The Labour Relations Board
Saskatchewan

HOTEL EMPLOYEES AND RESTAURANT EMPLOYEES UNION, LOCAL 41, Applicant v. CAVALIER ENTERPRISES LTD., operating as the SHERATON CAVALIER, Respondent

LRB File No. 123-02; January 14, 2004
Vice-Chairperson, Wally Matkowski; Members: Maurice Werezak and Leo Lancaster

For the Applicant: Angela Zborosky
For the Respondent: Kevin Wilson

Reconsideration – Criteria – Board discusses and applies criteria for reconsideration – Board concludes that original decision did not turn on improper interpretation of law or general policy – Board dismisses application for reconsideration.

***The Trade Union Act*, ss. 5(i) and 13.**

REASONS FOR DECISION

Background:

[1] Hotel Employees and Restaurant Employees Union, Local 41 (the "Union") applied to the Board on April 23, 2003 for reconsideration of the Board's decision in *Hotel Employees and Restaurant Employees Union, Local 41 v. Cavalier Enterprises Ltd. operating as the Sheraton Cavalier*, [2002] Sask. L.R.B.R. 447, LRB File No. 123-02. In that decision, the Board ruled that the bargaining unit applied for by the Union was not an appropriate unit, relying on factors set out in *Graphic Communications International Union, Local 75M v. Sterling Newspapers Group (a division of Hollinger Inc.),* [1998] Sask. L.R.B.R. 770, LRB File No. 174-98 and *Hotel Employees and Restaurant Employees International Union, Local 767 v. Courtyard Inns Ltd*., [1988] Winter Sask. Labour Rep. 51, LRB File No. 116-88. The Union made the application for reconsideration on the following ground:

> *The Board's ruling turns on a conclusion of law or general policy under the Code which law or policy was not properly interpreted by the original panel.*

The Board's Original Decision:

[2] The Union applied to be certified for a bargaining unit composed of housekeeping and laundry department workers employed by Cavalier Enterprises Ltd., a

Saskatoon hotel operating as the Sheraton Cavalier (the "Employer"). There were 36 employees in the proposed bargaining unit, with approximately 250 employees in 18 different departments at the hotel. A different local of the Union held a certification Order relating to the Employer's maintenance employees.

[3] The Board held that the proposed under-inclusive bargaining unit was not an appropriate one.

Reconsideration Criteria:

[4] The criteria applied by the Board on an application for reconsideration are set out in *Remai Investment Corporation, operating as Imperial 400 Motel v. Saskatchewan Joint Board, Retail, Wholesale and Department Store Union et al*., [1993] 3rd Quarter Sask. Labour Rep. 103, LRB File No. 132-93, as follows at 107-108:

> *Though the Board has the power under Section 5(i) to reopen decisions it has arrived at, this power must be exercised sparingly, in our view, and in a way which will not undermine the coherence and stability of the relationships which the Board seeks to foster. In a comment on an application for reconsideration of a decision of the British Columbia Labour Relations Board in Corporation of the District of Burnaby v. Canadian Union of Public Employees, [1974] 1 Can. L.B.R. 128, at 130, the Board asserted that "speed and finality of decisions are especially imperative in labour relations. Of no area of law is it truer to say that justice delayed is justice denied."*
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> *In the three jurisdictions we have alluded to above - Canada, British Columbia and Ontario - the recognition of the need to balance the claim for reconsideration against the value of finality and stability in decision-making is reflected in the procedures adopted by labour relations tribunals. In all of them, the procedure followed in connection with an application for reconsideration departs from the procedure employed for other kinds of applications. In all three cases, the applicant is required to establish grounds for reconsideration before a decision is made whether a rehearing or some other disposition of the matter is appropriate.*
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> *We have concluded that such a two-step approach is appropriate in cases of this kind. We do not agree with counsel for the Employer that we were mistaken in requiring that an applicant who seeks reconsideration of a decision of the Board must persuade us that there are solid grounds for embarking upon that course.*
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> *Counsel for the Employer argued that we should adopt the alternative of entertaining a full rehearing of the case, rather than establishing this intermediate stage. He predicted that this would not have the effect of an*

uncontrolled increase in the number of such applications. It is difficult to see, however, why allowing an automatic trial de novo to a disappointed applicant would not expose the Board to a growing number of applications to rehear cases in which the contest is serious or the stakes high.

In other jurisdictions, particularly in British Columbia, there has been extensive discussion of the criteria which labour relations boards might use to determine whether an applicant has been able to establish that there are grounds which justify the reopening of a decision. In their decision in the case of Overwaitea Foods v. United Food and Commercial Workers, No. C86/90, the British Columbia Industrial Relations Council set out the following criteria:

> *In [Western Cash Register v. International Brotherhood of Electrical Workers, [1978] 2 CLRBR 532], the Board articulated four criteria in which it would give favourable consideration to an application for reconsideration. Subsequent decisions (Construction Labour Relations Association of British Columbia, BCLRB No. 315/84, and Commonwealth Construction Co. Ltd., BCLRB No. 61/79, [1979] 3 Can LRBR 153), added a fifth and sixth ground:*
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> 1. *If there was no hearing in the first instance and a party subsequently finds that the decision turns on a finding of fact which is in controversy and on which the party wishes to adduce evidence; or,*
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> 2. *if a hearing was held, but certain crucial evidence was not adduced for good and sufficient reasons; or,*
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> 3. *if the order made by the Board in the first instance has operated in an unanticipated way, that is, has had an unintended effect on its particular application; or,*
>
> 4. *if the original decision turned on a conclusion of law or general policy under the Code which law or policy was not properly interpreted by the original panel; or,*
>
> 5. *if the original decision is tainted by a breach of natural justice; or,*
>
> 6. *if the original decision is precedential and amounts to a significant policy adjudication which the Council may wish to refine, expand upon, or otherwise change.*

Analysis:

[5] In the present application, the Union relied on the fourth ground listed above to justify its application for reconsideration. As set out in the *Remai Investment* decision, *supra*, the party applying for reconsideration must first establish that there are sufficient reasons to warrant reconsideration before the Board will proceed to hear and determine the application. In the case at hand, the Board heard arguments with respect to the sufficiency of the grounds for reconsideration and the actual merits of the reconsideration application. The Board will therefore initially determine whether the threshold for reconsideration has been met by the Union.

[6] In our view, this is not an appropriate case in which to grant a reconsideration application. The Board's original decision did not turn on a conclusion of law or general policy which was not properly interpreted by the original panel. While counsel for the Union acknowledged that the Board generally favors larger, more inclusive bargaining units, the Union argued that the rights of employees to form, join or assist a trade union and to bargain collectively through a trade union, as set out in s. 3 of *The Trade Union Act*, R.S.S. 1978, c. T-17, must also be recognized.

[7] In its original decision, the Board reviewed *Sterling Newspapers*, *supra*, and accepted the test set out therein. In that case, the Board stated at 776:

> *The Board is faced in this instance with choosing between the rights of employees to organize and the need for stable collective bargaining structures that will endure the test of time.*

[8] The Board accepts that it must strike a balance between these two objectives and the test set out in *Sterling Newspapers*, *supra,* adopted by this Board in its original decision, assisted the Board in arriving at its original determination. The Board sees no reason to deviate from this test.

[9] Therefore, the Union has failed to establish that reconsideration is warranted in the circumstances of this case and the application for reconsideration is dismissed.

DATED at Regina, Saskatchewan, this **14th** day of **January**, **2004.**

LABOUR RELATIONS BOARD

Wally Matkowski,
Vice-Chairperson