

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. 2223

Case No. 167/16/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An Application by

**T.X., representing the employees
of Rossburn Municipality,**

Applicant,

- and -

**International Union of Operating Engineers,
Local 987,**

Bargaining Agent/Respondent,

- and -

ROSSBURN MUNICIPALITY,

Employer.

BEFORE: C.S. Robinson, Chairperson

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

SUBSTANTIVE ORDER

WHEREAS:

1. On September 12, 2016, the Applicant filed an application with the Manitoba Labour Board (the “Board”) seeking cancellation of Certificate No. MLB-7173, issued December 16, 2015.
2. On September 19, 2016, the Employer filed its Nominal Roll in accordance with Rule 12(3) of the *Manitoba Labour Board Rules of Procedure*.

3. On September 21 and 22, 2016, the Bargaining Agent, filed its Reply to the application, indicating the Union does not oppose the Application and waives its right to a representation vote.
4. Section 49 of *The Labour Relations Act* (the “Act”) provides:

Application for cancellation or termination by employee

49(1) An employee claiming to represent a majority of the employees in a unit represented by a bargaining agent may, subject to this section, apply to the board

- (a) to cancel the certification of the bargaining agent, if it is the certified bargaining agent for the unit; or
- (b) to terminate the bargaining rights of the bargaining agent, if it has not been certified.

Time for application

49(2) An application under subsection (1) may be made at any time that an application may be made under section 35, in which case that section shall, with necessary modifications, apply to the application.

Exceptional cases

49(3) Notwithstanding subsection (2), where the board is satisfied that the employees in a unit or their employer, or both, would suffer substantial and irremediable damage or loss if it did not entertain an application made by an employee in the unit to cancel the certification of the bargaining agent representing the employees or terminate the bargaining rights of the bargaining agent representing the employees, and that it is not reasonable in the circumstances that the employees or their employer, as the case may be, should suffer that damage or loss, the board may receive and consider an application under subsection (1) at any time.

5. As set out in subsection 49(2) of the *Act*, one must look to Section 35 in order to determine whether an application of this type is timely. Section 35 provides that an application cannot be made until after the expiry of 12 months from the date on which the bargaining agent was certified:

Application where bargaining agent previously certified

35(1) Where no collective agreement in respect of the employees in a unit is in force but a bargaining agent has been certified under this Act for employees in the unit, no application for certification as bargaining agent for employees in the unit shall be made by another union until

(a) after the expiry of 12 months from the date on which the bargaining agent was certified; or

(b) after the expiry of 12 months from the date on which any court proceedings arising from the certification of the bargaining agent have been concluded;

whichever is the later, or

(c) the certification of the bargaining agent is cancelled.

6. The Board, following consideration of all material filed, has **DETERMINED** the following:

a) Certificate No. MLB-7173 was issued by the Board on December 16, 2015.

b) Accordingly, no Application seeking Cancellation of that Certificate may be brought until December 17, 2016.

c) Furthermore, the Board is not satisfied that the employees in the unit or their employer, or both, would suffer substantial and irremediable damage or loss if it did not entertain an application.

7. Having regard to the foregoing, the Application is **DISMISSED** as it is untimely.

T H E R E F O R E

The Manitoba Labour Board **HEREBY DISMISSES** the Application filed by T.X. representing the employees of Rossburn Municipality on September 12, 2016.

DATED at **WINNIPEG, Manitoba** this 3rd day of October, 2016, and signed on behalf of the Manitoba Labour Board by

“Original signed by”

C.S. Robinson, Chairperson