

Manitoba Labour Board

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DISMISSAL NO. 1828
CASE NO. 192/07/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An Application by

E.S.,

Applicant,

- and -

Manitoba Nurses' Union,

Respondent/Union,

- and -

ASSINIBOINE REGIONAL HEALTH AUTHORITY,

Respondent/Employer.

<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 20 of *The Labour Relations Act* (the "Act") arising out of her contention that, from on or about January 10, 2007, up to and including the present time, the Respondent Union (the "Union") has failed to assist the Applicant in a timely way or at all respecting her suspension with pay or "paid administrative leave" imposed by her Employer, the Assiniboine Regional Health Authority (the "Authority") on January 10, 2007. The Applicant alleges that the conduct of the Union and its purported failure to take action on her behalf violates various provisions of the Collective Agreement (the "Agreement") between the Authority and the Union. In the result, the Applicant requests that the Board order the Union to assist the Applicant in her dealings with the Authority under various provisions of the Agreement so that she receives timely and appropriate advice and direction in dealing with the discipline and suspension with pay and, further, seeks an order of the Board ordering the Union to pay the Applicant an amount not exceeding \$2,000.00.

2. On April 16, 2007, following an extension of time, the Union, through counsel, filed its Reply disputing the Application and asserting, *inter alia*, that the Applicant has failed to disclose any *prima facie* evidence that the Union has acted in a manner which is arbitrary, discriminatory, or in bad faith and has failed to establish a *prima facie* case that the Union is guilty of an unfair labour practice contrary to Section 20(b) of the *Act*. For all of the reasons recited in its Reply, the Union submits that the complaint is without merit and fails to disclose a legitimate basis for a complaint under the *Act* and submits that the Application should be dismissed without a hearing.
3. On April 16 2007, following an extension of time, the Authority, through counsel, filed its Reply disputing the Application and asserting, *inter alia*, that, to date, there has been no discipline imposed by the Authority on the Applicant arising out of the placement of the Applicant on administrative leave with pay and full benefits pending the conclusion of an administrative review arising out of certain allegations in respect of the Applicant. Further, the Authority says that the Union has not filed a grievance on behalf of the Applicant because there are, at present, no grounds to do so, nor has the Applicant suffered any financial loss. The Authority undertakes to meet with the Applicant and the Union upon completion of the investigation.
4. On May 8, 2007, the Applicant, through counsel, filed copies of the provisions from the Agreement which were cited in the Application.
5. On May 9, 2007, counsel for the Authority filed documentation with the Board objecting to the Board having accepted further documentation.
6. On May 11, 2007, counsel for the Union filed documentation with the Board, questioning the Board accepting further documentation.
7. On May 11, 2007, the Board advised all parties that the excerpts from the Agreement filed by counsel for the Applicant had been filed following a request from the Registrar of the Board.
8. The Board, following consideration of all material filed by the parties, has determined the following:
 - a. A hearing is not necessary in that this matter can be determined by a review of the written material filed by the parties.
 - b. The Board accepts the characterization of the Authority and the Union that, on or about January 10, 2007, the Applicant 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 the Applicant.

- c. The Union asserts in its Reply that:
 - i. the Applicant has no disciplinary record with respect to the matters that are under investigation;
 - ii. the Applicant has not been reported to a professional regulatory body, which the Authority would be statutorily obliged to do, had the Applicant been suspended; and
 - iii. there is no evidence that the investigation of the Applicant has not been conducted in good faith or contrary to the spirit of the Agreement.
 - d. The Board notes that there are no facts pleaded in the Application which are contrary to the foregoing assertions and they are accepted by the Board. These assertions are also consistent with the Reply of the Authority and its undertaking to meet with the Applicant and the Union upon completion of the investigation.
 - e. Given that the Board accepts that the Applicant has been on administrative leave with full pay and benefits pending completion of the investigation, there is no reasonable basis for the Applicant to allege that the Union has failed to represent her, pursuant to Articles 12.05, 12.06, 29.01 and 29.02 of the Agreement.
9. The material before the Board does not disclose that the Union has acted in an "arbitrary" or "discriminatory" manner under Section 20(b) of the *Act*, as those terms have been interpreted by the Board. The material reveals that the Union is monitoring the situation, pending completion of the investigation, and the Application does not recite any acts or omissions which, if proven, would establish that the Union has made any decision on the basis of irrelevant factors or that it has displayed an attitude which can be characterized as "... indifferent and summary or capricious or non-caring or perfunctory ..." [see *Re Moreau - and - Manitoba Association of Health Care Professionals*, [2004] 102 CLRBR (2d) 63 at 268]. Neither does the Application reveal, on its face, that any conduct on the part of the Union reflects "bad faith" [see *Moreau*, *supra*, p 268; and *Re Beach*, [2005] MLBD No. 2].

Based upon the foregoing, the Board has determined that the Applicant has failed to establish a *prima facie* case in respect of the matters complained of, as those matters exist at the present time. Accordingly, the Application is premature and the Board declines to take any further action on the complaint pursuant to Subsection 30(3) of the *Act*. In the result, the Application is to be dismissed.

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"

W.D. Hamilton, Chairperson

WDH/dr/rb-s