



File No. 96-011

Decision No.

**IN THE MATTER OF THE REQUEST FOR RECONSIDERATION OF THE LABOUR  
RELATIONS BOARD DECISION TO RESCIND A CERTIFICATION ORDER**

BETWEEN:

**CONSTRUCTION AND GENERAL LABOURERS AND GENERAL  
WORKERS IN CONSTRUCTION, INDUSTRIAL AND COMMERCIAL,  
LOCAL UNION NO. 1077**

APPLICANT

AND:

**APM CONSTRUCTION INC.**

RESPONDENT

Counsel for the Applicant:  
Counsel for the Respondent:

Gordon MacKay, Q.C.  
John K. Mitchell

**DECISION**

**BACKGROUND**

On September 25, 1995, the Labour Relations Board received an Application for Certification from the Construction and General Labourers Union, Local 1077, to certify all employees of the Respondent working as labourers and steel setters in the Province of Prince Edward Island and excluding foremen, and those above the rank of foremen, of APM Construction Inc., pursuant to Section 54 of the Act.

The Board Panel, consisting of George A. Lyle, Chairman and members Gerald Doyle and Ted Crockett, met on October 2, 1995. The Board found all matters pertaining to the Application to be in order under the Labour Act. Certification was granted by Order 07-95 to the Construction and General Labourers Union, Local 1077, certifying the Applicant as the Bargaining Agent for all employees of the Respondent working as labourers and steel setters in the Province of Prince Edward Island and excluding foremen, and those above the rank of foremen, employed with APM Construction Inc. Pursuant to the Act, notice was sent to the employer and the International Association of Bridge, Structural and Ornamental Ironworkers.

On October 10, 1995, the Board received a request supported by the affidavit of Timothy Banks, of Charlottetown, to review the foregoing Order pursuant to Section 54(6) of the Prince Edward Island Labour Act. The Board issued a notice of a Hearing of the Application for Review of Certification Order 07-95 to take place on the 8th of December, 1995. It was forwarded to the Respondent and the Applicant Union on the 15th of November, 1995. A request by Council for the Respondent Employer was received to delay the hearing date. The hearing was re-established for Tuesday, February 13, 1996, at 10:00 a.m. The Respondent Employer presented oral and documentary evidence supporting its allegation that at the time of the Application, APM Construction Inc., did not carry on business in Prince Edward Island and had no employees on Prince Edward Island.

The Applicant Union elected not to call evidence to refute the evidence given by the Respondent Union.

During the hearing on February 13, 1996, both Mr. Banks and Mr. Daley emphatically stated in their evidence that even though APM Construction Inc. is incorporated in the Province of Prince Edward Island, it did not do business within the Province of Prince Edward Island and did not have any employees in Prince Edward Island. As a result of hearing this testimony from Messrs Banks and Daley, the Board concluded that APM Construction Inc. had no employees within the Board's jurisdiction at the time of the Application for Certification. The Board, based on the evidence that the employer did not carry on business on Prince Edward Island, rescinded Certification Order 07-95 by Order dated February 13, 1996.

The Applicant Union by Application dated May 24, 1996, applied for a reconsideration of the decision of the Board, dated February 13, 1996, which rescinded Certification Order 07-95 granted October 2, 1995. This application for reconsideration was made pursuant to s. 4(1) of the Labour Act.

At the reconsideration hearing held on August 14, 1996, the Applicant Union presented in evidence the following documents:

- (1) a purchase order dated September 19, 1995 and signed by Timothy Banks from APM Construction Inc. to Fitzgerald & Snow to supply and install a galvanized MR24 roof system at a total price of \$228,720 at J.D. Irving Box Plant at Borden, Prince Edward Island;
- (2) a purchase order dated September 20, 1995 and signed by Timothy Banks from APM Construction Inc. to Schurman Ready-Mix to supply 21 MPA as per specs and 25 MPA as per specs and as per telephone conversation with Michael Schurman and Bill Davis for the Irving Box Plant at Borden, Prince Edward Island;

- (3) a purchase order dated 96-03-06 and signed by Dean Lamont from APM Construction Inc. to Arlbit Steel for the purpose of extra work due to anchor bolts and concrete pockets and extra work required to drop grids to the top of the black wall for the Irving Box Plant.

The Board has reviewed these purchase orders and reviewed the evidence that was given by Mr. Banks and Mr. Daley where they stated that APM Construction Inc. was not operating in Prince Edward Island and had no employees in Prince Edward Island. The Board has also considered a record of employment for the APM Group that was filed as an exhibit. Mr. Banks stated that the record of employment could be for either Landmark or for construction (SIC APM Construction Inc.).

In light of this evidence, the Board is satisfied that the earlier evidence given by Mr. Banks and Mr. Daley with respect to APM Construction Inc. not doing business on Prince Edward Island and not having employees on Prince Edward Island was not correct. The Board is of the opinion that they were misled by the Respondent's testimony.

In light of the above findings, the Board must now decide on what course of action it will follow.

The Board stated in its decision between the National Automobile, Aerospace, Transportation and General Workers Union of Canada (Caw-Canada), Applicant, and Perrin's Clinton View Lodge Ltd., Respondent, our file number 96-008, 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. And they quoted, in particular, the decision of M. G. Picher, Vice-Chairman, given on February 16, 1981, where he stated 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."

Based upon the above guiding principle, the Board is rather loathed to reopen for reconsideration a decision made under s.54(7) of the Labour Act.

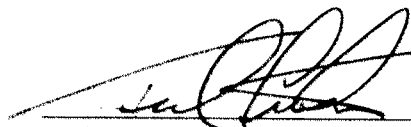
The Board is further guided by the text of Ontario Labour Relations Board Law and Practice of Sack and Mitchell published by Butterworths in 1985 on page 534-35 where it is stated:

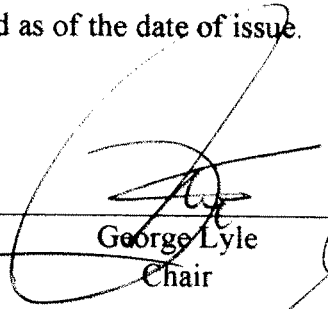
“The Board will reconsider where a decision contains an error of fact which is undisputed---where fraud or deceit is charged.”

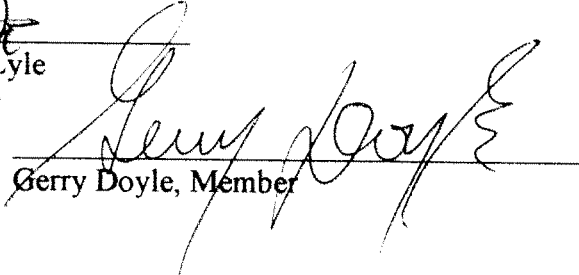
In this particular instance, the Board is of the opinion that the factual evidence that it relied upon to make its decision is incorrect. Both Mr. Banks and Mr. Daley emphatically denied the fact that APM Construction Inc. was doing business in this jurisdiction where, in fact, documents under the signature of Mr. Banks now available to the Board and not denied by Counsel for the Respondent shows the opposite. Mr. Daley, in his position as Comptroller, should have been aware of these purchase orders since they represent a fairly large portion of the total constructions costs of the Box Plant. The Board is under the opinion that in the present circumstances, the evidence given by both Mr. Banks and Mr. Daley cannot be relied upon.

**DECISION**

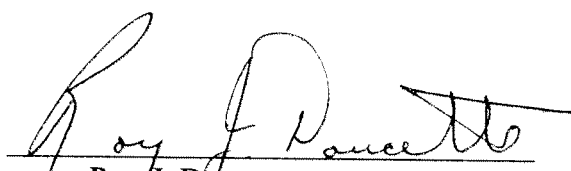
Therefore, the Board grants leave to reconsider its decision and after reconsideration, the Board rescinds its order made on the 13th day of February 1996 and Certification Order 07-95 dated October 2, 1995, is reinstated as of the date of issue.

  
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Ted Crockett, Member

  
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George Lyle  
Chair

  
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Gerry Doyle, Member

**THIS DECISION** made by the Labour Relations Board on the 6th day of September, 1996 and issued under the hand of its Chief Executive Officer on this 19th day of September, 1996.

  
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Roy J. Doucette  
Chief Executive Officer