



Manitoba Labour Board

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ORDER NO. 1414

Case No. 337/07/LRA

C/R Case No. 310/07/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An application by

PARKLAND REGIONAL HEALTH AUTHORITY,

Employer/Applicant,

- and -

**Manitoba Government and General Employees' Union,
International Union of Operating Engineers, Local Union No. 987,
Canadian Union of Public Employees,**

Respondents,

- and -

**Swan Valley Health Centre, operating facilities known as
Swan River Valley Hospital District No. 1, Benito Health Centre,
Swan River Valley Lodge Incorporated and Swan Valley Personal Care Home Inc.,**

Interested Party.

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

INTERIM ORDER

WHEREAS:

1. On March 5, 1999, the Manitoba Labour Board ("Board"), by way of Certificate No. MLB-5471, certified the Canadian Union of Public Employees ("CUPE") as the bargaining agent for a unit of employees of Parkland Regional Health Authority ("Parkland RHA") described as:

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“All other employees providing facility support not included in the Physicians, Nurses or Technical/Professional Paramedical Units, employed by Parkland Regional Health Authority in the Province of Manitoba, save and except those excluded by the Act.”

- 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, Swan River Valley Lodge Incorporated described as:

“All other employees providing facility support not included in the Physicians, Nurses or Technical/Professional Paramedical Units, employed by Swan Valley (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. Under the terms of previous collective agreements and Article 1.01 of the current collective agreement between the MGEU and Swan Valley Personal Care Home Inc. covering the term June 1, 2004 to March 31, 2008, (the “MGEU agreement”) the MGEU was/is recognized as the sole and exclusive bargaining agent for employees employed as follows:

“The Employer recognizes the Union as the sole and exclusive bargaining agent for employees in the classifications included in the bargaining unit as certified by the Manitoba Labour Board under specific certificates, or as may be granted voluntary recognition by the Employer and identified in Shedule “A”

Schedule “A” of the MGEU agreement identifies the following employee classifications:

- | | |
|--------------|------------------------------|
| Dietic Aide | Laundry Aidie |
| Cook | Health Care Aide (untrained) |
| Housekeeping | Health Care Aide (trained) |

- 4. On May 25, 2007, the Parkland RHA through Counsel, filed a Cross-Application (the “Application”) to case No. 310/07/LRA seeking leave pursuant to Section 17(2) of the Manitoba Labour Board Rules of Procedure, for relief pursuant to Section 56 of *The Labour Relations Act* (the “Act”) and for Board Ruling and Request for Review pursuant to Sections 142 and 143 of the *Act*, requesting that the Board exercise its power under the *Act*, *The Regional Health Authorities Act*, and the “Board’s Recommendations” in the Review of the Bargaining Unit Appropriateness in Manitoba’s Rural Health Care Sector to find the following:

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- (a) A declaration that the Parkland RHA is the successor employer of all employees formerly employed by Swan Valley Hospital District No. 1, Benito Health Centre, Swan River Valley Lodge Incorporated, and Swan Valley Personal Care Home (hereinafter collectively referred to as “Swan Valley”);
- (b) a declaration that there has been an intermingling of the Swan Valley employees and current employees of the Parkland RHA and that these employees constitute one or more units appropriate for collective bargaining;
- (c) a declaration that the terms of the collective agreements referred to in the Application be extended pending full and final determination of the Application, including any representation votes so ordered, if any, and that said collective agreements be extended on the same terms and the conditions of employment as are in effect as of the date of this Application;
- (d) an order that the Swan Valley Health Centre paramedical unit be restructured and applied as set out in the first part of the within Reply to Case No. 310/07/LRA and the Application; and
- (e) an Order that a regional representation vote be conducted amongst all employees in the support facility unit including those formerly employed by Swan Valley.

The Parkland RHA further submitted that if the Board ordered that a regional representation vote be conducted, then the vote should be ordered between the CUPE and the IUOE Local 987, as the MGEU does not represent the requisite twenty percent (20%) or more of the affected employees to be eligible as a bargaining agent.

- 5. On June 21, 2007, following an extension of time, the MGEU, through counsel, filed its Reply. In its Reply, 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.
- 6. On June 25, 2007, following an extension of time, the IUOE, Local 987, through counsel, filed its Reply in which it advised the Board that it did not dispute the Application.
- 7. On June 25, 2007, following an extension of time, CUPE, through Counsel, filed its Reply to the Application and submitted, for the reasons set forth in its Reply, that the Board should dismiss the Application without a hearing.
- 8. On October 1, 2007, counsel for CUPE filed documentation with the Board, summarizing the position of CUPE, as follows:
 - (a) the Application should be dismissed;

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- (b) if the Board is inclined to proceed on its own motion under Section 56 of the *Act*, then it should also exercise its discretion in this case to place the former Swan Valley support unit employees into the existing Parkland RHA support unit represented by CUPE; and,
 - (c) in the event that the Board determines a vote should be held, which was not conceded, then all unions should be on the ballot.
9. On October 2, 2007, counsel for the IUOE, Local 987 filed documentation with the Board advising that;
- (a) it takes no position on whether the Board should dismiss the Application on the basis that it has been made by an employer, and not by a bargaining agent; and,
 - (b) in the event the Board entertains the Application and determines that a representation vote is necessary and/or advisable, then all unions should be on the ballot of any such representation vote.
10. On October 4, 2007, the Board conducted a hearing with respect to the Application at which time the parties appeared before the Board and presented evidence and argument through their respective counsel.
11. 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 under the Review of Bargaining Unit Appropriateness in Manitoba's Rural Health Care Sector;
 - (b) the Applicant's request that the Board ought to act on its own motion is motivated by legitimate and *bone fide* considerations, free from anti-union animus, and, therefore, the Board ought to hear and resolve the matters in dispute;
 - (c) 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 Parkland RHA;

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- (d) at the time of the sale, merger or amalgamations on November 1, 2006, the MGEU, CUPE and IUOE, Local 987 were bargaining agents for facility employees employed by the Parkland RHA and by Swan Valley, as contemplated by Section 56(2)(b) of the *Act*;
- (e) there has been an intermingling within the meaning of Section 56(2)(c) of the *Act*, as interpreted by the Board in the *BorderLand 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 former Swan Valley employees who are covered by Certificate No. MLB-6350, represented by IUOE, Local 987;
 - 2) the former Swan Valley Personal Care Home Inc. employees who are covered by the MGEU agreement, and,
 - 3) the Parkland RHA Support Facility employees, who are covered by Certificate No. MLB-5471, represented by CUPE.

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

- (f) a single bargaining unit for all employees employed in “facility support” within the Parkland RHA, is appropriate;
- (g) the single bargaining unit appropriate for collective bargaining is properly described as follows:
- “All other employees providing facility support not included in the Physicians, Nurses or Technical/Professional Paramedical Units, employed by Parkland Regional Health Authority in the Province of Manitoba, save and except those excluded by the Act.”***
- (h) A representation vote is to be conducted among the affected employees in the bargaining unit, with CUPE, IUOE, Local 987 and MGEU appearing on the ballot, to determine their wishes as to which union shall be their bargaining agent.

THEREFORE

The Manitoba Labour Board **HEREBY ORDERS** that a representation vote shall be conducted among the affected employees in the single bargaining unit found to be appropriate in order to determine the wishes of the majority of the intermingled employees as to whether they wish to be represented either by Canadian Union of Public Employees, International Union of Operating

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Engineers, Local Union No. 987 or Manitoba Government and General Employees' Union as their sole bargaining agent.

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

GN/dlm/rb-s