

**Manitoba Labour Board**

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**ORDER NO. 1394**

**CASE NO. 770/06/LRA**

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

**- and -**

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

**D.W.,**

**Applicant,**

**- and -**

**LORD SELKIRK SCHOOL DIVISION,**

**Employer,**

**- and -**

**Lord Selkirk School Division Bus Drivers' Association,**

**Respondent/Union.**

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

**WHEREAS:**

1. On November 23, 2006, the Applicant filed an Application (the "Application") seeking remedy for an alleged unfair labour practice, contrary to Section 20(b) of *The Labour Relations Act* (the "Act").
2. On December 5, 2006, following an extension of time, the Respondent/Union filed its Reply disputing the allegations and requesting that the Board dispose of the complaint by declining to take further action.
3. On January 23, 2007, the Board, following consideration of material filed, directed that the matter proceed to a hearing.
4. On March 6 and 7, 2007, the Board conducted a hearing, at which time all parties appeared before the Board and presented evidence and argument. The Employer and Respondent/Union were represented by counsel.

5. The Board, following consideration of evidence adduced and material filed is satisfied that:
  - a. The events and circumstances relied on by the Applicant, which pre-dated August 31, 2006, do not disclose that the Union acted in an arbitrary or discriminatory manner or in bad faith, as those terms have been interpreted by the Board.
  - b. The Applicant, by his own admission, failed to follow the requirements of Article 4 of the Collective Agreement when he unilaterally submitted the Grievance dated September 11, 2006 (the "Grievance") to the Division and, further, the Grievance was drafted on the basis that the Applicant had the support of the Union when the fact is that the Union was not aware of either the content of the Grievance or the fact that it had been filed by the Applicant with the Employer.
  - c. All matters relating to the Applicant's removal from the Union Executive, on or about October 3, 2006, are internal union matters and such matters are not properly the subject of a Section 20 application because internal union matters do not involve the representation of an employee's rights under a collective agreement.
  - d. Regardless of the improper manner in which the Grievance was initially filed by the Applicant, the Union did act in an "arbitrary" manner between September 12 and 19, 2006, when it failed to investigate, in a reasonable manner or at all, during that period, the circumstances of the Grievance in order to determine whether the Grievance was justified under Article 4 of the Collective Agreement and ought to receive the support of the Union. Accordingly, the Respondent/Union breached its obligation to the Applicant during this period, contrary to Section 20(b) of the *Act*.
  - e. Notwithstanding the finding in sub-paragraph (d) and taking into account all of the individual circumstances in this case, including the fact that the Board accepts that the Applicant ultimately agreed not to proceed with the Grievance at the September 20, 2006 meeting with the Employer and at which meeting the Applicant had two representatives from the Executive of the Union present, the Board is satisfied that there is no basis to order that the Grievance be referred to arbitration.
  - f. The Applicant has not suffered any diminution of income or other employment benefits as a result of any conduct on the part of the Respondent/Union.

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

By reason of the finding in Paragraph 5(d) above, the Manitoba Labour Board **HEREBY ORDERS**, pursuant to Section 31(4)(e) of the *Act*, that the Union pay the Applicant the sum of \$500.00 on account of its breach of Section 20(b) of the Act.

**DATED** at **WINNIPEG**, Manitoba, this 26th day of April 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