

Manitoba Labour Board

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DISMISSAL NO. 2210

Case No. 154/15/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An Application by

United Steelworkers, Local 9074,

Applicant,

- and -

N.W.,

Respondent,

- and -

**WINNIPEG DODGE CHRYSLER LTD.
and E.T.,**

Respondent/Employer.

BEFORE: C.S. Robinson, Chairperson

D. Strutinsky, Board Member

S. Oakley, Board Member

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

SUBSTANTIVE ORDER

WHEREAS:

1. On July 30, 2015, the Applicant filed an application (the “Application”) seeking a remedy for an alleged unfair labour practice contrary to sections 5, 6, 7, 10 and 17 of *The Labour Relations Act* (the “Act”) with the Manitoba Labour Board (the “Board”). The Applicant requested that the hearing into this Application be heard together with the hearing into Case No. 132/15/LRA a decertification application that had been filed on July 3, 2015 (the “Decertification Application”).

2. On August 17, 2015, following an extension of time, the Respondent, through counsel filed its Reply, denying the allegations and requesting that the matter be dismissed without the necessity of a hearing.
3. On August 17, 2015, following an extension of time, the Respondent/Employer, through counsel filed its Reply, denying the allegations and requesting that the matter be dismissed without the necessity of a hearing.
4. On August 25, 2015 the Board conducted a Case Management Conference with regard to the Application and the Decertification Application, during which counsel for each of the Applicant, the Respondent and the Respondent/Employer made submissions. At the Case Management Conference the counsel agreed that the matters shall be heard together with the evidence being applied *mutatis mutandis*.
5. On November 4 and 5, 2015, continuing on January 11, 12, 13,14 and 18, 2016 the Board conducted the hearing, at which time counsel for the Union, the Employer and the Applicant, each presented evidence and argument.
6. The Union advanced a number of allegations against the Employer and two individuals, namely N.W. and E.T., the General Manager. The Board, following consideration of material filed, evidence and argument presented, has determined that the Application should be dismissed for the reasons set forth below:
 - a) The Union alleged that the Employer, N.W. and E.T. attempted to coerce and intimidate employees in an attempt to dissuade them from supporting the Union and to encourage them to support an attempt to decertify the Union due in part to a familial relationship between the two individual Respondents. There is a familial relationship between N.W. and E.T. They are second cousins removed. Although the familial relationship was known to some people in the workplace, the evidence established that N.W. did not widely disseminate such information and it does not appear to have been common knowledge to other employees. In this regard, only two of the employees who testified at the hearing knew of the relationship, and neither of them claimed to have been influenced by it. The evidence does not support the contention that N.W. was picked to lead the decertification drive because of the familial relationship, that N.W. made a point of advising employees of the familial relationship, or that the Respondents attempted to exploit the familial relationship to coerce or intimidate employees as alleged.
 - b) The Union's allegation that the Employer facilitated a transfer of N.W. into the bargaining unit in an attempt to coerce employees, by virtue of his relationship with

E.T., into supporting an application for decertification was also not supported by the evidence. N.W. was hired into his position in the bargaining unit. There is no evidence to support the contention that he was hired to undermine support for the Union or to attempt to have the Union decertified. The Employer did not facilitate a transfer of the Applicant into the bargaining unit in order for him to file an application for decertification or to attempt to coerce employees on account of his familial relationship with the General Manager.

- c) The Union's allegation that the circulation of Individual Letters of Support ("ILS") for a Decertification in the workplace during working hours would have been obvious to the Employer and/or its management was not established. The Board has determined that N.W. and another employee had a series of brief conversations with employees that mainly occurred during lunches or breaks. These conversations were discreet and apparently not held in the presence of managers. There is no evidence upon which to conclude that such efforts were known to, supported, or condoned by the Employer. Moreover, during the period that copies of the ILS were circulated and discussed, the evidence did not indicate that the efforts caused any disruption in the workplace.
- d) The Union's allegation that on July 16, 2015, N.W. engaged in a conversation with an employee in the bargaining unit in an attempt to intimidate him on behalf of the Employer and with its knowledge was not established. The Board is satisfied that while N.W. and the employee may have become frustrated with one another during the conversation, nothing that occurred constitutes a breach of the statute as alleged or at all and, further, there is no evidence upon which to base a conclusion that the Employer caused the conversation to take place or even had advance knowledge of it.
- e) The Union's allegation that an employee was transferred into a position in the bargaining unit in order to facilitate support for a decertification application was not supported by the evidence. The Board concluded that the employee was moved into a position as a Service Advisor in the bargaining unit on or about June 15, 2015 for legitimate business reasons entirely unrelated to the decertification drive.
- f) Finally, there is no evidence to support the Union's allegation that the Employer initiated, supported, or was in any way involved in the Application for Decertification filed by N.W., or that the Respondents, individually or in combination, attempted to intimidate, coerce or influence employee wishes with respect to the decertification nor is there any reasonable evidentiary foundation to allow such inference to be drawn.

T H E R E F O R E

The Manitoba Labour Board **HEREBY DISMISSES** the Application filed by the United Steelworkers, Local 9074 on July 30, 2015.

DATED at **WINNIPEG, Manitoba** this 7th day of April, 2016, and signed on behalf of the Manitoba Labour Board by

“Original signed by”

C.S. Robinson, Chairperson

“Original signed by”

D. Strutinsky, Board Member

“Original signed by”

S. Oakley, Board Member

CSR/lo/lo-s