

MANITOBA LABOUR BOARD

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June 1, 2015

**MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 1
REVIEW AND RECONSIDERATION**

Section 143(3) of *The Labour Relations Act*, C.C.S.M. Cap. L10, (the "**Act**") vests in the Manitoba Labour Board (the "**Board**") the statutory authority to review, rescind, amend, alter or vary any decision, order, direction, declaration or ruling made by it and to rehear any matter if it considers it advisable to do so.

Pursuant to Section 17(1) of the *Manitoba Labour Board Rules of Procedure, Regulation 184/87R*, (the "**Regulation**") passed under the **Act**, where an application is made to the Board under Section 143(3) of the **Act**, the applicant shall, in addition to compliance with the requirements of Section 2 of the **Regulation**:

- ...
- (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.

The Board takes this opportunity to express to parties coming before it on such matters that it will expect compliance with both the letter and spirit of the **Regulation**. The particulars of the statement to be filed with the Board must clearly set out those features which would justify an exercise of the Board's discretion. If the request for reconsideration involves a matter other than the introduction of new evidence, the "reasons" for such request must include a statement of the arguments to be advanced on the merits with respect to how the original decision was in error and why it should be reviewed, rescinded, etc.

The Board, as a result of receipt of materials under Section 17(1) of the **Regulation**, shall assume that the applicant has stated the basis for the appeal in its submission. If reasons for review or reconsideration bear no merit therein, the Board may dispose of the request and dismiss same without the holding of a hearing as it may do under the statute and regulations.

As to the substance of a request for review and reconsideration, the Board takes this opportunity to advise, and without restricting the generality of the foregoing, that favourable consideration to an application for reconsideration may be given in, but not limited to, the following circumstances:

- a. if there was no hearing in the first instance and a party subsequently finds that the decision turns on a finding of fact which is in controversy and on which the party wishes to adduce evidence;

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- b. if a hearing was held and certain crucial evidence was not adduced for good and sufficient reasons, i.e. where this evidence could not have been obtained by reasonable diligence before the original hearing;
- c. if the Order made by the Board in the first instance has operated in a unanticipated way, i.e. having an unintended effect on this particular application;
- d. if the original decision turned on a conclusion of law or general policy, which law or policy was not properly interpreted by the original panel, or whether the decision is inadvertently contrary to earlier Board practice; and
- e. where the original decision sets a precedent that amounts to a significant policy adjudication.

The Board hastens to add, however, that its exercise of the power of reconsideration will turn on the facts and circumstances of the particular case before it.

As to the manner and composition of panels that may be expected to deal with requests for review and reconsideration, the Board adopts the following general principles to guide itself in these matters:

- a. cases that raise issues of an evidentiary nature will go to a quorum that made the original findings a fact;
- b. cases that allege breaches of the rules of natural justice may be reviewed by the original panel or by a different panel or may be declined review by the Board depending on the nature of the allegation, i.e. procedural irregularity such as failure to transmit to other parties one party's submissions. More substantive matters such as bias would, in most cases, more properly be dealt with by the Courts; and
- c. cases involving interpretations of the law or matters of Board policy will ordinarily, although not necessarily, go to an expanded panel of the Board including the members of the original quorum.

The Board points out that these principles are to be considered as general statements of Board practice and procedure and are not to be considered as inflexible such as to prevent the Board from acting in accordance with the circumstances of the particular case before it and in the exercise of the discretion which it possesses pursuant to its broad powers of review under the **Act**.

A copy of **The Labour Relations Act**, C.C.S.M. c. L10, and the **Manitoba Labour Board Rules of Procedure, Regulation 184/87 R**, may be viewed on the Board's website at www.manitoba.ca/labour/labbrd, and/or obtained from Statutory Publications, 10th Floor – 155 Carlton Street, Winnipeg MB R3C 3H8, Telephone: 204-945-3101.

If you require additional information, please contact the Board's office at 204-945-2089.

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