

Manitoba Labour Board

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DISMISSAL NO. 1848
CASE NO. 472/07/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An Application by

**J.M.,
Part-time (employee whose wages vary day to day)
Transportation employee of the Seven Oaks School Division,

Applicant,**

- and -

**THE SEVEN OAKS SCHOOL DIVISION
of the Province of Manitoba, hereinafter called the "BOARD",**

- and -

**The Canadian Union of Public Employees Local Union No. 731
Chartered by the Canadian Union of Public Employees and
affiliated with the Canadian Labour Congress,
hereinafter called "THE UNION", or CUPE 731,

Respondents.**

<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 September 26, 2007, the Applicant filed an unfair labour practice application (the "Application") with the Manitoba Labour Board (the "Board") seeking remedies pursuant to various provisions of *The Labour Relations Act* (the "Act") and various provisions of the existing Collective Agreement (the "Agreement") between the Respondent Seven Oaks School Division (the "Division") and the Respondent Canadian Union of Public Employees Local Union No. 731 (the "Union"). The Applicant alleges that both the Division and the Union have failed to investigate or proceed with a "Formal Grievance" dated June 12, 2007, filed by the Applicant, in his individual capacity, with the Division.

The Applicant asserts that the Respondents have violated Sections 80(2), 130(3.1) and 133 of the *Act*, as well as Article 1.01 and Article 4.0 of the Agreement. As to remedial relief, the Applicant requests, *inter alia*, that the Board:

- a. inform the Division that it is in contravention of the *Act*;
 - b. remind the Division and the Union of their obligation to comply with Sections 80, 130 and 133 of the *Act* and the provisions of the Agreement in respect of investigating and resolving the allegations in the Formal Grievance;
 - c. compel the Division and the Union to resolve the Formal Grievance by issuing an order against both Respondents that they cease and desist discriminatory practices regarding part-time employees and order the removal of Article 7.02 from the Agreement and replace this provision with a clause which conforms to *The Human Rights Code*; and finally
 - d. appoint an independent source to review and resolve the Formal Grievance.
2. On October 3, 2007, the Division, through counsel, filed its Reply disputing the Application and asserting that the Board should dismiss the Application forthwith because it did not disclose a violation of the *Act* on the part of the Division.
 3. On October 9, 2007, the Union, through counsel, filed its Reply, denying that it had committed any unfair labour practice or breached any provision of the *Act*. The Union requests that the Application be dismissed without a hearing. In particular, the Union submits that the Application fails to disclose a *prima facie* case that the disputed language in the Agreement violates the *The Human Rights Code*, the *Act* or *The Employment Standards Code*, as alleged in the Application. The Union asserts that the Board has no jurisdiction to deal with an alleged violation of the Agreement as this is properly the subject of a grievance filed under the formal grievance and arbitration provisions of the Agreement. Further, the Union asserts that the Applicant is seeking to have the Board rewrite language in the Agreement which had been freely negotiated and ratified by the parties and that the Board has no jurisdiction to rewrite a provision in the Agreement.
 4. On October 18, 2007, the Applicant filed a reply to the Replies of the Respondents.
 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 issues raised in the Application can be determined by a review of the written materials filed by the parties.

- b. Conduct which may constitute an unfair labour practice is defined in **Part I** of the **Act** and the Application does not, on its face, disclose a *prima facie* breach of any substantive provision in **Part I** of the **Act**.
- c. None of Sections 80(2), 130(3.1) or 133 of the **Act**, standing alone, constitute a valid basis for an unfair labour practice application. In particular, Section 80 does not impose any duty on the Union. Rather, Section 80(2) contains a “fairness” provision that must be deemed to be in a collective agreement in the event the parties thereto do not include such a provision in the collective agreement.
- d. To the extent that the Applicant asserts Article 7.02 of the Agreement is discriminatory and contrary to **The Human Rights Code** and to the extent that the Applicant seeks an order of the Board amending or replacing this provision of the Agreement, these assertions and/or requested orders, in the context of the facts recited by the Applicant in the Application, are beyond the jurisdiction of the Board under the **Act**.
- e. To the extent the Application asserts that there has been violation or a breach of the Agreement, such assertions are properly the subject of the formal grievance and arbitration procedure contained in Articles 9 and 10 of the Agreement and, pursuant to Section 140(7) of the Act, the Board declines to adjudicate a matter arising from an interpretation of the Agreement and which, if arbitrable at all, can be adequately determined under the provisions of the Agreement for final settlement of disputes.
- f. In the result, the Application as a whole does not disclose any facts which arguably constitute a *prima facie* breach of any provision of the **Act**, particularly any of the substantive unfair labour practice provisions in **Part I** of the **Act**.

Accordingly, the Board declines to take further action on the Application 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 J.M., on September 26, 2007.

DATED at **WINNIPEG**, Manitoba, this 20th day of November 2007 and signed on behalf of the Manitoba Labour Board by

"Original signed by"

William D. Hamilton, Chairperson

WDH/dr/rb-s