



File No. 96-008

Decision No.

**IN THE MATTER OF THE REQUEST FOR RECONSIDERATION OF
CERTIFICATION ORDER**

BETWEEN:

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND
GENERAL WORKERS UNION OF CANADA (CAW-CANADA)**

APPLICANT

AND:

PERRIN'S CLINTON VIEW LODGE LTD.

RESPONDENT

**Representative for the Applicant:
Counsel for the Respondent:**

**Thomas Barron
Donna MacEwen**

DECISION

BACKGROUND

In the matter of the Board reconsidering its own decision, the Board relies upon the guiding principles as set out in the Ontario Labour Relations Board Decision in the matter of Service Employees' International Union, Local 183, v. K-Mart Canada Limited (Peterborough), v. Group of Employees. The decision of M.G. Picher, Vice-Chairman, given on February 16, 1981, states that:

"To avoid abuse of the reconsideration provision and bring some finality to its adjudicated decisions, the Board has adopted principles not unlike those of the courts. The Board will not normally accede to a request to reconsider unless the party requesting reconsideration intends to adduce new evidence which was not previously available to them by the exercise of due diligence, and then only where such additional evidence, if proved, would be likely to make a substantial difference to the outcome of the case. Reconsideration is therefore generally restricted to allowing a party to adduce evidence or make representations which it did not have a previous opportunity to raise. The Board may also consider such factors as the notices for the request for reconsideration in light of a party's conduct, and the resulting prejudice to another party if the case is reopened."

The comments have been alluded to and followed in various matters before the Ontario Labour Relations Board to current date.

In the matter of the Application for Certification by the CAW-Canada, Applicant and Perrin's Clinton View Lodge Ltd., Respondent, the Board, pursuant to the Labour Act reviewed the Application and supplementary documents filed with the Application and the Respondent's reply, particularly the allegation in 10(b) of the reply. The Board concluded that the Applicant was a trade union and that the proposed bargaining unit was an appropriate unit. In determining the appropriate unit, the Board looks at the nature of the work performed, the conditions of employment, the skill of the employees, the geographic circumstances, function coherence and interdependence, and administration. The Respondent's reply and, in particular, Exhibit B to its reply, listed all the employees of Perrin's Clinton View Lodge Ltd. and provided a job description for each. The Board was satisfied that there was a community of interest based on the foregoing considerations. The Board concluded that all the employees of Perrin's Clinton View Lodge, with the exception of those who are excluded by law through the operation of Section 7(2)a and 7(2)b of the Labour Act were an appropriate bargaining unit.

In the Respondent's reply (paragraph 10(c), the Respondent alleged that the Applicant did not have a majority of the employees as members. Upon a review of the reply, Exhibit B, listing all the employees of the Respondent, and in comparison to the list of members submitted with the Application, the Board was able to determine conclusively that a majority of the employees of Perrin's Clint View Lodge Ltd., were members of the Applicant and pursuant to Section 3, Sub-section (4), of the Labour Act regulations a person shall be deemed by the Board to wish that the Applicant trade union be certified as a bargaining agent on his or her behalf, if at the date of the Application, (a) he was a member in good standing of the Applicant trade union and had paid at least \$2.00 as union dues within three months preceding the date in which the Application was filed or, (b) he has signed a document stating that he wishes the Applicant trade union to be certified as a bargaining agent on his behalf and has, within three months preceding the date on which the Application was filed, paid at least \$2.00 as union dues or fees.

DECISION

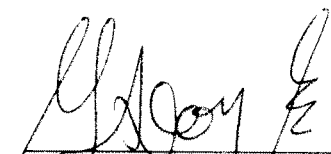
Based upon the proof of membership supplied by the Applicant and the conclusive list of employees supplied the Respondent, the Board had no choice but to conclude that there was a majority of the employees wishing the Applicant trade union be certified as their bargaining agent.

The Board is, therefore, of the opinion that the Respondent's reply did not provide any allegation of fact or law which required the Board to conduct a hearing in order for it to determine the essential elements of the Applicant's Application. Furthermore, the Respondent, in its request for reconsideration, did not adduce any new allegations of fact or law that were not previously available to them by the exercise of due diligence.

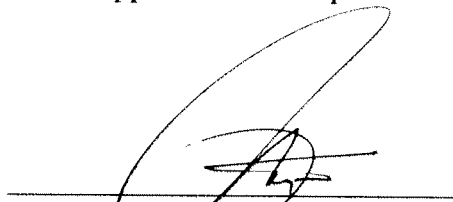
The Board is, therefore, of the opinion that there is no allegation, either in the original Application, or the Respondent's reply, or in the Application for reconsideration, which under the rules of natural justice, would require it to hold a hearing.

The decision to hold a hearing is at the discretion of the Board and the Board would exercise that discretion if there was an allegation presented either by the Applicant, or by the Respondent that could not be determined from the material supplied by the Application and the Respondent's reply. The Board is of the opinion that a hearing should not be granted automatically upon request since it would only serve to delay the processing of Applications for Certification and bring the Labour Act and Board into disrepute. A hearing is a vehicle used by the Board to conclusively determine all the essential elements of the Application should those essential elements not be determinable from the material and documentation supplied to the Board at the time of the Application and the Respondent's reply.


The Board concludes that all the essential elements of the Application for Certification were present at the time the Order for Certification was given, that there is no new evidence, or allegations, which was not previously available that would be likely to make a difference to the outcome of the Order. Therefore, the application for request for reconsideration made by the applicant is denied.



Gerry Doyle, Member

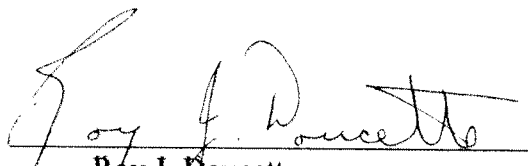


George Lyle
Chair



Ted Crockett, Member

THIS DECISION made by the Labour Relations Board on the 1st day of May, 1996 and issued under the hand of its Chief Executive Officer on this 9th day of May, 1996.



Roy J. Doucette
Chief Executive Officer