

**MANITOBA LABOUR BOARD**Suite 500, 5<sup>th</sup> Floor - 175 Hargrave Street, Winnipeg, Manitoba, Canada R3C 3R8

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[www.manitoba.ca/labour/labbrd](http://www.manitoba.ca/labour/labbrd)**CERTIFICATE NO. MLB-6687****Case No. 152/08/LRA****IN THE MATTER OF:    *THE LABOUR RELATIONS ACT*****- and -****IN THE MATTER OF:    An application by:****International Alliance of Theatrical Stage Employees, Moving  
Picture Technicians, Artists and Allied Crafts of the United  
States, its Territories and Canada, Local 63,****Applicant,****- and -****MANITOBA THEATRE FOR YOUNG PEOPLE INC.,****Employer.****WHEREAS:**

1. On April 4, 2008, the Applicant filed an Application for Certification for a unit described as:

*"All stagehands/production employees of the Manitoba Theatre for Young People Inc. in the Province of Manitoba, including Technical Director, Head of Properties, Scenic Carpenters, Venue Technicians, Head of Wardrobe, Production Assistants, all stagehands, and excluding Artistic Director, General Manager, Production Manager, Administrative and Office staff, Theatre School staff and those excluded by the Act."*

2. On April 9, 2009, the Employer, through Counsel, filed its Return, requesting the exclusion from the bargaining unit of the classifications of *Technical Director* and *Production Assistant* and further, advising that it does not agree to the description of the bargaining unit as applied for. The Employer proposed an alternate bargaining unit to be described as:

*"All Stage Hand/Production Supervisory Employees of the Manitoba Theatre for Young People Inc. in the Province of Manitoba including Head of Properties, Scenic Carpenters, Venue Technicians and Head of Wardrobe, and excluding Technical Director, Production Assistants, Artistic Director, General Manager, Production Manager, Administrative and Office staff, Theatre School staff, non-supervisory Stage Hands, and those excluded by the Act."*

**CERTIFICATE NO. MLB-6687****Page 2****Case No. 152/08/LRA**

3. On April 10, 2008, the Applicant filed its Reply to the Employer's Return, advising that it did not agree with the Employer's request to exclude the classifications of *Technical Director* and *Production Assistant* and further disputing the Employer's proposed description of the bargaining unit.
4. On July 14, 2008, July 15, 2008 and November 10, 2008, the Board conducted a hearing, at which time the parties appeared before the Board and presented evidence and argument through their respective Counsel.
5. At the conclusion of the proceedings on July 15, 2008, Counsel for the Applicant requested that the Board issue an Interim Certificate pursuant to Section 39(4) of *The Labour Relations Act*. The Board proceeded to hear the submissions of the parties on the issue. The Board reserved its decision on the matter.
6. On July 21, 2008, the Board informed the parties, in writing, that following consideration of material filed, and the submissions presented by the parties on July 15, 2008, the Applicant's request for an Interim Certificate, pursuant to Section 39(4) of *The Labour Relations Act*, had been **DENIED**.

The Board, following consideration of material filed, evidence and argument presented, **DETERMINED** that:

- a) the classifications of *Technical Director* and *Production Assistant* shall be included in the bargaining unit;
- b) the bargaining unit applied for hereinafter described is appropriate for collective bargaining, namely:

***"All stagehands/production employees of the Manitoba Theatre for Young People Inc. in the Province of Manitoba, including Technical Director, Head of Properties, Scenic Carpenters, Venue Technicians, Head of Wardrobe, Production Assistants, all stagehands, and excluding Artistic Director, General Manager, Production Manager, Administrative and Office staff, Theatre School staff and those excluded by the Act."***

The Board further **DETERMINED** to its satisfaction that:

- c) the Applicant is a Union within the meaning of the *Act*;
- d) no allegations of impropriety pursuant to Section 45 of the *Act* have been raised; and
- e) at the time the application was filed, sixty-five percent (65%) or more of the employees in the unit wished to have the Union represent them as their bargaining agent.

**CERTIFICATE NO. MLB-6687**

Page 3

**Case No. 152/08/LRA**

Accordingly, the Board **HEREBY ORDERS** certification to issue pursuant to Section 40(1)1 of *The Labour Relations Act*.

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

The Manitoba Labour Board **HEREBY CERTIFIES** to all parties concerned, that the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 63, is the properly chosen bargaining agent for a bargaining unit described as:

*"All stagehands/production employees of the Manitoba Theatre for Young People Inc. in the Province of Manitoba, including Technical Director, Head of Properties, Scenic Carpenters, Venue Technicians, Head of Wardrobe, Production Assistants, all stagehands, and excluding Artistic Director, General Manager, Production Manager, Administrative and Office staff, Theatre School staff and those excluded by the Act."*

and such bargaining agent and Employer are entitled to exercise the rights conferred upon them and are subject to the provision of the Act.

**DATED** at WINNIPEG, Manitoba, this 19<sup>th</sup> day of January, 2009, and signed on behalf of the Manitoba Labour Board by:

  
Gavin Wood, VICE-CHAIRPERSON

RL/acr

**N O T E S****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:

**Board Review**

143(3) the board or any panel of the board may review, rescind, amend, alter or vary any decision, order, direction, declaration or ruling made by it, and may rehear any matter if it considers it advisable to do so.

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**CERTIFICATE NO. MLB-6687****Page 4****Case No. 152/08/LRA**

- (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;

**CERTIFICATE NO. MLB-6687****Page 5****Case No. 152/08/LRA**

(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.

**Couriered to:**

- Ms. T. L. Epp, Pitblado LLP, Barristers and Solicitors, 2500-360 Main Street, Winnipeg MB R3C 4H6
- Mr. G. Smorang, Q.C., Myers Weinberg LLP, Barristers and Solicitors, 724-240 Graham Avenue, Winnipeg MB R3C 0J7
- Ms. D. Lysak, General Manager, Manitoba Theatre for Young People Inc., 2 Forks Market Road, Winnipeg MB R3C 4X1
- Mr. B. Haines/Mr. J. Gallagher, International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 63, 202-128 James Avenue, Winnipeg MB R3B 0N8