

**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](http://www.manitoba.ca/labour/labbrd)

**ORDER NO. 1389**

**Case No. 394/05/LRA**

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

**- and -**

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

**Association of Employees Supporting Education Services,**

**Applicant,**

**- and -**

**UNIVERSITY OF MANITOBA,**

**Respondent/Employer.**

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

**WHEREAS:**

1. On June 14, 2005, the Applicant filed an application with the Manitoba Labour Board seeking a Board Determination pursuant to Section 142(5)(d) of *The Labour Relations Act*, requesting the Board to determine whether certain employees in Libraries Administration, filling certain positions, are included in the bargaining unit described in Certificate No. MLB-3974.
2. The Applicant originally requested in its application that the Board determine that the following ten positions be included in the bargaining unit: a) Receptionist, Libraries Administration Office, b) Manager Administrative Services, c) Budget Officer, d) Human Resources Officer, e) Executive Assistant, f) Associate Director, Collections, g) Associate Director, Operations and Planning, h) Associate Director, Info Services & Systems, i) Administrative Services Officer, and j) Executive Secretary.
3. On June 30, 2005, the Employer, through Counsel, filed its Reply, advising that except for the Receptionist position, all of the positions named in the Application are excluded by virtue of their status either as managers or as confidential employees, and, therefore, the application should be dismissed. The Employer further advised that it did not dispute the inclusion in the bargaining unit of the Receptionist position.

4. By letter dated July 12, 2006, Counsel for the Applicant requested leave to amend its application by deleting the request to include the three Associate Director positions in the bargaining unit.
5. On February 7, 8, 14 and 15, June 28 and 29, September 18 and 19, October 4, 6, 23 and 24, 2006, the Board conducted a hearing at which time the parties, through their respective Counsel, presented evidence and argument.
6. During his closing argument, Counsel for the Applicant further advised the Board the Union agreed that the position of Executive Assistant to the Director, currently held by M.W., should be excluded from the bargaining unit.
7. The Board, following consideration of material filed, evidence and argument presented **DETERMINED** that:
  - a) This is not an exclusion case of first instance in the context of an application for certification. As such, it follows that the case is to be assessed in accordance with the long-standing principle established by the Board that, where a position has historically been excluded from a bargaining unit covered by successive collective agreements negotiated between the two parties, the onus of proof rests with the Applicant who must satisfy the Board that there have occurred material and significant changes sufficient to sustain the conclusion that the excluded positions out to be henceforth included in the bargaining unit.
  - b) The bargaining unit is set out in Labour Board Certificate MLB-3974, dated December 20, 1985. The bargaining unit excluded certain classifications set out in Appendix "A" to the Certificate. Those exclusions list six positions in the Libraries System (Administration), namely Secretary to the Director, Secretary to the Associate Director (Tech. Services), Secretary to the Associate Director for Public Services, Assistant Director of Libraries – Administration, Confidential Secretary & Office Co-Ordinator, and Budget and Accounts Secretary.
  - c) The parties have entered into successive collective agreements since 1985. The term of the current collective agreement is September 20, 2004 to September 21, 2007. That agreement contains provisions confirming the scope of the bargaining unit to be in accordance with Labour Board Certificate No. MLB-3974. Moreover, the term "employee" is defined in the current collective agreement by reference to the Certificate.
  - d) The Applicant Union filed a very similar Application with the Board on January 10, 2000. As is the case in the present matter, the Applicant therein requested that the Board determine, pursuant to section 142(5)(d) of the *Act* whether "certain employees in Libraries Administration" were included in the bargaining unit described in Certificate No. MLB-3974. That case was resolved by the parties who agreed that

six positions within the Libraries System (Administration) would remain excluded while two other positions, namely the Receptionist and Executive Secretary (Fundraising) would be included in the bargaining unit. The six positions that the parties agreed would be excluded are the same positions that the Applicant now claims ought to be included in the bargaining unit.

- e) While there have been organizational changes within the Libraries System and changes to the titles of positions and the individuals who fill the positions at issue in the present case, the Board determined that there have not been material and significant changes sufficient to conclude that the excluded positions ought to be included in the bargaining unit.

Accordingly, the Manitoba Labour Board,

**R U L E S**

- a) that the position of Receptionist, Libraries Administration Office, is included in the bargaining unit described in Certificate No. MLB-3974; and
- b) that the positions of Executive Assistant to the Director; Manager, Administrative Services; Budget Officer; Human Resources Officer; Administrative Services Officer; and Executive Secretary are excluded from the bargaining unit described in Certificate No. MLB-3974.

**DATED** at **WINNIPEG**, Manitoba, this 10<sup>th</sup> day of January, 2007, and signed on behalf of the Manitoba Labour Board by

*"Original signed by"*

---

**Colin S. Robinson, VICE-CHAIRPERSON**

RL\*jjb/rb-s