

**Manitoba Labour Board**

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**DISMISSAL NO. 1805**  
**CASE NO. 725/06/LRA**

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

**- and -**

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

**St. Boniface Nurses Local 5 of the  
Manitoba Nurses' Union,**

**Applicant,**

**- and -**

**THE ST. BONIFACE GENERAL HOSPITAL,**

**Employer/Respondent.**

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

**WHEREAS:**

1. On October 23, 2006, the Manitoba Labour Board (the "Board"), pursuant to Order No. 1378, declined to hear the Application of the Applicant seeking various remedies for an alleged unfair labour practice, contrary to Section 6 of *The Labour Relations Act* (the "*Act*"), and, for the reasons set forth in Paragraph 3 of said Order, the Board made the following determination:

The Manitoba Labour Board **DECLINES** to hear the Application dated August 1, 2006, and **DEFERS** the matters therein raised to the grievance and arbitration provisions of the Collective Agreement between the parties, pursuant to Section 140(7) of *The Labour Relations Act*.

2. On November 3, 2006, the Applicant filed a Request for Review and Reconsideration (the "Request") of Order No. 1378, requesting that the Board reconsider its decision on the basis that the issue before the Board is materially different from what could be raised pursuant to the grievance and arbitration procedure contained in the current Collective Agreement between the parties. While the Applicant acknowledges that the evidence submitted to an arbitrator and the Board would be similar in respect of the right of the Respondent to impose a bilingual qualification and that an arbitrator would be entitled to assess the reasonableness of any such qualification in respect of a specific nursing position, the Applicant contends that the Employer cannot impose such a qualification without

bargaining the right to do so with the Applicant, and it is the failure to bargain this "term and condition" of employment which is the focus of the Application.

3. On November 16, 2006, the Respondent, through counsel, filed its Reply to the Request asserting, *inter alia*, that the Request neither alleges that any new evidence has arisen, as required by Section 17(a) and (b) of the ***Manitoba Labour Board Rules of Procedure*** ("the ***Rules***"), nor does the Request demonstrate any cause to support a review, as contemplated by Section 17(c) of the ***Rules***. For the reasons set forth in the Reply, the Respondent asserts that the Request should be dismissed.
4. On December 27, 2006, the Applicant, through counsel, filed, for the Board's consideration, the decision of the Board in ***University of Manitoba Faculty Association - and - The University of Manitoba*** (1996), MLBD No. 21.
5. On January 3, 2007, the Respondent, through counsel, filed correspondence commenting on the decision filed by the Applicant.
6. The Board, following consideration of material filed, has determined, to its satisfaction, the following:
  - a. The Request must be assessed against Section 17(1)(c) of the ***Rules*** because, in the absence of new evidence, the Applicant must show cause why the Board should review or reconsider its original decision in Order No. 1378;
  - b. The core issue raised in the Application and the Request is one that is normally dealt with by third party arbitration and arbitration is a forum where the rights of the members represented by the Applicant may be adequately addressed.
  - c. If the Respondent decides to impose a bilingual qualification for one or more nursing position(s), then the Board is satisfied that the Respondent would not be engaging in conduct which may involve a repudiation of substantive rights and protections granted to employees or bargaining agents pursuant to the ***Act***. Rather, the Applicant, in seeking to have the Board, pursuant to an application filed under Section 6 of the ***Act***, issue a mandatory order that the Respondent may only impose a bilingual qualification for selected positions through collective bargaining and the mutual agreement of the parties is tantamount to requesting that the Board itself amend the terms of the current Collective Agreement between the parties by adding a "mutual agreement" requirement, contrary to accepted arbitral principles.
  - d. The Request does not demonstrate any cause to support a review or reconsideration of the original Decision.

Based on the foregoing, the Board has determined that the Request for Review and Reconsideration ought to be dismissed and that Order No. 1378 be confirmed.

**T H E R E F O R E**

The Manitoba Labour Board **HEREBY DISMISSES** the Application seeking Review and Reconsideration filed by the St. Boniface Nurses Local 5 of the Manitoba Nurses Union on November 3, 2006, and **AFFIRMS** Order No. 1378, issued on October 23, 2006.

**DATED** at **WINNIPEG**, Manitoba, this 1st day of February 2007 and signed on behalf of the Manitoba Labour Board by

*“Original signed by”*

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**William D. Hamilton, Chairperson**

WDH/dr/rb-s