

**Manitoba Labour Board**

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**ORDER NO. 1397**

**Case No. 85/07/LRA**

**IN THE MATTER OF:     *THE LABOUR RELATIONS ACT***

**- and -**

**IN THE MATTER OF:   An Application by**

**National Automobile, Aerospace, Transportation and  
General Workers Union of Canada (CAW-Canada), Local 144,**

**Applicant,**

**- and -**

**FORT ROUGE AND IMPERIAL VETERANS LEGION,**

**Employer/Respondent.**

**This Decision/Order has been edited to protect the personal  
information of individuals by removing personal identifiers.**

**WHEREAS:**

1. On February 19, 2007, the National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 144 (the “Union”) filed an Application for settlement of subsequent collective agreement, pursuant to Section 87.1(1) of *The Labour Relations Act* (“the *Act*”).
2. On February 21, 2007, the Manitoba Labour Board (the “Board”) requested certain information from the parties pursuant to Section 87.1(3) of the *Act*, as follows:
  - a. the position of the parties as to whether or not the parties are bargaining in good faith in accordance with Section 63(1) of the *Act*;
  - b. the position of the parties as to whether or not they are likely to conclude a collective agreement within thirty days if they continue bargaining; and
  - c. any pertinent documents that may be taken into consideration in accordance with Section 87.1(3) of the *Act*.
3. On March 7, 2007, following an extension of time, the parties, through their respective counsel, filed written submissions with the Board.

4. On March 16, 2007, the Board, following consideration of the Application and the material filed by the parties, advised that:
  - a. the Board 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;
  - b. the Board was exercising its discretion under Section 87.1(4) of the *Act* and delaying making the determination required under Section 87.1(3) of the *Act* until it satisfied itself 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;
  - c. the Board wished to hear from the parties on the issue raised under (b); and
  - d. the Application should proceed to hearing on an expedited basis.
5. On March 21, March 22, April 4, April 5, and April 17, 2007, the Board conducted a hearing at which time both parties appeared before the Board with their respective counsel and presented evidence and argument.
6. The Board, following consideration of material filed, evidence and argument presented satisfied itself of the following:
  - a. the conditions outlined in Sections 87.1(1)(a), (b) and (c) of the *Act* have been met;
  - b. having inquired into the negotiations between the parties, pursuant to Section 87.1(3) of the *Act*, the Board has determined, for the purposes of this Application only, the following:
    - i. the Employer is not bargaining in good faith in accordance with Section 63(1) of the *Act*;
    - ii. the Union is bargaining in good faith in accordance with Section 63(1) of the *Act*; and,
    - iii. the parties are unlikely to conclude a collective agreement within thirty days if they continue to bargain; and,
  - c. 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.

7. The Board further determined that, pursuant to Section 87.3(1) of the *Act*, the Union, as the party making the Application, has bargained in good faith in the factual circumstances prevailing in this case.
8. The determinations made by the Board in the foregoing paragraphs on the issue of whether or not either or both parties is/are bargaining in good faith are for the purposes of this Section 87.1 Application only. The unfair labour practice complaints filed by the Union in Case Nos. 799/06/LRA and 7/07/LRA and by the Employer in Case No. 235/07/LRA, under Section 30(1) of the *Act*, alleging, *inter alia*, a failure to bargain in good faith under Section 63(1) of the *Act* on the part of the Employer or the Union, as the case may be, will be determined on the basis of the evidence adduced and argument presented in those proceedings.
9. Based on the determinations made in paragraphs 6 and 7, the Application is allowed.

**T H E R E F O R E**

The Manitoba Labour Board, pursuant to Section 87.3(1) of the *Act*, **HEREBY ORDERS** that:

1. the Employer shall immediately terminate the lockout which commenced on December 18, 2006;
2. the Employer shall 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 operative portion of which Section provides:

*“...the employer shall reinstate the employees in the unit in the employment they had at the time the strike or lockout commenced*

*(a) in accordance with any agreement between the employer and the bargaining agent respecting reinstatement of the employees in the unit; or*

*(b) where no agreement respecting reinstatement of the employees in the unit is reached between the employer and the bargaining agent, on the basis of the seniority standing of each employee in relation to the seniority of the other employees in the unit employed at the time the strike or lockout commenced, except as may be directed by an order of the board made for the sole purpose of allowing the employer at a totally shut-down workplace to resume normal operations in stages.”; and,*
3. the provisions of a collective agreement between the parties shall be settled:
  - a. 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 from of the date of this Order and such a notice must name the person who has agreed to act as arbitrator; or

- b. failing an agreement between the parties on an arbitrator, by the Board, within ninety days of the date of this Order

**DATED** at **WINNIPEG**, Manitoba, this 15th day of May, 2007 and signed on behalf of the Manitoba Labour Board by

*"Original signed by"*

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**William D. Hamilton, Chairperson**

GN/dlm/rb-s