

**ORDER NO. 1651**

**Case No. 215/16/LRA**

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

**- and -**

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

**University of Manitoba Faculty Association,**

**Applicant,**

**- and -**

**UNIVERSITY OF MANITOBA,**

**Respondent/Employer.**

**ORDER**

**WHEREAS:**

1. On November 7, 2016, the University of Manitoba Faculty Association (the "Faculty Association"), through counsel, filed an application (the "Application") with the Manitoba Labour Board (the "Board") seeking remedy for alleged unfair labour practices contrary to section 26 of *The Labour Relations Act* (the "Act").
2. On November 22, 2016, following an extension of time, the University of Manitoba (the "University"), through counsel, filed its reply. In his cover letter counsel advised that the strike between the parties had settled and, if the Board did not consider that the matter was moot, that it was prepared to set hearing dates. In the reply, the University denied that it had failed to bargain in good faith or failed to make every reasonable effort to conclude a collective agreement, and further asserted that the Application did not disclose a *prima facie* case and should be dismissed without a hearing.
3. On December 2, 2016, following an extension of time, counsel for the Faculty Association advised that it would not be filing a response to the reply as contemplated by Rule 22(5) of *The Manitoba Labour Board Rules of Procedure* (the "Rules"). However, counsel disputed the University's claim that the matter was moot.

4. On December 12, 2016, the Board directed that the matter proceed to a hearing.
5. On January 30, 2017, the University, through counsel, requested that the Board convene a case management conference to discuss issues of mootness, labour relations purpose, amendments to its reply, and issues related to the conduct of the hearing including the narrowing of issues and production of documents.
6. On January 30, 2017, counsel for the Faculty Association responded to the request for a case management conference. Counsel asserted that the Board had already addressed the issues of mootness and labour relations purpose when it set the matter down for a hearing.
7. On February 1, 2017, the Board informed the parties that it was satisfied that a live controversy between the parties still existed and, accordingly, the Board did not consider the matters raised in the Application to be moot. The Board scheduled a case management conference to address the other issues raised by the University.
8. On February 22, 2017, the parties, each represented by counsel, appeared before the Board at a case management conference.
9. On March 1, 2017, following a request by counsel for the Faculty Association, the parties, each represented by respective counsel, appeared before the Board at a second case management conference to discuss the pre-hearing production of documents.
10. On March 6, 7, 13, 14, May 2, 3, 5, June 14 and 15, 2017, the Board conducted a hearing at which time counsel for the Faculty Association and the University each presented evidence and argument.
11. The Board, following consideration of the evidence, including the materials filed and the argument presented, has **DETERMINED**, as set out in the attached Reasons for Decision, that the University failed to comply with the requirements of section 63 of *The Labour Relations Act* and, as such, committed an unfair labour practice contrary to section 26 of the *Act*.

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

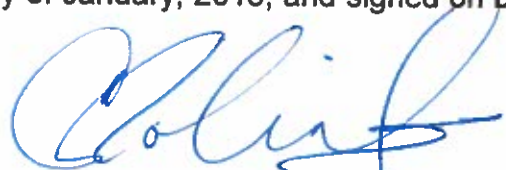
The Manitoba Labour Board, **HEREBY ISSUES** the following remedies:

1. A Declaration that the University failed to comply with section 63(1) and committed an unfair labour practice contrary to section 26 of the *Act*;

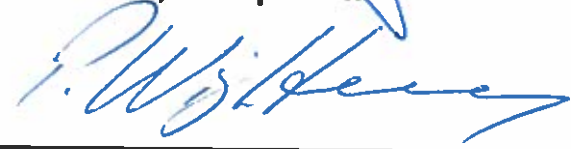
2. An Order that the University, pursuant to clause (f) of section 31(4) of the *Act*, pay to the Faculty Association an amount not exceeding \$2,000 for having interfered with its rights under the *Act*;
3. An Order that the University, pursuant to clause (e) of section 31(4) of the *Act*, pay to each employee who was in the bargaining unit when the unfair labour practice was committed an amount not exceeding \$2,000 for having interfered with their rights under the *Act*; and
4. An Order that the University apologize, in writing, to the Faculty Association and all employees who were in the bargaining unit when the unfair labour practice was committed, for its conduct that the Board has determined was contrary to the *Act*.

The parties shall be given 30 days from the date of the Board's Order to agree upon the specific amounts that the University shall pay pursuant to points 2 and 3 above. If the parties are unable to agree on those amounts, the Board retains jurisdiction and shall receive submissions from the parties with respect to those remedies and determine the amounts to be paid by the University.

**DATED at WINNIPEG, Manitoba** this 29<sup>th</sup> day of January, 2018, and signed on behalf of the Manitoba Labour Board by



**C.S. Robinon, Chairperson**



**P. Wightman, Board Member**



**W. Comstock, Board Member**

**NOTE: Written Reasons for Decision attached**

CSR/rm/lo

**NOTES**

**REQUEST FOR REVIEW BY MANITOBA LABOUR BOARD OF A DECISION, ORDER, ETC. OF THE BOARD**

- (a) Subsection 143(3) of *The Labour Relations Act* of Manitoba, C.C.S.M. Chapter L10 provides:

The board or a panel of the board may

- (a) review and vary or rescind any decision, order, direction, declaration or ruling that it or another panel has made; and
- (b) rehear a matter that it has heard or that another panel has heard.
- (b) Request for review by the board of its decision, order etc. must be made by application to the board, within ten days of the making of the board decision, order, etc.

Section 17 of the *Manitoba Labour Board Rules of Procedure* (being Manitoba Regulation 184/87R, published in the Manitoba Gazette Part II) provides:

**Application for Review of Board Decision**

17(1) Where an application is made to the board under subsection 143(3) of the *Act*, to review, rescind, amend, alter or vary any decision, order, direction, declaration or ruling made by it, the applicant, in addition to the material required to be filed under section 2, shall

- (a) file a concise statement of any new evidence with such evidence being verified by statutory declaration;
- (b) file a statement explaining when and how the new evidence became available and the applicant's reasons for believing that the new evidence so changes the situation as to call for a different decision, order, direction, declaration or ruling; and
- (c) in the absence of any new evidence, file a concise statement showing cause why the board should review or reconsider the original decision, order direction, declaration or ruling.

**Time Limit for Review**

17(2) Except by leave of the board, no application under subsection 143(3) of the Act for a review of any decision, order, direction, declaration or ruling made by the board shall be reviewed by the board after more than 10 days have elapsed following the date of the making of the decision, order, direction, declaration or ruling.

**JUDICIAL REVIEW OF FINAL DECISION OF THE MANITOBA LABOUR BOARD**

Subsection 143(6) of *The Labour Relations Act of Manitoba* provides:

**Judicial Review of Final Decision**

143(6) Notwithstanding any other Act, a final decision, order, direction, declaration or ruling, but not a procedural, interim or any other decision, order, direction, declaration or ruling, of the board or a panel of the board may be reviewed by a court of competent jurisdiction solely by reason that the board or the panel failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction, if

- (a) the applicant for review has first requested the board or the panel, as the case may be, to review its decision under subsection (3), and the board or the panel has decided not to undertake a review, or has undertaken a review and rendered a decision thereon, or has failed to dispose finally of the request to review within 90 days after the date on which it was made;
- (b) the board has been served with notice of the application and has been made a party to the proceeding; and
- (c) no more than 30 days have elapsed from, as the case may be, the decision by the board or panel not to undertake a review, or the date of the decision rendered by the board or panel on the review, or the expiration of the 90 day period referred to in clause (a).

**REASONS FOR DECISION**

It is the policy of the Manitoba Labour Board that where a party to the proceedings is adversely affected by an Order or by a decision of the Board, within ten (10) calendar days of the date on which the Board's Order or decision was signed, that party may request the Board in writing to furnish written reasons for its Order or decision. The Board then may consider such request for reasons for its Order or decision and shall notify the requesting party as to whether reasons will be provided.

**Emailed to:**

- Mr. G. Juliano, Associate Vice-President (Human Resources), University of Manitoba
- Mr. K. Dolinsky / Mr. R.C. Roy, Taylor McCaffrey LLP
- Dr. G. Fleming, Executive Director, University of Manitoba Faculty Association
- Mr. G. Smorang, Q.C., Myers Weinberg LLP