

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20100211

**Dockets: A-33-09
A-69-09**

Citation: 2010 FCA 43

**CORAM: NOËL J.A.
PELLETIER J.A.
LAYDEN-STEVENSON J.A.**

BETWEEN:

O-PIPON-NA-PIWIN CREE NATION

Applicant

and

MANITOBA GOVERNMENT and GENERAL EMPLOYEES' UNION

Respondents

Heard at Winnipeg, Manitoba, on February 11, 2010.

Judgment delivered from the Bench at Winnipeg, Manitoba, on February 11, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

PELLETIER J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Winnipeg, Manitoba, on February 11, 2010.)

PELLETIER J.A.

[1] The O-Pipon-Na-Piwin Cree Nation Band (the Band) brings judicial review applications against decisions made by the Canada Industrial Relations Board (the Board) pursuant to the *Canada Labour Code*, R.S.C. 1985, c. L-2 (the Code) clarifying an earlier order (the Original Decision) (docket A-33-09) and amending the description of the certified bargaining unit therein contained (the Clarification Decision) (docket A-69-09).

[2] The two decisions in issue arise from an application by the Manitoba Government and General Employees' Union (the Union) seeking the clarification and amendment of the Original Decision. The issue turns on whether the Original Decision maintained or altered the bargaining unit which had been previously certified by the Manitoba Labour Board, back in 1998.

[3] By order of this Court dated September 22, 2009, the two applications were consolidated, docket A-33-09 being designated the lead file. In conformity with this order, these reasons will be filed in docket A-33-09 and a copy thereof will be filed as reasons for judgment in docket A-69-09.

[4] The original application before the Board was made under subsection 44(3) of the *Code* and sought recognition under the *Code* of the bargaining relationship which had been established under the Manitoba legislation. The Original Decision purported to do exactly that, specifically, to recognize the Union as the bargaining agent under paragraph 44(3)(a) and to recognize the collective agreement between the parties under paragraph 44(3)(b) of the *Code*. There was no request by either the Union or the Band for a modification of the bargaining unit pursuant to section 45 of the *Code*.

[5] Responding to the Band's allegation that it had, without any request to that effect and without notice to the parties, modified the bargaining unit definition, the Board's Clarification Decision simply recognized that it had not intended to modify the bargaining unit definition. Sections 18 and 46 of the *Code* are broad enough to allow the Board to proceed as it did.

[6] With respect to the timeliness of the Union's application, the ambiguity alleged by the Union only became apparent in February 2008 when the Band communicated to the Union its position that the scope of the bargaining unit had been altered by the Original Decision. The Union moved immediately upon being so advised. That is why the Union did not seek an extension of time and the Board did not see the need to resort to its power to abridge the time limit.

[7] The application for judicial review will be dismissed with one set of costs.

"J.D. Denis Pelletier"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS: A-33-09 and A-69-09

APPEAL FROM A DECISION OF THE CANADA INDUSTRIAL RELATIONS BOARD DATED DECEMBER 3, 2008, DECISION NO. 2020.

STYLE OF CAUSE: O-Pipon-Na-Piwin Cree Nation v. Manitoba Government and General Employees' Union

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: February 11, 2010

REASONS FOR JUDGMENT OF THE COURT BY: NOËL, PELLETIER, LAYDEN-STEVENSON JJ.A.

DELIVERED FROM THE BENCH BY: PELLETIER J.A.

APPEARANCES:

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