tasks including the preparation and processing of correspondence for the Director. Therefore, the Board ruled that the position of Human Resources Clerk was excluded from the bargaining unit and the positions of Payroll Clerk and Benefit Support Clerk were “employees” within the meaning of the Act and were included in the bargaining unit.

UNIVERSITY OF MANITOBA -and- Association of Employees Supporting Education Services

Case No. 394/05/LRA

August 2, 2007

BARGAINING UNIT - EXCLUSIONS - Confidential Personnel - Union sought ruling that positions historically excluded in Libraries Administration Office be included - In accordance with long-standing principle where position covered by successive collective agreements, Applicant must satisfy Board that material and significant changes have occurred - Changes to titles of positions and individuals who filled the positions, not material and significant to conclude contested excluded positions ought to be included in bargaining unit.

The Union filed an application seeking a Board Ruling to determine whether certain positions in the Libraries Administration Office were included in the bargaining unit. Some of the positions were Receptionist; Manager, Administrative Services; Budget Officer; Human Resources Officer; Administrative Services Officer; and Executive Secretary to the Associate Directors. The contested positions were not new positions. The Union filed an almost identically worded application in January 2000 which was settled in September 2000. The Union claimed that the deal was not consummated as the Executive Secretary position was never filled as promised and the Receptionist position was vacant.

Held: The Board was satisfied that the Settlement was made in good faith and that the Employer’s failure to fill the Executive Secretary position was due to budget cuts and its decision to leave the Receptionist position vacant did not abrogate that agreement. The terms of the Settlement are of great significance in this case. At that time the parties agreed that seven positions would remain excluded. The Board was satisfied that those positions include the same positions that the Union now claims ought to be in the bargaining unit. The Board determined that this case is to be assessed in accordance with the long-standing principle that, where a position has historically been excluded from a bargaining unit covered by successive collective agreements negotiated between the two parties, the onus of proof rests with the Union who must satisfy the Board that there have occurred material and significant changes sufficient to sustain the conclusion that the excluded positions ought to be henceforth included in the bargaining unit. The Board compared position descriptions which existed at the time of the parties’ previous settlement with the most current position descriptions. While acknowledging that there have been organizational changes within the Libraries System and some changes to the titles of positions and the individuals who fill the positions at issue in the present case, the Board determined that there have not been material and significant changes sufficient to conclude that the contested excluded positions ought to be included in the bargaining unit. For some of the positions the Board found they were more “excludable” than when the parties entered into the previous settlement. Accordingly, the Board determined the position of Receptionist was included in the bargaining unit, and that the positions of Executive Assistant to the Director; Manager, Administrative Services; Budget Officer; Human Resources Officer; Administrative Services Officer; and Executive Secretary to the Associate Directors are excluded from the bargaining unit.

Winnipeg South Osborne Legion Branch #252 (Formerly Fort Rouge and Imperial Veterans Legion Branch #252) -and- National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 144

Case No. 85/07/LRA
August 7, 2007

COLLECTIVE AGREEMENT - Subsequent Collective Agreement - As parties did not agree on a term for the Subsequent Collective Agreement for period longer than one year, pursuant to Section 87.3(5.1) of *The Labour Relations Act*, Board was restricted to settling Agreement for fixed term of six months following date of settlement - Substantive Order.

COLLECTIVE AGREEMENT - Subsequent Collective Agreement - Board determines which articles deemed to be appropriate for inclusion in the Subsequent Collective Agreement - Substantive Order.

The Union filed an Application for settlement of a Subsequent Collective Agreement pursuant to Section 87.1(1) of *The Labour Relations Act*. In a previous Order, the Board ordered the provisions of a collective agreement to be settled by an arbitrator, within the sixty days mandated by Section 87.3(3) of the *Act*, provided that the parties serve a notice of their wish for arbitration on the Board within ten days of the date of the Order; or failing an agreement between the parties on an arbitrator, by the Board within 90 days of the date of the Order. The parties did not serve notice on the Board within the time limit prescribed by Section 87.3(2) of the *Act* that they wished to have a collective agreement settled by arbitration. Accordingly, the Board proceeded to settle the terms and conditions of the Collective Agreement between the parties. The Board considered fifteen issues that remained in dispute.

Held: As the previous Collective Agreement expired on August 31, 2005, and the parties did not agree on a term for the Subsequent Collective Agreement for a period longer than one year, the Board, pursuant to Section 87.3(5.1) of the *Act*, was restricted to settling a Subsequent Collective Agreement for a fixed term of six months following the date of settlement. The Board accepted all terms and conditions from the previous Collective Agreement which the written submissions of the parties revealed were agreed to by both parties and could, therefore, be incorporated, without change, in the Subsequent Collective Agreement. The Board accepted the revised list of arbitrators agreed to by the parties during the hearing. As to the 15 issues which remained in dispute, the Board was satisfied that, except for settling new or revised terms for Article 3.08; Articles 21.04(a) and (b); Articles 22.01 to 22.06 (Benefits); and Article 23.01, the remaining issues referred to the Board were in the circumstances of the case, deemed to be inappropriate for inclusion in the Subsequent Collective Agreement.

Assiniboine Regional Health Authority - and - Manitoba Nurses' Union -and- Manitoba Government and General Employees' Union

Case No. 474/06/LRA
September 6, 2007

SUCCESSORSHIP - BARGAINING UNIT - Appropriate Bargaining Unit - Amalgamation - Board determined classification of Home Care Case Co-ordinators were practicing profession of nursing as essential part of their job functions and properly fell with the Manitoba Nurses' Union bargaining unit - Board ordered Home Care Case Co-ordinators who were still within Technical/Professional Paramedical bargaining unit be removed from the Manitoba Government and General Employees' Union bargaining units and be placed within the MNU bargaining unit - Substantive Order.

The Employer requested that the Board determine whether the Home Care Case Co-ordinators (HCCC) should be assigned either to the Nurses' bargaining unit represented by the Manitoba Nurses' Union (MNU) or to the Technical/Professional Paramedical bargaining unit represented by the Manitoba Government and General Employees' Union (MGEU).

Held: The Employer, as a successor and new employer, made a determination that as of January 2003 all HCCC's would be required to be nurses. The fact that the guidelines of the Manitoba Home Care Program did not require that a nurse be employed as an HCCC was not determinative of the case. While the Board accepted that there was no requirement that this assessment function must be conducted by a nurse, the Employer had determined that a nurse was required. It was not the task of the Board to question this policy decision. The Board accepted that a nurse can be "practicing the profession" of nursing within the definition of "practicing" in *The Registered Nurses Act* and under the Standards of Practice for Registered Nurses without providing clinical nursing care on a regular basis. In this regard, the Board accepted that the HCCC's delivered nursing services within the meaning of Section 4.3.1 of the Program as a normal expectation of their job and, as such, were required to "practice the profession or nursing" in the course of their duties. The

HCCCs, in the course of their duties, use the knowledge, training and experience they have acquired as nurses when they assess clients and develop, implement and revise care plans for clients. The Board was also satisfied that changes to the administration of the Program constituted a significant change. The Board was satisfied that a nexus existed between the nursing qualifications required by the Employer and the duties and functions of the HCCC's. Therefore, the Board determined that the Home Care Case Co-ordinators were practicing the profession of nursing as an essential part of their job functions and properly fell with the MNU bargaining unit. The Board ordered that the Home Care Case Co-ordinators who were still within the Technical/Professional Paramedical bargaining unit be removed from the MGEU bargaining units and be placed within the MNU bargaining unit.

Winnipeg Fire Paramedic Service -and- United Fire Fighters of Winnipeg, Local 867 -and- Drew Duff
Case No. 738/05/LRA
September 11, 2007

DUTY OF FAIR REPRESENTATION - Contract Administration - Failure to Process Grievance - Union's decision not to file grievance because it would be inimical to interests of bargaining members as a whole was a decision which was reasonably sustainable - Employee disagreeing with decision was not a basis to find that Union was in breach of Subsection 20(b) of *The Labour Relations Act* - Application dismissed - Substantive Order.

The Employee elected to terminate his employment in June 2004. The collective agreement provided that an employee who retired was entitled to receive any unused sick leave as retirement leave with pay or a lump sum payment. For some time prior to June 2004, the Union and the Employer had agreed to remove the sick leave cash out provisions. The terms of this change was subject to ongoing discussion/arbitration proceedings in 2004. When the Employee did not receive any sick leave pay out, he requested that the Union file a grievance. The Union decided not to pursue the matter for a number of reasons. For many years, persons in the Employee's position had never received any sick leave cash out because they were not deemed to have retired. Also, a verbal legal opinion was received years prior that a similar case was not winnable due to years of uncontested past practice. As well, legal advice was also that the grievance would be detrimental to the interests of the bargaining unit as whole due to the ongoing discussions over the sick leave pay out issue. The Employee filed an application under Section 20 of *The Labour Relations Act* asserting that the Union failed to properly represent him by failing to file and process a grievance.

Held: A union is entitled to decide not to file a grievance, not to pursue a grievance to arbitration, and is entitled to decide to settle a grievance without an employee's agreement so long as the union's decision is not arbitrary, discriminatory or made in bad faith. The Board was satisfied that the Union did not act on the basis of hostility, ill will or dishonesty and, given its clear communication to the Employee, the Union did not attempt to deceive him or refuse to process a grievance for sinister purposes. The Union did not single out the Employee in a pejorative manner, based on irrelevant considerations. The Union was entitled to rely on the legal opinion it had obtained from experienced legal counsel in a case which raised the same issue as in the Employee's case. The fact that the legal advice received was verbal was not determinative and did not affect its cogency or validity. The Union took into account the long-term interests of the members of the bargaining unit as a whole when it made its decision and was entitled to consider such broader issues. The Union's decision was not made on the basis of irrelevant factors and the Union did not display an attitude which could be characterized as "... indifferent in summary, or capricious and non-caring or perfunctory". As a result, the Board found that the Union's decision not to file a grievance on behalf of the Employee because it would be inimical to the interests of bargaining members as a whole was a decision which was reasonably sustainable. The fact that the Employee disagreed with the decision was not a basis to find that the Union was in breach of Subsection 20(b) of the *Act*. Therefore, the Board determined that the Employee failed to establish that the Union acted in a manner which was arbitrary, discriminatory or in bad faith in representing him and the unfair labour practice application was dismissed.

University of Manitoba -and- University of Manitoba Faculty Association -and- Claude Berube, Pamela Danis, John Brian Dobie, Stan Pierre, Jonathan Rempel and Michael Sirant

Case Nos. 109/06/LRA and 111/06/LRA

October 4, 2007

UNFAIR LABOUR PRACTICE - Interference - Bargaining Directly with Employees - Employer interfered with rights of Union and members by introducing employment model under which athletic team coaches would no longer hold academic rank and therefore fell outside bargaining unit - Employer did not consult Union during the process and met directly with coaches without Union being present.
UNFAIR LABOUR PRACTICE - REMEDY - Compensation - Employer introduced employment model under which athletic team coaches would no longer hold academic rank and therefore fell outside bargaining unit - Employer unlawfully removed coaches from bargaining unit and deprived the Union of dues to which it was entitled - Employer ordered to pay union dues itself and not by deducting amounts from coaches' salaries.

In December 2005, the Employer decided to introduce an employment model for certain athletic team coaches. Prior to the introduction of the model, the coaches had been granted term appointments with academic rank as Instructors within the bargaining unit and were covered by the terms of the collective agreement with the Association. Under the new model, the coaches would not hold academic rank and would fall outside that bargaining unit. The Employer determined that it wanted to implement the new model starting with the coach whose term was to expire on December 31, 2005. The Employer needed to meet with him, explain the model, have him agree to it and complete paperwork promptly if he was going to be paid in January on schedule. The next day, the Employer summoned the other coaches to a meeting in which they were told that they would be offered appointments under the new employment model but if they chose not to accept the appointment without rank then they would be given three months notice as required under the collective agreement and they would not receive another appointment. When one of the coaches informed the Association about the meeting and the employment model, the Association filed two applications for Board Ruling requesting that the Board determine that the Persons Concerned were Instructors in the bargaining unit for which the Association was certified and/or that a group of employees including those individuals was an appropriate bargaining unit. In addition, the Association filed an Unfair Labour Practice Application which alleged that the Employer interfered with its rights and the rights of the coaches.

Held: The coaches were academics. In addition to discharging a teaching function in their role as coach, they are responsible for monitoring the academic success of their athletes and they may be assigned to teach undergraduate courses. The new employment model did not affect their duties. They continued to perform essentially the same duties as when they were accorded academic rank. The decision to deny academic rank was taken to remove the coaches from the union and a collective agreement which the Employer perceived as impeding its ability to adequately deal with issues including the promotion and compensation of coaches. The Employer was determined to bring coaches outside of the bargaining unit so that it would have essentially unrestricted latitude to determine their terms and conditions of employment without input or interference from the bargaining agent. It is significant that at no point during the new employment model's year-long gestation period did the Employer approach the Association to discuss the problems which had been identified regarding coaches. While the failure to include the Association in these discussions is not necessarily an unfair labour practice, it does suggest that the Employer seized upon only one solution to the problem, that being the removal of the coaches from the bargaining unit. For the Employer to unfairly deny academic rank and deliberately remove positions from the bargaining unit violated the individuals' rights to be in a union and it constitutes an unreasonable and unjustifiable interference with the administration of the trade union contrary to sections 5 and 6 of the *Act*. In addition, in unlawfully seeking to remove the positions from the bargaining unit, the Employer deprived the Association of union dues to which it was entitled contrary to section 29 of the *Act* which also constitutes an unfair labour practice. The Employer's decision to meet individually with coaches, as well as the nature of the communications during those meetings transgressed upon the Association's monopoly on representation guaranteed by the *Act* and seriously interfered with its ability to represent those employees. The meetings with the coaches, particularly the one with the single coach, were extremely untoward. These meetings were clearly designed to sell the coaches on the new non-union model. The decision to exclude the Association from those meetings was clearly deliberate and strategic. The Employer's communications with the coaches at those meetings in which it offered incentives and made threats to the coaches' continued employment in order to encourage them to cease being members of the union violated section 17 of the *Act*. The decision to meet with the Association members without notice to the Association unreasonably and unjustifiably undermined the union's statutory authority and obligation to represent the

employees. As to the Board Ruling, the Board ruled that there had not occurred material and significant changes to the positions held by the Persons Concerned to sustain the conclusion that they ought to be excluded from the bargaining unit. The Board heard that the Employer had been hiring "professional" as opposed to "academic" coaches for many years. This is in no way a recent change or a circumstance that was unknown to the Employer prior to negotiation of the most recent collective agreement. The Board was not satisfied that the Employer had come close to discharging its onus to prove material and substantial change. Therefore, the Board ruled that the coaches were employed within the Instructors series and included in the bargaining unit for which the Association was certified. One of the remedies granted was that the Employer pay "union dues on behalf of the Persons Concerned in such amounts as ought to have been deducted from them and remitted to" the Association. The Board clarified that it intended the Employer pay these monies itself rather than deduct the amounts from the salaries of the coaches.

Able Movers Ltd. -and- International Union of Operating Engineers, Local 987-and- Gerard Fillion

Case No. 376/07/LRA

November 2, 2007

CONSTRUCTION INDUSTRY - UNFAIR LABOUR PRACTICE - STRIKE - Layoff - Union contended Employer refused to reinstate Employee following end of strike based on his seniority - Held parties reached an agreement that Employer retained discretion to determine whether work was available and, if so, which employees would be required to perform that work without regard to seniority - Board accepted that Employee not recalled on account of lack of work and decision based on valid business reasons - Substantive Order.

The Employee was a journeyman heavy duty mechanic. The Union filed an application for an unfair labour practice asserting that the failure to recall the Employee to work following the end of a legal strike interfered with the right of the Employee to participate in the activities of the Union [Section 5(3)]; interfered in the administration of a union and/or the representation of employees by the Union [Section 6(1)]; constituted a refusal to continue to employ and/or discriminated in regard to employment against the Employee due to his participation in union activities and/or having exercised his rights under the *Act* [Section 7]; and by refusing to reinstate the Employee in order of seniority as work became available following the conclusion of the strike, the Employer violated Section 12(1)(f) or, alternatively, Section 13(1)(e) of the *Act*.

Held: The evidence did not establish that the Employer violated either Sections 5(3) or 6(1) of the *Act*. Therefore, the core matters before the Board related to assertions that Sections 7 and 12(1)(f) or 13(1)(e) of the *Act* had been violated. The Board noted that the Collective Agreement, consistent with most agreements in the construction industry, did not contain any seniority provisions. The Employer satisfied its onus that the Employee's participation in a legal strike was neither the reason for nor a motivating factor for his lay-off. The Board accepted that the reason for not recalling him to work was on account of a lack of work and was based on valid business reasons. As to the contention that the Employer failed to recall the Employee on the basis of his "seniority standing", the applicable provision was Section 12(1) of the *Act* because a collective agreement was concluded between the parties. Section 13(1) of the *Act* was only triggered where no collective agreement was concluded. The work performed by the Employee at the time the strike commenced was not continued after the strike was settled, so the conditions for Section 12(1)(c) of the *Act* had not been met. Further, pursuant to Section 12(1)(e) of the *Act*, the parties did reach an agreement respecting the reinstatement of employees in the unit and the terms of this agreement included the condition that the Employer retained the discretion to determine whether work was available and, if so, which employees would be required to perform that work. Under the terms of the agreement, such decisions may be made without regard to seniority. Having made this finding, Section 12(1)(f) of the *Act* was not applicable in the circumstances of this case. As a result, the application was dismissed.

Parkland Regional Health Authority -and- Manitoba Government and General Employees' Union (MGEU) -and- International Union of Operating Engineers, Local 987 (IUOE)

Case No. 310/07/LRA

November 16, 2007

VOTE - SUCCESSORSHIP - Intermingling - MGEU filed Application for declaration that five paramedics formerly employed by Swan Valley and represented by IUOE were within scope of unit for which MGEU was bargaining agent - Employer requested "yes/no" vote be held to determine if five paramedics wanted to be represented by a union - Board held vote not necessary as overwhelming

majority of employees fell within existing MGEU unit - Board declared technical/professional paramedical employees formerly employed by Swan Valley fell within the scope of MGEU bargaining unit - Substantive Order.

By reason of the transfer of the Swan Valley facilities to the Employer there had been a sale, merger or amalgamation within the meaning of Section 56(2)(a) of *The Labour Relations Act* and, as a consequence, the Employer acquired the rights, privileges and obligations under the *Act* as a successor employer. The MGEU filed an Application for Board Ruling requesting that the Board declare that the technical/professional paramedical employees formerly employed by Swan Valley and represented by the IUOE were within the scope of the Employer's technical/professional paramedical unit. The Employer requested that the declaration be held in abeyance pending the result of a "yes/no" vote to be held among the five technological/professional paramedical employees formerly employed by Swan Valley. The purpose of the "yes/no" vote was to determine whether or not the five affected employees wished to be represented by a union. If a majority of the affected employees indicated "yes" then the five employees would be placed in the MGEU unit. MGEU was of the position that a "yes/no" vote should not be conducted.

Held: There had been an intermingling among the five former Swan Valley technical/professional paramedical employees and the technical/professional paramedical employees who fall within the MGEU unit. In the circumstances of the case, it was neither necessary nor advisable to order a "yes/no" vote pursuant to Section 56(2)(e) of the *Act*. The technical/professional paramedical employees employed by the Employer and the former Swan Valley facilities constituted a single appropriate bargaining unit. The single bargaining unit appropriate for collective bargaining had already been determined by the Board and that unit was properly described in the certificate for the MGEU. It was not necessary to conduct a representation vote pursuant to Section 56(2)(e), as between the MGEU and the IUOE, because the IUOE indicated that it was withdrawing from any representation vote which the Board may have ordered. This reflected the practical reality particularly having regard that the overwhelming majority of the affected employees fell within the existing MGEU unit. Therefore, the Board declared that the technical/professional paramedical employees formerly employed by Swan Valley fell within the scope of the MGEU bargaining unit.

Parkland Regional Health Authority –and– Manitoba Government and General Employees' Union - and- International Union of Operating Engineers, Local Union No. 987 -and- Canadian Union of Public Employees –and– Swan Valley Health Centre and its facilities

Case No. 337/07/LRA

November 16, 2007

SUCCESSORSHIP - Issues before Board did not constitute a continuation of Review of Bargaining Unit Appropriateness in Manitoba's Rural Health Care Sector - Transfer of Swan Valley facilities to the Parkland Regional Health Authority resulted in a sale, merger or amalgamation within the meaning of Section 56(2)(a) of *The Labour Relations Act* - Determined Parkland RHA was successor employer - Substantive Order.

SUCCESSORSHIP - VOTE - PRACTICE AND PROCEDURE - Amalgamation of health facilities into Health Authority resulted in intermingling of three unions - Employer submitted that MGEU should not be included on representation vote as it did not represent 20% or more of affected employees - MGEU questioned existence of Board rule for threshold of support in order to be placed on ballot - Board order MGEU to be on ballot - Substantive Order.

Parkland RHA filed an application seeking a declaration that it was the successor employer of all employees formerly employed by Swan Valley Health Centre; a declaration that there had been an intermingling of the Swan Valley employees and current employees of the Parkland RHA and that those employees constituted one or more units appropriate for collective bargaining; and an Order that a regional representation vote be conducted among all employees in the support facility unit including those formerly employed by Swan Valley.

Parkland RHA further submitted that, if the Board ordered that a regional representation vote be conducted, then the vote should be ordered between CUPE and IUOE as MGEU did not represent the requisite 20% or more of the affected employees to be eligible as a bargaining agent. The MGEU submitted that it should be included in any representation vote that may be ordered by the Board and questioned the existence of any Board rule, which required that a bargaining agent must enjoy a specific threshold of support in order to be placed on a ballot.

Held: The Application was to be determined under Section 56(2) of *The Labour Relations Act*. The issues before the Board did not constitute a continuation of the review of bargaining units under the Review of

Bargaining Unit Appropriateness in Manitoba's Rural Health Care Sector. By reason of the transfer of the Swan Valley facilities to the Parkland RHA there had been a sale, merger or amalgamation within the meaning of Section 56(2)(a) of the *Act* and, as a consequence thereof, Parkland RHA had acquired the rights, privileges and obligations under the *Act* as a successor employer. There had been an intermingling within the meaning of Section 56(2)(c) of the *Act*, among the former Swan Valley employees and the Parkland RHA Support Facility employees. The Board further determined that a single bargaining unit for all employees employed in "facility support" within the Parkland RHA was appropriate. The Board ordered that a representation vote be conducted among the affected employees in the bargaining unit, with CUPE, IUOE and MGEU appearing on the ballot.

Seven Oaks School Division -and- Canadian Union of Public Employees, Local 731 -and- John Missler
Case No. 472/07/LRA
November 20, 2007

UNFAIR LABOUR PRACTICE - Prima facie - Employee asserted Employer and Union violated Sections 80(2), 130(3.1) and 133 of *The Labour Relations Act* by failing to proceed with his grievance - No part of those sections standing alone, constitute valid basis for an unfair labour practice application - Application did not, on its face, disclose prima facie breach of any substantive provision in Part I of the *Act* - Application dismissed - Substantive Order.

UNFAIR LABOUR PRACTICE - ARBITRATION - JURISDICTION - Employee asserted collective agreement was contrary to Human Rights Code and asserted Employer and Union violated agreement - Board declined to adjudicate matter arising from an interpretation of the agreement as such assertions were properly subject of formal grievance and arbitration procedure - Substantive Order.

The Employee filed an unfair labour practice application alleging that both the Employer and the Union failed to investigate or proceed with a formal grievance filed by the Employee, in his individual capacity. The Employee asserted that the Employer and the Union violated Sections 80(2), 130(3.1) and 133 of *The Labour Relations Act*, as well as Article 1.01 and Article 4.0 of the Agreement.

Held: Conduct which may constitute an unfair labour practice is defined in Part I of the *Act* and the Application did not, on its face, disclose a prima facie breach of any substantive provision in Part I of the *Act*. None of Sections 80(2), 130(3.1) or 133 of the *Act*, standing alone, constitute a valid basis for an unfair labour practice application. To the extent that the Applicant asserted Article 7.02 of the Agreement was discriminatory and contrary to The Human Rights Code and to the extent that the Employee sought an order of the Board amending or replacing this provision of the Agreement, those assertions and/or requested orders were beyond the jurisdiction of the Board under the *Act*. To the extent the Application asserted that there had been a violation or a breach of the Agreement, such assertions were properly the subject of the formal grievance and arbitration procedure. The Board declined to adjudicate a matter arising from an interpretation of the Agreement and which, if arbitrable at all, can be adequately determined under the provisions of the Agreement for final settlement of disputes. In the result, the Application as a whole did not disclose any facts which arguably constitute a prima facie breach of any provision of the *Act*, particularly any of the substantive unfair labour practice provisions in Part I of the *Act*. As a result, the Board dismissed the Application.

Addictions Foundation of Manitoba -and- Manitoba Government and General Employees' Union -and- Jackie Massey
Case No. 501/07/LRA
November 27, 2007

VOTE - PRACTICE AND PROCEDURE - TIMELINESS - Employee filed vote complaint application 4 months after ratification vote - Held Employee unduly delayed filing application as she was aware of date of vote and as per Section 70(1) of *The Labour Relations Act* complaint must be filed within 15 days of a vote - Substantive Order.

The Employee was aware that a ratification meeting was being held in Winnipeg on July 3, 2007. Not having received a mail-in ballot, she called the offices of the Union on or about June 25, 2007, and was advised of the procedure which she could follow in order to vote at the meeting scheduled for the Winnipeg location on July 3. Almost four months after the ratification vote, she filed a complaint pursuant to Sections 69 and 70 of *The Labour Relations Act* seeking an order requiring the Union to conduct another vote by mail among all of the affected employees in the bargaining unit.

Held: The Employee, having been aware of the ratification meeting and of her opportunity to cast a ballot at the meeting on July 3 had unduly delayed the filing of the Application because Section 70(4) of the *Act* states that where no complaint is filed with the Board under Section 70(1) within 15 days after a vote is held in purported compliance with Section 69, then the vote shall be "... conclusively deemed to have been carried out in accordance with the requirements of section 69." The Board accepted that reasonable notice of the vote was given to the affected employees; a reasonable opportunity was given to the employees to cast a ballot; and that the vote was conducted by secret ballot. As a result, the complaint was dismissed.

Manitoba Interfaith Immigration Council -and- Canadian Union of Public Employees -and- Gerardo A. Aguilar

Case No. 009/07/LRA

January 25, 2008

DUTY OF FAIR REPRESENTATION - Arbitrary Conduct - Failure to Refer Grievance to Arbitration - Union Executive Committee directed arbitration hearing be adjourned in light of new allegations against Employee - Union did not act arbitrarily by not proceeding to arbitration hearing after a grievance had been filed and a hearing date scheduled - Decision not to proceed based on relevant factors and decision did not reflect indifference or non-caring attitude towards the Employee's concerns - Substantive Order.

DUTY OF FAIR REPRESENTATION - Union representative aggressively expressed his view towards dismissed employee was unfortunate but did not result in Union being unfair towards the Employee - Substantive Order.

The Union filed a grievance challenging the dismissal of the Employee. A week before the arbitration hearing, the Employer advised the Union of a further offence by the Employee. The grievance was referred back to the Executive Committee. After consideration, the Committee directed that the hearing be adjourned and that an attempt be made to settle with the Employer. The terms of settlement were negotiated, but the Employee rejected the settlement. The Union then advised the Employee of its decision to withdraw the grievance. The Employee appealed that decision. Legal Counsel was present at the Committee hearing and provided legal advice. The Committee upheld the decision to withdraw the grievance if settlement was not achieved. As a result of the decision, the Employee filed an unfair labour practice application that the Union had acted arbitrarily contrary to Section 20(i) and (ii) of *The Labour Relations Act*.

Held: The critical issue to be decided was whether the Union acted in an arbitrary manner by not proceeding to the arbitration hearing after a grievance had been filed and a hearing date scheduled. In this case, the Union did direct its mind to the merits of the grievance and reached a reasoned and informed decision in determining not to proceed to arbitration. The Union was not obligated to arbitrate the issue advanced by the Employee, but rather was only obligated to fairly consider whether that issue should be arbitrated. The Union received advice from legal counsel before making its decision to withdraw the grievance from arbitration. The Union provided the Employee with an opportunity to appeal its decision and, in that regard, the Board was satisfied that the Employee who was represented by counsel, had the opportunity to present his appeal before the Executive Committee. There was no suggestion the Committee acted in other than a *bona fide* manner in considering and, ultimately, rejecting the appeal. The Board noted that at one meeting a representative of the Union was aggressive in expressing his view to the Employee. Such aggressiveness towards a dismissed employee is unfortunate. Nevertheless, the Board is satisfied that this conduct did not result in the Union being unfair towards the Employee. The Employee strongly disagreeing with the Union's decision to not pursue the grievance to arbitration does not constitute a breach of section 20 of the *Act*. The decision not to proceed was based on relevant factors and the decision did not reflect either indifference or a non-caring attitude towards the Employee's concerns. Therefore, the Board determined that the Employee failed to establish that the Union acted in a manner that was arbitrary in representing rights of the Employee under the agreement. Accordingly, the application was dismissed.

SUMMARIES OF SIGNIFICANT BOARD DECISIONS PURSUANT TO *THE EMPLOYMENT STANDARDS CODE*

Mandix Corporation Ltd. t/a McDougall Auto Superstor -and- Terry Haluik,

Case No. 714/06/ESC

April 13, 2007

NOTICE - Exception under Section 62 of *The Employment Standards Code* - Employer asserted it was entitled to terminate Employee without notice as he had not fulfilled all of his responsibilities, and had been inattentive to important details, and had otherwise failed to fulfill some rules and procedures relating to transactions - Held circumstances at the material time were not so extreme as to justify an immediate dismissal without notice - Claim for wages in lieu of notice allowed - Substantive Order.

WAGES - Unauthorized deductions - Employee filed claim for an unauthorized deduction relating to an invoice for labour and parts for work done on a vehicle that he purchased from Employer - While he had not signed order authorizing work to be done, he clearly asked that a few things be done to the vehicle, the labour and parts as invoiced were supplied and he benefited from the work performed - Claim for reimbursement for an unauthorized deduction dismissed - Substantive Order.

The Employer asserted that it was entitled to terminate the employment of the Employee without notice because the Employee had not fulfilled all of his responsibilities, and had been inattentive to important details, and had otherwise failed to fulfill some of the reasonable rules and procedures of the Employer relating to at least one, and potentially more, transactions. Section 61 of *The Employment Standards Code* stipulates that an Employer shall not terminate the employment of an Employee without giving notice of not less than one pay period. Certain exceptions to that general principle are outlined in section 62 of the *Code*. The Employer argued that this case fit within the exception outlined in subsection 62 (h) of the *Code*. The Employer specifically alleged that the Employee had acted in a manner which constituted "willful misconduct, or disobedience, or willful neglect of duty" that was not condoned by the Employer. The Employee's claim included reimbursement for an unauthorized deduction relating to an invoice for labour and parts charged by the Employer for work done on a used vehicle that had been purchased by the Employee from the Employer.

Held: The Employer failed to establish willful misconduct, disobedience or willful neglect of duty. Moreover, the circumstances at the material time were not so extreme as to justify an immediate dismissal without notice.

The Employer was entitled to make the business decision to terminate the Employee's employment. However, as with many business decisions, there is a cost associated with that decision, namely the cost of providing notice of not less than one pay period, or payment in lieu thereof, to the Employee. In the result, the Employee is entitled to receive wages in lieu of notice. As to the claim for the unauthorized deduction, the Board noted that Employee had not signed a work order authorizing the work to be done. However, the evidence was clear that the Employee had asked that a few things be done to the vehicle, and that the labour and parts referred to on the invoice were supplied by the Employer. The amount in question is a sum certain, the Employee has received the benefit of the work performed, and it was appropriate that he pay for that work. In the result, the Employee's claim for reimbursement for an unauthorized deduction was dismissed.

Tonya Collins, trading as Lite Stop Foods -and- Cindy Fleet

Case No. 204/07/ESC

January 28, 2008

NOTICE - DISCHARGE - EVIDENCE - Theft - At time of termination, Employer issued wages in lieu of notice and a Record of Employment reflecting "things not working out" - Employer reissued Record of Employment and for first time noted Employee was dismissed for theft of muffins based on allegations of one witness - Board troubled that Employer allowed Employee to work after it became aware of alleged theft - Evidence to substantiate theft fell short of being clear, compelling and cogent - In absence of sufficient explanation for change of mind, Employer should be held to original position - Order for wages in lieu of notice confirmed.

At the time of her termination, the Employer paid the Employee wages in lieu of notice, issued a Record of Employment and told her things were not working out. The Employee later noticed the cheque was inaccurate and contacted the Employer. She was instructed to return to the store. When she did, she was given a new Record of Employment which said she was being dismissed for dishonesty. This was the first time the issue of

dishonesty was raised. The Employee maintained that she had not been dishonest. She filed a claim with the Employment Standards Division for wages owing. The Division found in part, that wages in lieu of notice be paid. The Employer disagreed wages should be paid since the Employee stole muffins from the restaurant. The Employer relied on the evidence of one individual who testified that she saw the Employee put muffins in a black backpack but could not recall when the theft occurred. The Employer acknowledged allowing the Employee to continue working at the store after it became aware of the allegations. The Employee denied taking the muffins as alleged and said she did not have a black backpack.

Held: The Board only had before it the one witness' assertions, which the Employee disputed in their entirety. The Board was troubled that the Employer allowed the Employee to continue working after it became aware of the alleged theft. Evidence to substantiate theft should be clear, compelling and cogent. In these particular circumstances, the evidence fell short of this. Further, the Board noted that if the Employer itself was satisfied at the time of termination that there was sufficient evidence of theft to terminate the Employee for that reason, then presumably the Employer would have done so. In this case, not only did the Employer terminate the Employee by telling her only that "things weren't working out", but confirmed in response to a question by the Employee that they were paying her wages in lieu of notice and, further, that "Statutory Pay" was included. There appears to have been a change of heart and mind between the time the Employee first was advised of her termination and the time the new and revised Record of Employment was given to her. In the absence of sufficient explanation, the Board can only speculate as to reasons for this. Regardless, at the time the termination first occurred, the Employer was aware of the theft allegations and was still prepared to issue wages in lieu of notice and a Record of Employment reflecting same. The Board was of the view the Employer should be held to this position. Accordingly the Order of the Employment Standards Division was confirmed.

GIJO Ltd., trading as Canadian Homestead -and- Lesley Ann Baker

Case No. 676/06/ESC

March 2, 2007 & June 29, 2007

EMPLOYEE - WAGES - Commission Wages - Employee closed a sale consisting of six advertisements - Employer had yet to receive payment for advertisements - Board ruled Employee entitled to receive commission wages and vacation wages on all collections received by the Employer for advertisements sold - Further, the agreement between the parties was that commission would be paid upon publication of advertisements - Substantive Order.

Preliminary Order: The Director of the Employment Standards Division ordered the Employer to pay \$4,525.92 in wages to the Employee. The Employer disputed the payment.

Held: The Board issued a preliminary decision that the Employee was entitled to receive commission wages on all collections received by the Employer for advertisements sold by the Employee at the agreed upon rate of 25%. She was entitled to receive vacation wages on all commission wages owing to her at a rate of 4%. During the time period at issue, the Employee closed a single sale, consisting of six advertisements. The Employer had yet to receive any payment from the customer from the publication of the advertisements. The Employer was to confirm for the Board on or before June 1, 2007 whether the advertisements had been published, that the amounts owing by the customer have been received by the Employer, and that the commission wages and vacation wages owing to the Employee, based on the collections received by the Employer from the customer, have been paid to the Employee.

Final Order: As per the Preliminary Order, on June 1, 2007, the Employer filed documentation with the Board, advising that the advertisements had been published; that the amounts owing by the customer had not been received by the Employer and that commission wages and vacation wages had not been paid to the Employee by the Employer.

Held: The Board was satisfied that the agreement between the parties was that commission would be paid upon publication of advertisements. Noting the advertisements have been published, the Board found that the Employee was entitled to receive wages, less \$100 advance which the Employee conceded receiving, and \$4,395.92 for vacation wages.

SUMMARIES OF SIGNIFICANT BOARD DECISIONS PURSUANT TO *THE WORKPLACE SAFETY & HEALTH ACT*

Shaw Laboratories Ltd. -and- Director, Workplace Safety and Health

Case No. 314/07/WSH

July 24, 2007

PRACTICE AND PROCEDURE - Hearings - Director of Workplace Safety and Health Division submitted that Board confirm administrative penalties and dismiss appeal without oral hearing - Pursuant to Sections 53.1(8) and 53.1(9) of *The Workplace Safety and Health Act* Board can only exercise its jurisdiction following hearing of an appeal - Substantive Order.

The Employer filed an application seeking an appeal from a Decision of the Director, Workplace Safety and Health pursuant to Section 53.1 of *The Workplace Safety and Health Act* respecting the issuance of five administrative penalties for failure to comply with five Improvement Orders issued under the *Act*. The Director submitted that the Board should confirm the administrative penalties and dismiss the appeal without the necessity of an oral hearing.

Held: Pursuant to Sections 53.1(8) and 53.1(9) of the *Act*, the Board could only exercise its jurisdiction following the hearing of an appeal. The Board, following consideration of material filed, evidence and argument presented at the hearing, determined that the Employer failed to comply with the five Improvement Orders which were subject to administrative penalties. The Board was satisfied that the penalties imposed were established in accordance with the *Administrative Penalty Regulation 62/2003*. Therefore, the Board confirmed the five administrative penalties and dismissed the appeal application.

Sherbeth Enterprises Ltd. -and- Director, Workplace Safety and Health

Case No. 497/07/WSH

January 28, 2008

PRACTICE AND PROCEDURE - TIMELINESS - Employer filed appeal of Notices of Administrative Penalties seven days after time limit prescribed by Section 53.1(7) of *The Workplace Safety and Health Act* - Board does not have inherent or implied power to extend mandatory fourteen day appeal period - Board lacked jurisdiction and appeal dismissed - Substantive Order.

On July 5, 2007, Notices of Administrative Penalties were issued to the Employer for failure to comply with seven Improvement Orders. The Notices were personally served on the Employer on September 29, 2007. On October 22, 2007, the Employer filed an appeal with the Board pursuant to Section 53.1 of *The Workplace Safety and Health Act*. The Director raised the preliminary issue of timeliness asserting that the Appeal was out of time and ought to be dismissed on that basis alone.

Held: As per Section 53.1(7) of the *Act* an appeal to the Board must be filed with 14 days after being served with a notice. Fourteen days from September 29, 2007 expired on October 13, 2007. As October 13, 2007 was a Saturday, according to Section 24(2) of *The Interpretation Act*, the time for filing an appeal would have been extended to Monday, October 15, 2007. The Employer did not file the Appeal with the Board until October 22, 2007, a date beyond the time period prescribed by Section 53.1(7) of the *Act*. The time limit in Section 53.1(7) of the *Act* is mandatory and the Board was satisfied that a failure to follow this provision goes to the jurisdiction of the Board to entertain any appeal. The Board does not have any inherent or implied power to extend the 14 day appeal period under Sections 53.1(7) of the *Act*. Any power to extend an appeal period must be expressly conferred on an administrative tribunal, as the Legislature did in Section 39(2) of the *Act* by specifically empowering the Board to extend the (14) day appeal period in that Section by stating “. . . or within any further period that the Board may allow.” No such wording appears in Section 53.1(7) of the *Act*. As a result, the Board was satisfied that the Appeal of the Employer was untimely and that the Board did not have the jurisdiction to hear the Appeal. Accordingly, the Appeal of the Employer was dismissed.

Protech Scale Ltd. -and- Director, Workplace Safety and Health

Case No. 382/07/WSH

February 13, 2008

JURISDICTION - PRACTICE AND PROCEDURE - Employer appealed Notices of Administrative Penalties but had not filed an appeal of Improvement Orders - Board's jurisdiction limited to determining whether Employer complied with improvement order - Jurisdiction to vary Improvement Order only vested when the improvement order itself was appealed - Under Section 53.1(9) Board must accept improvement order as issued - Appeal dismissed as Employer failed to comply with Improvement Orders and penalties were imposed in accordance with Regulation - Substantive Order.

On June 20, 2007, five Notices of Administrative Penalties were issued to the Employer for failure to comply with five Improvement Orders issued under the *Workplace Safety and Health Act*. On July 9, 2007, the Employer filed an appeal pursuant to Sections 53.1 of the *Act* from the decision to issue the Notices.

Held: The Employer did not appeal the Improvement Orders when they were issued and the time for appealing the Orders under Section 39(2) of the *Act* had expired. Accordingly, the condition prescribed by Section 53.1(3) of the *Act* for the issuance of a notice of administrative penalty had been met. Under Section 53.1 of the *Act*, the jurisdiction of the Board was limited to determining whether an improvement order had been complied with by an appellant as the Board can only confirm or revoke the administrative penalty. The Board did not have the jurisdiction to assess the merits or the reasonableness of an improvement order for the purpose of varying that order because the jurisdiction to vary an order was only vested in the Board under Section 39(6) of the *Act* when the improvement order itself was appealed in the first instance. Under Section 53.1(9), the Board must accept the improvement order, as issued. The Employer had not established that it complied with any of the five Improvement Orders. As a result, the Board was satisfied that the Employer failed to comply with five Improvement Orders, and which Orders were subject to administrative penalties. The Board further satisfied itself that the penalties imposed were established in accordance with the *Administrative Penalty Regulation 62/2003*. In the result, the Board confirmed the administrative penalties and dismissed the Employer's appeal.

SUMMARIES OF SIGNIFICANT COURT DECISIONS

Nygaard International Partnership Associates -and- Sharon Michalowski

Supreme Court of Canada

MLB Case No. 735/03/ESC

No. 31751

Heard by Justices Binnie, Deschamps and Abella

Delivered April 19, 2007

The application for leave to appeal from the judgment of the Court of Appeal of Manitoba was dismissed with costs.

Rodney Allan Shier, being a Director of Bisset Gold Mining Company -and- Director of Employment Standards

Court of Appeal of Manitoba

MLB Case No. 414/02/PWA

Docket No. AI 06-30-06312

Heard by Justice Steel

Delivered May 25, 2007

On December 15, 1997, the directors of the mine decided to cease operations. Mr. Shier tendered his written resignation as a director to the company's solicitor at 9:26 p.m. At 10:00 p.m., the local manager of the mine was instructed to take the steps to shut down the operation. The manager called his senior personnel together and decided for safety reasons that the miners underground would be notified of the closure at shift end which was at 3:30 a.m. At 10:45 p.m., Shier's resignation was received in the company's registered office at which time it became effective. The Director of the Employment Standards Division ordered that Shier was liable for \$3,343,915.51 for wages in lieu of notice. Shier disputed the order, and it was referred to the Board. The

Board determined that because Shier had tendered his resignation prior to the termination, he was not a director at the time the termination took place and, therefore, was not liable for termination wages. The Director sought leave to appeal on three questions.

Held: The Director submitted that the Board erred in law when it found that Shier was not liable for termination wages for senior staff who were notified of their termination prior to Shier's resignation. The Director argued that Shier's resignation had not been received at the corporate offices before the mine manager was telephoned and that the telephone call was notice of actual termination. The Director further argued that the failure of the Board to refer to the evidence of other senior staff members besides the manager indicated a failure to deal with the argument or a failure to consider relevant evidence. The Court stated the Board was not obliged to mention every piece of evidence adduced. The failure to mention the evidence of some of the witnesses does not necessarily mean that it was ignored. The time when the termination occurred was a crucial determination, something of which the Board members were very much aware. They clearly concluded the manager was instructed to affect an orderly shut down of the mine and the timing of that shutdown was left to his discretion. Whether a telephone conversation between the directors and the local mine manager was actually a termination of the senior staff or an instruction to do something in the future, the timing of which was left to the mine manager was a question of fact or, at best, mixed fact and law. Section 16(1) of *The Payment of Wages Act* allowed leave to be granted only on questions of law or jurisdiction. The Court denied leave to appeal on this ground.

The Director submitted that the Board erred in law in its interpretation of Section 40 of *The Employment Standards Act (ESA)* in that it found that, given the language of Section 40(1), a director's liability under the *Act* was triggered only upon termination and was not tied to the intention to terminate. The Board's reasons hinge on a comparison between the 1997 wording in Section 40(1) of the *ESA* and the wording in Section 67(1) of *The Employment Standards Code*. This would have been a question of law deserving of leave to appeal. However, not only must the applicant demonstrate that there is a genuine question of law or jurisdiction involved, but the question must be of sufficient importance to engage the attention of the court. Of key importance was this case's lack of precedential value. Given that it had been eight years since the addition of the words "intends to terminate" in the legislation, it was difficult to believe that there were many cases to which the old legislation would still apply. Further, pursuant to April 30, 2007 amendments to the *Code*, directors are no longer responsible for termination pay. Issues in any litigation are always important to the parties involved, regardless of the dollar amount at stake, but importance to the parties in a case is not, in and of itself, sufficient to attract the attention and resources of the court. The question of law here was not a question of sufficient importance upon which to grant leave, and therefore, leave to appeal was denied on this ground.

The Director alleged that the Board erred in law and in jurisdiction by failing to exercise the jurisdiction conferred on it to determine whether Shier was still a director at the time the employees were terminated even though Shier had resigned as a director. The Director relied on a letter that Shier sent to the Minister of Labour on December 16, 1997, which he signed as "VP Finance & CFO" of the corporation, and suggested that it was evidence that Shier was acting as a *de facto* director after his resignation was effective. The reasons for decision of the Board did not make any specific reference to this argument or to the letter in question. However, the Board stated that "[w]e have reviewed the case law provided to us and considered the submissions made by counsel about the case law". The written argument of the Director submitted to the Board contained extensive argument to the effect that the directors are liable for termination wages based on their conduct despite the resignations. Based on this, it can be said that the Board considered and rejected the Director's argument that Shier acted as a *de facto* director after the time of the resignations. The Board specifically not referring to this argument in its reasons did not amount to a failure to exercise its jurisdiction. More importantly, the Court found this to be a question of mixed fact and law. Even if this was a question of law, there must be an argument of merit for leave to be granted. The only evidence relied on that would make Shier liable for the payment of termination wages as a *de facto* director was the letter sent to the Minister of Labour that Shier clearly signed as an officer of the company. The Court did not accept the Director's argument that the opening sentence, which stated: "It is with deep regret that we must advise you of our decision" imports conduct consistent with a *de facto* director. The evidence of conduct relied on was consistent with the functions of an officer as well as a director. This ground did not have merit, and leave to appeal was denied. Therefore, the motion for leave to appeal on all three questions was dismissed.

Wescan Electrical –and– IBEW, Local 2085 –and– Devin Davis

Court of Appeal of Manitoba
MLB Cases No. 342/04/LRA & 499/04/LRA
Docket No. AI 06-30-06532
Heard by Justices Scott, Freedman and Joyal
Delivered June 28, 2007

The Employee filed a complaint against the Union pursuant to section 20 of *The Labour Relations Act* alleging that the Union had committed an unfair labour practice in failing to assist him with his claim against a disability benefits insurance provider. The Union did not assist him on the basis that eligibility for benefits was within the jurisdiction of the insurance company, and was not something over which the Union had control. The Board dismissed the application as it was not satisfied that the subject matter of the complaint against the Union arose from its representation of the applicant under a collective agreement, as contemplated by Section 20 of the *Act*. The Employee filed an appeal of the Board's decision in the Court of Queen's Bench arguing that the Board had improperly declined jurisdiction. The motions judge rejected that argument stating that the Board considered the matter and made a decision that it was not an unfair labour practice and did not fall within Section 20 of the *Act*. He stated that the Board was entitled to deference. The standard of review he applied was patent reasonableness. The Employee filed an appeal from the Court of Queen's Bench decision arguing that the judge was wrong, and that the Board's decision was also wrong. He said that disability coverage was a benefit to which he was entitled under the collective agreement, and that the Board simply refused to consider his complaint. This was, in effect, declining jurisdiction.

Held: Given that this case involved an allegation of an unfair labour practice by a union, the correct standard of review by a judge of the Board's decision was patent unreasonableness. The motions judge selected the correct standard and he applied it. Nevertheless, the Employee argued that the Board declined to exercise jurisdiction and that in such a case a standard of correctness applied. The Board decision was sufficiently clear that the Board exercised jurisdiction and did not decline it. The motions judge also so found and held the Board's decision not to be patently unreasonable. He was correct in his finding. The appeal was dismissed.

Wescan Electrical –and– IBEW, Local 2085 –and– Devin Davis

Court of Appeal of Manitoba
MLB Cases No. 342/04/LRA & 499/04/LRA
Docket No. AI 06-30-06532
Heard by Justices Scott, Freedman and MacInnes
Delivered October 17, 2007

The Employee moved for an order for reconsideration by the court of its decision delivered June 28, 2007, wherein the court dismissed his appeal from the judgment of the Court of Queen's Bench pronounced October 11, 2006. The grounds for appeal were that the Board refused to exercise the jurisdiction mandated to it by *The Labour Relations Act* and that the standard of judicial review to be applied by the court was correctness.

Held: The court decided that the motions judge was correct in concluding that the Board had not declined jurisdiction but had accepted jurisdiction and concluded that the complaint did not come within section 20 of *The Labour Relations Act*, as a result of which the union was not guilty of an unfair labour practice. As well, it decided the judge was correct in finding the standard of review to be that of patent unreasonableness (not that of correctness, as asserted by the Employee). A motion for rehearing of an appeal should be granted only in exceptional circumstances. The threshold test for granting an application for reconsideration is if there was a patent error on the face of the reasons delivered or a point for argument not raised at the hearing of the appeal and which arose out of the judgment delivered, which point could not reasonably have been foreseen and dealt with at the original hearing. Upon consideration of the Employee's application, the threshold test had not been met. From the materials filed by the Employee in connection with this appeal, it was clear that he chose his grounds of appeal and argued them before the court. The court, in its reasons for judgment delivered June 28, 2007, decided that the motions judge had been correct in his decision and dismissed the appeal. The Employee was not seeking a reconsideration, but a fresh or second appeal on different grounds than he chose to raise or argue on the first occasion. There was neither merit in his motion nor any basis for granting the relief sought. The motion was therefore dismissed.

St. Boniface General Hospital –and– Manitoba Nurses’ Union, Local 5

Court of Queen’s Bench of Manitoba
MLB Cases No. 536/06/LRA & 725/06/LRA
Docket No. CI 07-01-50847
Heard by Justice Keyser
Delivered January 10, 2008

The Union filed an unfair labour practice resulting from the Employer indicating that nursing positions would be designated as bilingual. The Board ordered that the question be deferred to arbitration. The Union filed a judicial review of the Board’s decision arguing that the question of whether the bilingualism requirement was a term and condition of employment could only be answered by the Board and not by an arbitrator. Should the Board determine that it was a term and condition of employment then an unfair labour practice had occurred and any remedy could only be granted by the Board.

Held: Although the courts in Manitoba have endorsed the application of the standard of patent unreasonableness to decisions involving the interpretation and application of collective agreements by the Board there seems to be little practical distinction between the standards of reasonableness simpliciter and patent unreasonableness. In its decision in *Council of Canadians with Disabilities*, the Supreme Court appeared to have relegated the standard of patent unreasonableness to the “archives of legal history”. To the extent the issues raised in this appeal involved questions that were not matters of pure law or jurisdiction, the standard of reasonableness simpliciter as adopted by the Supreme Court would be applied. Although the application was styled as a challenge to jurisdiction, it was more accurately characterized as a challenge to the manner in which the Board interpreted and applied its own legislation and the collective agreement. An interpretation by an expert tribunal of its own legislation was entitled to deference. By deferring the matter to arbitration, the Board implicitly determined that the bilingualism requirement for certain positions could be considered as a qualification, the reasonableness of which should be determined by an arbitrator. In addition, the Board decided that the mandatory order requested by the Union would itself involve an amendment of the collective agreement. Taken as a whole, the decision of the Board to defer to arbitration was supported by a reasonable line of analysis. The reasons expressed in the orders it issued demonstrated a line of reasoning which show that it understood its jurisdictional framework. The reasons demonstrated that the Board carefully thought out and articulated why the question was being deferred to arbitration. This it was entitled to do. Thus the request for judicial review was dismissed.

TABLE 1

Statistics Relating to the Administration of *The Labour Relations Act* by the Manitoba Labour Board

(April 1, 2007 – March 31, 2008)

	Cases Carried Over	Cases Filed	Total	Disposition of Cases					Number of Cases Disposed	Number of Cases Pending
				Granted	Dismissed	Withdrawn	Did Not Proceed	Declined to Review		
Application for Certification	13	63	76	37	3	22	0	0	62	14
Application for Revocation	1	10	11	6	2	1	0	0	9	2
Application for Amended Certificate	4	20	24	20	0	0	0	0	20	4
Application for Unfair Labour Practice	14	40	54	1	13	25	0	0	39	15
Application for Board Ruling	45	12	57	21	0	11	1	0	33	24
Application for Review and Reconsideration	8	12	20	0	17	0	0	0	17	3
Application for Successor Rights	2	80	82	9	0	0	0	0	9	73
Application for Termination of Barg. Rights	1	0	1	1	0	0	0	0	1	0
Application pursuant to Section 10(1) ¹	0	0	0	0	0	0	0	0	0	0
Application pursuant to Section 10(3) ²	1	2	3	3	0	0	0	0	3	0
Application pursuant to Section 20 ³	11	14	25	1	10	1	1	0	13	12
Application pursuant to Section 21(2) ⁴	0	1	1	0	0	0	0	0	0	1
Application pursuant to Section 22 ⁵	0	2	2	0	0	1	0	0	1	1
Application pursuant to Section 58.1 ⁶	1	0	1	0	0	0	1	0	1	0
Application pursuant to Section 69, 70 ⁷	1	1	2	0	2	0	0	0	2	0
Application pursuant to Section 76(3) ⁸	1	12	13	11	0	1	0	0	12	1
Application pursuant to Section 87(1) ⁹	1	6	7	3	0	4	0	0	7	0
Application pursuant to Section 87.1(1) ¹⁰	1	0	1	1	0	0	0	0	1	0
Application pursuant to Section 115(5) ¹¹	0	13	13	5	0	6	0	0	11	2
Application pursuant to Section 130(10.1) ¹²	0	5	5	5	0	0	0	0	5	0
Application pursuant to Section 132.1 ¹³	1	1	2	1	1	0	0	0	2	0
Referral for Expedited Arbitration **	16	87	103	-	-	-	-	-	89	14
Totals	122	381	503	125	48	72	3	0	337	166

1 When an Application for Certification is filed with the Board, changes in conditions of employment cannot be made without the Board's consent until the Application is disposed of.

2 Within the first 90 days following certification of a union as a bargaining agent, strikes and lockouts are prohibited, and changes in conditions of employment cannot be made without the consent of the bargaining agent. Applications under this section are for an extension of this period of up to 90 days.

3 Duty of Fair Representation

4 Permit for Union to visit on Employer's property

5 Access Agreements

6 Business coming under provincial law is bound by collective agreement

7 Complaint re ratification vote

8 Religious Objector

9 First Collective Agreement

10 Subsequent agreement to first collective agreement

11 Request for the Board to appoint arbitrators

12 Extension of Time Limit for expedited decisions

13 Disclosure of information by unions

** See Table 3

TABLE 2

STATISTICS RELATING TO THE ADMINISTRATION OF *THE LABOUR RELATIONS ACT* RESPECTING REPRESENTATION VOTES

(April 1, 2007 – March 31, 2008)

TYPE OF APPLICATION INVOLVING VOTE	Number of Votes Conducted	Number of Employees Affected by Votes	Applications GRANTED After Vote	Applications DISMISSED After Vote	Applications Withdrawn After Vote	Outcome Pending	Vote Conducted but not counted
Certification	17	198	9	1	0	1	6
Revocation	4	64	3	1	0	0	0
Board Ruling	3*	1155	2	0	0	0	0

* Two votes were conducted for one case.

TABLE 3

STATISTICS RELATING TO THE ADMINISTRATION OF *THE LABOUR RELATIONS ACT* RESPECTING REFERRALS FOR EXPEDITED ARBITRATION

(April 1, 2007 – March 31, 2008)

Cases Carried Over	Number of Referrals Filed	Number of Cases Mediator Appointed	Disposition of Cases				Number of Cases Disposed	Number of Cases Pending		
			TOTAL	Settled by Mediation	Settled by Parties	Settled by Arbitration			Declined to Review	Withdrawn
16	87	44	103	24	26	9	1	29	89	14

TABLE 4

STATISTICS RELATING TO HOURS OF WORK EXEMPTION REQUESTS PURSUANT TO *THE EMPLOYMENT STANDARDS CODE*

(April 1, 2007 – April 30, 2007)

Cases Carried Over	Number of Applications Filed	Number of Cases Mediator Appointed	Applications Withdrawn	Not Proceeded with by Applicant	Number of Cases Disposed of	Number of Cases Pending	
14	54	68	68	0	0	68	0

Note: The above table relates to applications for one month. Amendments to The Employment Standards Code which came into effect April 30, 2007, resulted in the responsibility for processing hours of work applications being transferred from the Board to the Employment Standards Division.

TABLE 5

STATISTICS RELATING TO THE ADMINISTRATION OF *THE PAYMENT OF WAGES ACT*

(April 1, 2007 – March 31, 2008)

Cases Carried Over	Number of Applications Filed	Orders Issued by the Board	Applications Withdrawn	Not Proceeded with by Applicant	Number of Cases Disposed of	Number of Cases Pending	
1	0	1	1	0	0	1	0

TABLE 6

STATISTICS RELATING TO THE ADMINISTRATION OF *THE EMPLOYMENT STANDARDS CODE*

(April 1, 2007 – March 31, 2008)

Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Not Proceeded with by Applicant	Number of Cases Disposed of	Number of Cases Pending
30	52	82	38	16	1	55	27

TABLE 7

**STATISTICS RELATING TO THE ADMINISTRATION OF *THE WORKPLACE SAFETY & HEALTH ACT* BY THE MANITOBA LABOUR BOARD
APPLICATION FOR APPEAL OF DIRECTOR'S ORDER**

(April 1, 2007 – March 31, 2008)

Cases Carried Over	Number of Applications Filed	TOTAL	Decisions/Orders Issued by the Board	Applications Withdrawn	Number of Cases Disposed	Number of Cases Pending
1	10	11	3	3	6	5

TABLE 8

STATISTICS RELATING TO THE ADMINISTRATION OF *THE ESSENTIAL SERVICES ACT* BY THE MANITOBA LABOUR BOARD

(April 1, 2007 – March 31, 2008)

Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Not Proceeded with by Applicant	Number of Cases Disposed of	Number of Cases Pending
0	0	0	0	0	0	0	0

TABLE 9

STATISTICS RELATING TO THE ADMINISTRATION OF *THE ELECTIONS ACT* BY THE MANITOBA LABOUR BOARD

(April 1, 2007 – March 31, 2008)

Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Not Proceeded with by Applicant	Number of Cases Disposed of	Number of Cases Pending
1	0	1	0	1	0	1	0

TABLE 10
FIRST AGREEMENT LEGISLATION REVIEW OF CASES FILED
(April 1st, 2007 - March 31st, 2008)

Union	Employer	Date of Application	Outcome of Application	Status as at March 31
Pending from Previous Reporting Period:				
Manitoba Nurses' Union	Lions Personal Care Centre (LHC Personal Care Home)	March 14, 2007	Withdrawn	
New Applications this Reporting Period:				
United Food & Commercial Workers, Local 832	Shoppers Drug Mart (5320933 Manitoba T/A)	April 24, 2007	Withdrawn	
General Teamsters, Local 979	Peterson Investment Group Peterson Operations Management Portage Place Shopping Centre	April 26, 2007	Board imposed first collective agreement	Expiry June 24, 2008
United Food & Commercial Workers, Local 832	Holiday Inn Hotel And Suites Downtown Winnipeg (Winnipeg Downtown Enterprises Ltd. T/A)	May 11, 2007	Withdrawn	
International Union of Operating Engineers, Local 987	Shelter Canadian Properties	July 27, 2007	Board imposed first collective agreement	Expiry September 26, 2008
Manitoba Nurses' Union, Local 138	Nisichawayasihk Personal Care Home	September 20, 2007	Board imposed first collective agreement	Expiry January 3, 2008
General Teamsters, Local 979	Viscount Gort Motor Hotel	December 6, 2007	Withdrawn	