

Manitoba Labour Board

Suite 500, 5th Floor - 175 Hargrave Street
Winnipeg, Manitoba, Canada R3C 3R8
T 204 945-2089 F 204 945-1296
www.manitoba.ca/labour/labbrd

DISMISSAL NO. 1862
CASE NO. 508/07/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An Application by

**M.O., on behalf of employees of Betel Home Foundation,
Applicant,**

- and -

**International Union of Operating Engineers, Local 987D,
Respondent/Certified Bargaining Agent,**

- and -

**BETEL HOME FOUNDATION,
Employer.**

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

WHEREAS:

1. On November 1, 2007, the Applicant filed an application with the Manitoba Labour Board (the "Board") seeking cancellation of Certificate No. MLB-6359, issued July 12, 2006 (the "Application").
2. Between November 2, 2007, and February 19, 2008, the Applicant filed further documentation respecting the Application.
3. On November 14, 2007, the Employer, through counsel, filed its nominal roll in accordance with Rule 12(3) of the *Manitoba Labour Board Rules of Procedure* (the "Rules")
4. On November 23, 2007, the Certified Bargaining Agent, through counsel, filed its Reply disputing the Application.

5. On March 13, 2008, the Board conducted a hearing at which time all parties appeared before the Board and presented evidence and argument, the Employer and the Certified Bargaining Agent being represented by counsel.
6. Following consideration of material filed, evidence and argument presented, the Board is satisfied that the material findings of fact relevant to the disposition of this case are as follows:
 - a. The Application is timely in accordance with Section 49(2) of *The Labour Relations Act* (the "Act").
 - b. There was no evidence of any actual or perceived influence by management in respect of the origination and circulation of the Petition filed in support of the Application.
 - c. The wording at the top of the Petition was, in and of itself, sufficient to identify the general purpose underlying the Application and to appoint the Applicant as a representative on behalf of those employees who chose to sign the Petition.
 - d. Based upon information circulated by the Applicant to employees in the bargaining unit, a meeting was arranged at a location outside of the workplace in Selkirk, Manitoba and this meeting was held on October 9, 2007, between the hours of 2:00 p.m. and 6:30 p.m. The Petition and other documentation was available for review by employees on a table located at the meeting. During the course of this meeting, the Board accepts that the Applicant spoke to employees who were then present regarding the purpose of the Petition.
 - e. For employees who were unable to attend the meeting on October 9, 2007, the Applicant arranged to meet some employees at another commercial establishment in Selkirk, Manitoba, again, outside the workplace. The Applicant also visited some employees at their homes and asked them to sign the Petition. On cross-examination, the Applicant acknowledged that a few employees signed the Petition in the parking lot at the Employer's place of business and that it was possible that one or two employees signed the Petition in the workplace itself.
 - f. There is no reference to any date(s) on the Petition and the Applicant acknowledged that she could not testify to the date when any employee's signature was obtained, whether at the October 9th meeting, at an individual's home, in the parking lot, or in the workplace.
 - g. While the Applicant is shown as being a "... witness as to all signatures" at the bottom of each page of the Petition, the Applicant did not personally witness every employee who signed the Petition at the time an employee actually signed the

Petition. The statement that the Applicant was a "witness as to all signatures" was only completed after all persons who signed the Petition had done so and a decision was made to file the Petition with the Board.

- h. The Applicant acknowledged, on cross-examination, that not all employees saw the supporting documentation which was filed with the Board either with the Application itself or after the filing of the Application but prior to the hearing.
 - i. At the time of filing the Application, the Statutory Declaration on *Form A: Memorandum of General Information Required on all Proceedings ("Form A")* was blank and the Applicant did not sign the Statutory Declaration at all, before a Commissioner for Oaths. After being advised of the deficiencies on the Statutory Declaration, the Applicant later filled in the name of the Commissioner for Oaths and then signed the Statutory Declaration herself, following which she resubmitted the Statutory Declaration with the Board on November 6, 2007. At no time did the Applicant attend before a Commissioner for Oaths or other official entitled to swear statutory declarations and execute a completed Statutory Declaration in the presence of that person.
 - j. At the time the Applicant was seeking support for the Application, the Applicant advised employees that she believed the collective agreement currently in effect between the Employer and the Union would remain in effect at least until another bargaining agent might apply for certification under the *Act*. The Board accepts that the Applicant, at all times, acted in good faith and never purposely misrepresented the legal consequences of a (potential) decertification but the Board does find there was at least some confusion as to whether the collective agreement currently in effect would continue in effect after the date of any decertification which might be ordered by the Board.
7. In the context of the material facts recited in Paragraph 6, and after considering the submissions of the parties, the Board has determined the following:
- a. The Board reaffirms the tests and principles enunciated by the Board in *Integrated Messaging Inc.*, [2001] M.L.B.D. No. 17, particularly the finding by the Board in that decision that any application for the cancellation of a certification involves a two-stage process and that, during the first stage of this process, the onus is on an applicant (the Applicant here) to satisfy the Board, on the balance of probabilities, that any petition filed represents the voluntary wishes of its signatories. Further, in order to satisfy this onus, the Board requires cogent evidence regarding the origination, preparation and circulation of a petition. The Board reaffirms the criteria summarized in Paragraphs 44 to 46 of the *Integrated Messaging* case, particularly the requirement cast on an applicant to call witnesses to give evidence, based on personal knowledge and observations, relating to the circumstances of the origination and

- preparation of a petition and, further,... the manner in which each signature was obtained. Each and every signature on the petition must be identified and the circumstances under which it was obtained must be described. When such evidence is not presented, the signature may and likely will, be discounted ..."
- b. The Board further reaffirms the principles summarized in Paragraphs 58 and 59 of ***Integrated Messaging*** in respect of the manner in which petitions ought to be signed and dated by a witness at the time each employee signs a petition.
 - c. Pursuant to the criteria established in ***Integrated Messaging, supra***, there was no evidence as to either the date on which or the place where each individual signed the Petition and there was no evidence that a witness was personally present and witnessed an employee actually signing the Petition. As noted in Paragraph 6, *supra*, the Applicant acknowledged that she could not state when each employee signed the Petition and that she only signed as a witness after all signatures were obtained.
 - d. The Board is satisfied that a number of employees signed the Petition under the mistaken belief that the collective agreement would continue for a period of time after any decertification was issued and that they would still receive protection in respect of the terms and conditions contained in the collective agreement. At the very least, the Board accepts that there was likely some confusion regarding the effects of a decertification on existing terms and conditions of employment. In making this finding, the Board accepts that there was no intent on the part of any person to mislead or misrepresent the facts to the employees but, in the context of other concerns enumerated herein, such a fact may be considered by the Board when assessing the threshold issue of whether or not a petition reflects the voluntary wishes of the employees in the bargaining unit.
 - e. The failure of the Applicant to properly swear the Statutory Declaration on *Form A* constitutes a defect in the Application and, in the circumstances prevailing in this case, this defect is more than a technical irregularity which the Board is empowered to cure or amend. Rule 2(2) of the Board's *Rules* specifically requires that all facts recited in *Form A* and an accompanying application must be verified by statutory declaration. In this case, the Applicant never attended before a Commissioner for Oaths or other person duly empowered to swear statutory declarations to swear the Statutory Declaration in the presence of that person.
8. Based on the foregoing, the Board has determined that the Applicant has failed, on the balance of probabilities, to satisfy the Board that 50 percent or more of the employees in the unit support the Applicant and, therefore, the Applicant has failed to meet the requirements of the first stage of the process. While the Board accepts that the Applicant proceeded, at all times, in good faith, it is the cumulative effect of the deficiencies in the Petition itself (as recited in Paragraph 7); the failure of the Applicant to swear the Statutory

Declaration before an authorized person; and the finding that some employees likely believed that the collective agreement would remain in force after any potential decertification was issued that has led to the determination in this particular case.

T H E R E F O R E

The Manitoba Labour Board **HEREBY DISMISSES** the Application filed by M.O., on behalf of employees of Betel Home Foundation, on November 1, 2007.

DATED at **WINNIPEG**, Manitoba, this 15th day of April 2008 and signed on behalf of the Manitoba Labour Board by

“Original signed by”

William D. Hamilton, Chairperson

WDH/dr/rb-s