

Manitoba Labour Board

402-258 Portage Avenue
Winnipeg, Manitoba, Canada R3C 0B6
T 204 945-2089 F 204 945-1296
www.manitoba.ca/labour/labbrd

ORDER NO. 1415

Case No. 310/07/LRA

C/R Case No. 337/07/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An application by

Manitoba Government and General Employees' Union,

Applicant,

- and -

PARKLAND REGIONAL HEALTH AUTHORITY,

Employer,

- and -

International Union of Operating Engineers, Local 987,

Respondent.

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

WHEREAS:

1. On March 5, 1999, the Manitoba Labour Board ("Board"), by way of Certificate No. MLB- 5470, certified the Manitoba Government and General Employees' Union ("MGEU") as the bargaining agent for a unit of employees of Parkland Regional Health Authority ("Parkland RHA") described as:

"All employees employed by the Parkland Regional Health Authority in both facility and community health care in technical/professional paramedical classifications who hold a degree, license or certificate and are employed in a paramedical capacity, excluding physicians, nurses and those who fall within the support units, within the Province of Manitoba, save except all ambulance attendants employed at the Gilbert Plains Health Center and the Roblin and District Health Center and those excluded by the Act." (the "MGEU unit")

2. On June 21, 2006, the Board, by way of Certificate No. MLB- 6350, certified the International Union of Operating Engineers, Local 987 (“IUOE, Local 987”) as the bargaining agent for a unit of employees of Swan River Valley Hospital District No. 1, Benito Health Centre, and Swan River Valley Lodge Incorporated (“Swan Valley”) described as:

“All other employees providing facility support not included in the Physicians, Nurses or Technical/Professional Paramedical Units, employed by Swan Valley Health facilities (Swan River Valley Hospital District No. 1, Benito Health Center and Swan River Valley Lodge Incorporated), in the Province of Manitoba, save and except the Administrator, Office Staff, Activities Director, the Maintenance Department Head and those excluded by the Act.”

3. On April 30, 2007, the Applicant filed an Application for Board Ruling (the “Application”) pursuant to 56, 57, 58, 59 and 142 of *The Labour Relations Act* (the “Act”), requesting that the Board:
- (a) Declare that there has been a sale, merger or amalgamation of the business of the Respondent Parkland RHA and Swan Valley;
 - (b) Declare that Parkland RHA and Swan Valley are carrying on associated or related activities or businesses by or through more than one corporation, individual, firm, syndicate or association of them, under common control or direction, and constitute one employer for the purpose of the Act;
 - (c) Declare that Swan Valley has sold, leased, transferred or otherwise disposed of its business, or part of its business, to the Parkland RHA;
 - (d) Declare that there has been intermingling of technical/professional paramedical employees employed by Swan Valley and technical/professional employees employed by Parkland RHA;
 - (e) Declare that technical/professional paramedic employees formerly employed by Swan Valley are within the scope of the Parkland RHA technical/professional paramedical unit as described in Certificate No. MLB-5470;
 - (f) Such further and other relief by way of Declaration or otherwise as the Board, may deem appropriate.

4. On May 25, 2007, following an extension of time, the Parkland RHA, through counsel, filed its Reply to the Application consenting to the relief requested by the MGEU in paragraph 3(a), (b), (c) and (d), *supra*, and further advising that the relief sought in paragraph 3(e) 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 five employees are comprised of two Pharmacy Technicians who are represented by the IUOE Local 987 and two Social Workers and one Respiratory Technician/Therapist who are not currently represented by a bargaining agent. The purpose of the “yes/no” vote was to determine whether or not the five affected employees, formerly employed by Swan Valley, wished to be represented by a union. If a majority of the affected employees who voted indicated “yes” then the Parkland RHA’s position is that the five employees would be placed in the MGEU unit.
5. On May 28, 2007, following an extension of time, the IUOE, Local 987 filed its Reply.
6. On June 25, 2007, the IUOE, Local 987 filed documentation with the Board, modifying the position contained in its original Reply, advising that it concurred with the approach suggested by the Parkland RHA in its Reply.
7. On June 6, 2007, the Board, noting the Parkland RHA’s Reply, **DETERMINED** that the Canadian Union of Public Employees (“CUPE”) may have an interest in these proceedings and, accordingly, CUPE was served with notice of the Application.
8. On June 21, 2007, the Applicant, through counsel, filed documentation with the Board in response to the Parkland RHA’s Reply.
9. On June 25, 2007, following an extension of time, CUPE, through its Counsel, filed its Reply to the Application. In its Reply, CUPE advised the Board that it does not represent any employees employed in the technical/professional paramedical unit who were formerly employed by Swan Valley or in the technical/professional paramedical unit employed by the Parkland RHA.
10. On September 28, 2007, counsel for MGEU filed documentation with the Board, advising it was the position of MGEU that a “yes/no” vote, as requested by the Parkland RHA, should not be conducted in respect of the determination of the bargaining agent for the technical/professional paramedical unit.
11. On October 1, 2007, counsel for CUPE filed documentation with the Board, advising that CUPE does not oppose the MGEU position that a “yes/no” vote is not appropriate in this case.

12. On October 2, 2007, counsel for the IUOE, Local 987 filed documentation with the Board advising that;
 - (a) it was not taking any position on the dispute between the MGEU and the Parkland RHA with regard to a “yes/no” vote; and,
 - (b) in this particular Application, and without prejudice to its position in any other cases before the Board, it was withdrawing from any representation vote which the Board may order.
13. On October 4, 2007 the Board conducted a hearing with respect to the Application at which time the Parkland RHA, MGEU, IUOE, Local 987 and CUPE appeared before the Board with their respective counsel. At the commencement of the hearing the Board **DETERMINED** that CUPE did not have an interest in the Application. The Parkland RHA, MGEU and IUOE, Local 987 presented evidence and argument with respect to the Application.
14. The Board was informed by the parties that the MGEU unit is comprised of two-hundred and fourteen employees.
15. The Board following consideration of all material filed, evidence and argument presented has **DETERMINED**, to its satisfaction, the following:
 - (a) the Application is to be decided in accordance with Section 56(2) of the *Act*. The issues before the Board do not constitute a continuation of the review of bargaining units ordered under the Review of Bargaining Unit Appropriateness in Manitoba’s Rural Health Care Sector (the “Review”). In this regard, the Board notes that no reconfiguration of any bargaining unit is required in this case. The MGEU unit reflects the standard technical/professional paramedical unit, as previously determined by the Board under the Review, and all parties agree that the five former Swan Valley technical/professional paramedical employees fall within the objective scope of the MGEU unit;
 - (b) by reason of the transfer of the Swan Valley facilities to the Parkland RHA effective November 1, 2006, there has been a sale, merger or amalgamation within the meaning of Section 56(2)(a) of the *Act* and, as a consequence thereof, Parkland RHA has acquired the rights, privileges and obligations under the *Act* as a successor employer in respect of the former Swan River Valley Hospital District No. 1, Benito Health Centre, Swan River Valley Lodge and Swan Valley Personal Care Home Inc.. All former Swan Valley employees are now employed by the Parkland RHA.

- (c) at the time of the sale, merger or amalgamations on November 1, 2006, the MGEU and IUOE, Local 987 were bargaining agents for technical/professional paramedical employees employed by Parkland RHA and Swan Valley, as contemplated by Section 56(2)(b) of the *Act*;
- (d) there has been an intermingling within the meaning of Section 56(2)(c) of the *Act*, as interpreted by the Board in **Border Land School Division – and – Service Employees’ International Union and Local 308 and CUPE, Local 3573 (2004) 102 C.L.R.B.R. (2nd) 273**, among:
- 1) the five former Swan Valley technical/professional paramedical employees; and
 - 2) the Parkland RHA technical/professional paramedical employees who fall within the MGEU unit.
- (e) in the circumstances of this case, it is neither necessary nor advisable to order a “yes/no” vote pursuant to Section 56(2)(e) of the *Act* among the five technical/professional paramedical employees formerly employed by Swan Valley.

and, accordingly, pursuant to Sections 56(2)(d) and (e) of the *Act* the Board, has further **DETERMINED** that;

- (f) the technical/professional paramedical employees employed by the Parkland RHA and the former Swan Valley facilities constitute a single appropriate bargaining unit
- (g) the single bargaining unit appropriate for collective bargaining has already been determined by the Board and that unit is properly described in Certificate No. MLB-5470 as follows:

“All employees employed by the Parkland Regional Health Authority in both facility and community health care in technical/professional paramedical classifications who hold a degree, license or certificate and are employed in a paramedical capacity, excluding physicians, nurses and those who fall within the support units, within the Province of Manitoba, save except all ambulance attendants employed at the Gilbert Plains Health Center and the Roblin and District Health Center and those excluded by the Act.”

- (h) it is not necessary to conduct a representation vote pursuant to Section 56(2)(e), as between the MGEU and the IUOE Local 987, because the IUOE, Local 987, without prejudice to its position in any other cases which may come before the Board, indicated that it was withdrawing from any representation vote which the Board may

have otherwise been disposed to order in this case. This reflects the practical realities, which exist in these circumstances, particularly having regard to the fact the overwhelming majority of the affected employees fall within the existing MGEU unit.

Based on the foregoing, there is no need to issue a new Certificate.

THEREFORE

1. The Board declares that the technical/professional paramedical employees formerly employed by Swan Valley fall within the scope of the Manitoba Government and General Employees' Union bargaining unit for the Parkland RHA, as described in Certificate No MLB-5470.
2. The Board shall remain seized of its jurisdiction under Sections 56(2)(f) to (i) of the *Act* to grant consequential relief and issue necessary directions to resolve any questions arising from the foregoing determinations, which the parties themselves cannot resolve.

DATED at WINNIPEG, Manitoba, this 16th day of November, 2007, and signed on behalf of the Manitoba Labour Board by

"Original signed by"

William D. Hamilton, Chairperson