



File No. 96-034

Decision No.

APPLICATION FOR REVOCATION OF CERTIFICATION ORDER 04-96

BETWEEN:

**MAJORITY OF EMPLOYEES OF PERRIN'S CLINTON VIEW LODGE
LIMITED**

APPLICANT

AND:

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

RESPONDENT

**Counsel for the Applicants:
Representative of Respondent:**

**John K. Mitchell
Thomas A. Barron**

DECISION

BACKGROUND

The Applicants have applied for a revocation of the Certification Order 04-96 issued by the PEI Labour Relations Board ("the Board") on February 5, 1996 to the Respondent, CAW Canada ("the Union"). The hearing of this application was held on February 6 and 7, 1997, in Charlottetown.

To briefly review the events leading to the present application, subsequent to the Certification Order issued on February 5, 1996, the employer, Perrin's Clinton View Lodge Limited, made application to the Board for Reconsideration of the Certification Order. A hearing was held and the decision of the Board dated May 9, 1996, concluded that this application would fail as there was no new evidence adduced that was not previously available to the parties.

On June 18, 1996, application was then made by some employees of Perrin's Clinton View Lodge Limited for the consent of the Board to permit the employees to make application for revocation of the Certification Order prior to the expiration of the ten month period set out in section 12(3) of the Labour Act. On July 31, 1996 the Board issued its decision that this application be dismissed as the Union should be allowed a sufficient amount of time from the date of the Certification Order to attempt to negotiate a collective agreement or to utilize the provisions of the Act.

On June 18, 1996, the Union applied to the Minister for the appointment of a conciliation officer. On September 26, 1996, Mr. Wayne MacKinnon was appointed by the Minister as Conciliation Officer pursuant to section 25(b) of the Act. On November 27, 1996, pursuant to section 26 of the Act, Mr. MacKinnon filed his report with the Minister indicating that he was unable to effect a settlement. On November 29, 1996, the Minister gave notice to the parties that, pursuant to his authority by section 41(6) of the Act, he would be proceeding with the appointment of an Arbitration Board pursuant to section 41(6)(a).

The Application for Revocation herein was filed with the Board on December 6, 1996, after the ten month period from the date of the Certification Order, as set out in section 12(3) of the Act.

ISSUES AND ARGUMENTS

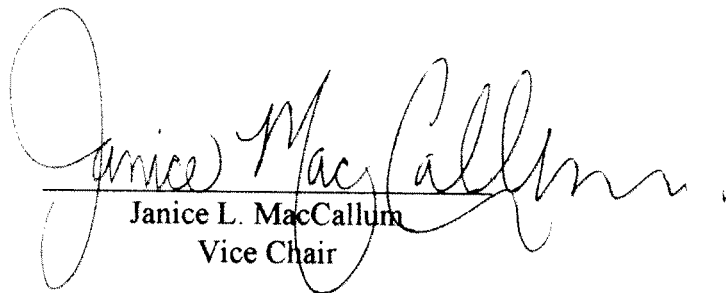
Both parties presented the Board with extensive oral evidence and arguments to support their respective case.

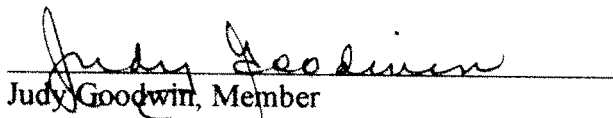
At the outset of the Respondent's arguments, the Union representative argued that the Application before the Board was itself untimely in that the statutory declaration forming part of the Application was dated November 29, 1996, and therefore the Application was made before the end of the ten month period set out in section 12(3) of the Act, that date being December 5, 1996. The Board is of the opinion that it is quite clear that any application of filing made to the Board pursuant to the requirements of the Act or regulations is made on the date on which the application is actually received and filed with the Board. The present Application was received and filed with the Board on December 6, 1996 and therefore is timely for the purposes of section 12(3) of the Act.

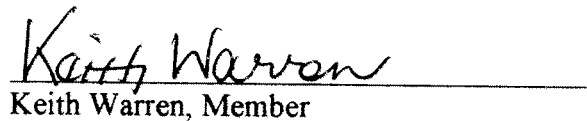
At the conclusion of its presentation of oral evidence, the Respondent argued that given the fact that the Minister had commenced the arbitration process, the granting of this present Application would frustrate and undermine the integrity of the Labour Act. Although this issue was not presented to the Board by the Respondent until well into its argument, the Board considers this to be a threshold issue which must be considered before the Board is able to consider any of the other evidence or arguments presented to it under this Application.

DECISION

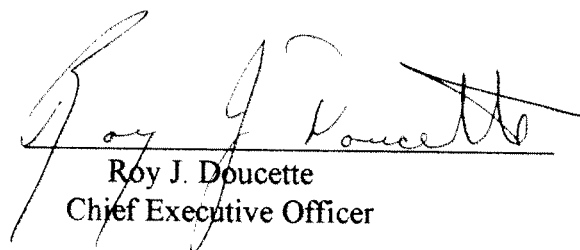
The pith and substance of the Labour Act as it relates to collective agreements is that it is to provide a complete process for determining a collective agreement. The Arbitration Board and its procedure are prescribed by the Act and are therefore a legislated step in the collective bargaining process. The Board has proceeded to review the law in this area and has concluded that section 41 of the Act is mandatory. It requires the Minister to set up the Arbitration Board as part of the process of collective bargaining and it is the role of the arbitration board to resolve all matters upon which the parties have failed to agree. In this instance, this process was commenced prior to the filing of the present Application for Revocation. The Board therefore has no alternative but to declare that it is unable to grant the relief requested by the Applicants as the Application has been made untimely by the invoking of the arbitration process by the Minister prior to the Application.


Janice L. MacCallum
Vice Chair


Judy Goodwin, Member


Keith Warren, Member

THIS DECISION made by the Labour Relations Board on the 7th day of April, 1997 and issued under the hand of its Chief Executive Officer on this 9th day of April, 1997.


Roy J. Doucette
Chief Executive Officer