

Manitoba Labour Board

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DISMISSAL NO. 1829
CASE NO. 191/07/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An Application by

E.S.,

Applicant,

- and -

ASSINIBOINE REGIONAL HEALTH AUTHORITY,
Employer/Respondent,

- and -

Manitoba Nurses' Union,

Certified Bargaining Agent,

<p>This Decision/Order has been edited to protect the personal information of individuals by removing personal identifiers.</p>
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WHEREAS:

1. On March 23, 2007, the Applicant filed an Application with the Manitoba Labour Board (the "Board"), seeking various remedies for an alleged unfair labour practice (the "Application") contrary to Section 30(1) of *The Labour Relations Act* (the "Act") arising out of her contention that, from on or about January 10, 2007, and continuing up to the present time, the Respondent has imposed discipline on the Applicant in a manner contrary to the Collective Agreement (the "Agreement") in force between the Manitoba Nurses' Union (the "Union") and the Respondent. In particular, the Applicant alleges that the Respondent has failed to follow the process outlined in the Agreement when it suspended the Applicant with pay through a so-called paid administrative leave on January 10, 2007. The Applicant seeks:
 - a. an order that the Respondent expedite its investigation pertaining to its discipline of the Applicant and decide its next step in a timely manner without undue delay;
 - b. an order directing the Respondent, if appropriate, to follow the procedures contained in the Agreement, particularly Articles 12.05, 12.06, 29.01 and 29.02; and

- c. an order that the Respondent pay the Applicant an amount not exceeding \$2,000.00.
2. On March 26, 2007, the Applicant, through counsel, filed documentation making a correction to the Application.
3. On April 16, 2007, following an extension of time, the Union, through counsel, its Reply in which counsel notes that the Union is not named as a party respondent to the Application.
4. On April 16 2007, following an extension of time, the Respondent, through counsel, filed its Reply disputing the Application and asserting, *inter alia*, that the Applicant is seeking to enforce terms of the Agreement through the unfair labour practice provisions of the *Act*; and that the alleged violations of the Agreement do not constitute an unfair labour practice within the meaning of the *Act*. The Respondent submits that the Application ought to be dismissed without a hearing.
5. The Board, following consideration of the material filed by the parties, has determined the following:
 - a. A hearing is not necessary in that the matter can be determined by a review of the written materials filed by the parties.
 - b. While the Applicant alleges that the Respondent has breached Section 30(1) of the *Act*, the Board notes that Section 30(1) only states that an employer, employee, union, or other person, who alleges the commission of unfair labour practice, may file a written complaint with the Board. This permissive and procedural provision does not, in and of itself, prescribe what constitutes an unfair labour practice and it is the preceding provisions of *Part I* of the *Act* which prescribe what conduct constitutes (an) unfair labour practice(s). In this regard, the Application does not, on its face, allege a breach of any substantive provisions of the *Act* where unfair labour practices are defined.
 - c. The Board accepts the position of the Respondent that, on or about January 10, 2007, the Applicant was placed on an administrative leave of absence with pay and full benefits pending the conclusion of an administrative review/investigation arising out of certain allegations in respect of the Applicant's conduct. There is no dispute that the Applicant currently remains on administrative leave of absence with pay and full benefits.
 - d. The Applicant's assertion that the Respondent has imposed "... discipline upon the Applicant in a manner contrary to the Collective Agreement ..." does not constitute an unfair labour practice pursuant to the *Act*, and the proper forum for the resolution of a dispute involving alleged improper/unjust discipline is the grievance and

- arbitration provisions of the Agreement.
- e. The Applicant cannot seek to enforce a purported breach of the Agreement by filing an undefined unfair labour practice complaint under Section 30(1) of the *Act*.
6. Having made the findings in the preceding paragraph, the Board is satisfied that the Application does not disclose any facts which arguably constitute a *prima facie* case under any of the substantive unfair labour practice provisions of *Part I* of the *Act* and, accordingly, declines to take further action on the complaint pursuant to Section 30(3)(c) of the *Act*.

T H E R E F O R E

The Manitoba Labour Board **HEREBY DISMISSES** the Application filed by E.S. on March 23, 2007.

DATED at **WINNIPEG**, Manitoba, this 6th day of June 2007 and signed on behalf of the Manitoba Labour Board by

"original signed by"

William D. Hamilton, Chairperson

WDH/dr/rb-s