The Labour Relations Board
Saskatchewan

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1985, CONSTRUCTION & GENERAL WORKERS, LOCAL 890, CONSTRUCTION & GENERAL WORKERS, LOCAL 180, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS, LOCAL 771, INTERNATIONAL UNION OF OPERATING ENGINEERS, HOISTING, PORTABLE AND STATIONARY, LOCAL 870 and OPERATIVE PLASTERERS & CEMENT MASONS INTERNATIONAL ASSOCIATION, LOCAL 222, Applicants and GRAHAM CONSTRUCTION AND ENGINEERING LTD., GRAHAM CONSTRUCTION AND ENGINEERING (1985) LTD., B F I CONSTRUCTORS LTD., BANFF LABOUR SERVICES LTD., JASPER LABOUR SERVICES LTD., BANFF FINANCIAL CO. INC., PETER BALLANTYNE CONSTRUCTION LTD., POINTS NORTH CONSTRUCTION LTD., GRAHAM INDUSTRIAL CONTRACTORS LTD., GRAHAM INDUSTRIAL SERVICES LTD., Respondents

LRB File Nos. 014-98 & 227-00; June 4, 2004
Vice-Chairperson, Wally Matkowski; Members: Duane Siemens, Leo Lancaster, Hugh Wagner and Mike Carr

For the Applicants:	Drew Plaxton
For Graham Construction and Engineering Ltd., Graham Construction and Engineering (1985) Ltd. and BFI Constructors Ltd.:	Larry Seiferling, Q.C.
For Banff Labour Services Ltd., Jasper Labour Services Ltd. and Banff Financial Co. Inc.:	Larry LeBlanc, Q. C.

Reconsideration – Criteria – Board reviews grounds on which applications for reconsideration may be granted – Board concludes that criteria not met and dismisses application for reconsideration.

Reconsideration – Practice and procedure – Original Board ruling was not significant policy adjudication – Board dismisses application for reconsideration.

Reconsideration – Practice and procedure – Original Board ruling has not operated in unanticipated manner – Board dismisses application for reconsideration.

***The Trade Union Act*, s. 13**

REASONS FOR DECISION

Background:

[1] United Brotherhood of Carpenters and Joiners of America, Local 1985, Construction & General Workers, Local 890, Construction & General Workers, Local 180,

International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771, International Union of Operating Engineers, Hoisting, Portable And Stationary, Local 870 and Operative Plasterers & Cement Masons International Association, Local 222 (the "Unions") applied to the Board for reconsideration of the Board's decision in *United Brotherhood of Carpenters and Joiners of America, Local 1985 et al. v. Graham Construction and Engineering Ltd. et al.*, [2003] Sask. L.R.B.R. 471, LRB File Nos. 014-98 & 227-00 (the "original decision"). The original decision was a unanimous ruling provided by a panel (the "original panel") consisting of Vice-Chairperson Matkowski and Board Members Lancaster and Siemens.

[2] In the original decision, the Board ruled that the Unions had abandoned their collective bargaining rights, relying on principles which originated in the decision *International Union of Operating Engineers, Hoisting and Portable Stationary, Local 870 v. Wappel Concrete and Construction Ltd*., [1984] Apr. Sask. Labour Rep. 33, LRB File No. 302-83. These principles were subsequently applied by the Board in the decision *Morin v. Aim Electric Ltd. and International Brotherhood of Electrical Workers, Local 529,* [1985] Feb. Sask. Labour Rep. 27, LRB File No. 331-84 and considered by the Board in the decisions *International Union of Operating Engineers, Local 870 v. Gunnar Industries*, [1996] Sask. L.R.B.R. 749, LBR File No. 160-96, *International Brotherhood of Painters and Allied Trades, Local 739 v. Marchak Decorating Ltd.,* [1998] Sask. L.R.B.R. 63, LRB File No. 009-97 and *International Brotherhood of Electrical Workers, Local 529 v. Mudjatik Thyssen Mining Joint Venture*, [2000] Sask. L.R.B.R. 332, LRB File No. 140-99.

[3] In both *Wappel*, *supra*, and *Mudjatik*, *supra*, the Board makes it clear that the defence of abandonment should be applied sparingly and that the facts of any particular case will dictate whether the Board arrives at a determination that a union has abandoned its certification order.

[4] The Unions made the reconsideration application on the following grounds:

a) The Board's ruling has operated in an unanticipated way and will have an unanticipated effect;

b) The Board's ruling is precedential and amounts to a significant policy adjudication which the Board may wish to change; and

c) The original decision turns on conclusions of law and general policy which were not properly interpreted by the original panel.

[5] At the start of the hearing on the reconsideration application, counsel for the Unions and counsel for the employers each challenged the composition of the panel hearing the reconsideration application. Counsel for the Unions argued that the present panel assigned to hear the reconsideration application, which consisted of five members (the "expanded panel"), was not the correct panel to hear the preliminary arguments. Counsel for the Unions took the position that, because three members of the expanded panel sat on the original panel, there existed a type of systemic bias, in that three Board members had already rendered a decision against his clients.

[6] Counsel for the Unions argued that his clients wanted the full Board to hear the second part of the reconsideration application, including the original panel.

[7] Counsel for the employers argued that only the original panel should hear the reconsideration application and that, normally, other than when an original panel member is unavailable, the panel hearing the reconsideration application is the same panel which heard the original application.

[8] The parties were advised that it was an administrative decision to expand the original panel to five members. The Board issued verbal rulings rejecting the Unions' argument that the expanded panel was not the appropriate panel to hear the preliminary arguments with respect to the application for reconsideration and rejecting the Unions' request that the entire Board hear the reconsideration application. Likewise, the Board rejected the employers' argument that the appropriate panel to hear the case should be restricted to the original panel. For reasons set out later herein, a reconsideration application is not an appeal. The fact that a panel consisting of five members would now hear the reconsideration application did not transform the reconsideration application into an appeal.

[9] A majority of the expanded panel verbally ruled that the Unions had failed to establish that reconsideration was warranted in the circumstances and dismissed the application.

The parties were advised that written reasons would be provided and that Board Members Siemens and Wagner dissented from the majority decision with respect to whether reconsideration was warranted and that a written dissent or dissents would accompany the written reasons of the majority of the expanded panel.

Reconsideration criteria:

[10] The Board dealt with a number of reconsideration applications over the last year and consistently applied the same stringent test in determining whether or not a reconsideration application should be allowed. As set out by the Board in *Grain Services Union v. Saskatchewan Wheat Pool et al.*, [2003] Sask. L.R.B.R. 454, LRB File No. 003-02, at 456:

> *A request for reconsideration is not an appeal or a hearing de novo, nor is it an opportunity to reargue a case, raise new arguments or present new evidence, but rather, it generally allows important policy issues to be addressed, such as evidence to be presented that was not previously available, or errors to be corrected.*

[11] The Board in *Rattray v. Saskatchewan Government and General Employees' Union*, [2003] Sask. L.R.B.R. 528, LRB File No. 011-03 stated that there must be some solid grounds to persuade the Board to exercise its discretion to embark upon reconsideration of an original Board decision.

[12] The reason why such a stringent test is applied by the Board was set out in *City of North Battleford v. Canadian Union of Public Employees, Local 287*, [2003] Sask. L.R.B.R. 288, LRB File No. 054-01 at 291:

> *…the policy behind such a restrictive approach to reconsideration is to accord a serious measure of certainty and finality to the decisions of the Board, while affording "a fulsome degree of flexibility to respond to exigencies of fact and circumstance which may militate against the continued governance of determinations earlier made."*

[13] The criteria consistently reviewed and 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, 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."

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.

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.

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:

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,*

2. *if a hearing was held, but certain crucial evidence was not adduced for good and sufficient reasons; or,*

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.*

Unions' Arguments:

[14] Counsel for the Unions argued that grounds 3, 4 and 6 from the test set out in *Remai, supra,* were applicable in the case at hand and that the Unions had established that there were sufficient grounds to warrant reconsideration. Counsel argued that the previous Board decisions which had accepted the abandonment defence, which the original panel followed, were incorrectly determined. Counsel argued that the original panel had no jurisdiction to make an abandonment finding. Counsel argued that the original decision was contrary to the decision in *Mudjatik, supra*, and that, as such, grounds 4 and 6 were applicable in that the original decision turned on a conclusion, namely the applicability of the principle of abandonment, which was not properly interpreted. Counsel argued that the original decision on abandonment was precedential and amounted to a significant policy adjudication which the Board may wish to change.

Employers' Arguments:

[15] Counsel for the employers stated that the original panel heard over twenty days of evidence and argument prior to rendering its decision and argued that the Unions were simply trying to re-litigate the application. Counsel argued that a finding of abandonment was justified given the facts heard by the original panel. Counsel pointed out that the original panel had called the parties back for additional arguments with respect to the issues prior to releasing the original decision. Counsel argued that the Board has accepted the abandonment argument in the past and that it would have been a significant policy determination had the original panel departed from this line of precedent. Counsel argued that, not only has the Board recognized the principle of abandonment, other jurisdictions have recognized the abandonment concept. Counsel argued that the Unions should be seeking judicial review because they are challenging the Board's jurisdiction to accept the defence of abandonment.

Analysis:

[16] As set out in *Remai*, *supra*, the party applying for reconsideration must first establish that there are sufficient grounds to warrant reconsideration before the Board will proceed to hear and determine the application. In the case at hand, at the request of counsel, only the threshold arguments with respect to the sufficiency of the grounds for reconsideration were heard by the Board.

[17] As stated, counsel for the Unions attempted to transform the reconsideration application into an appeal. For example, in the Particulars Re Application For Reconsideration filed by the Unions, the Unions contend that the original panel "failed to consider or properly consider evidence," and that the Board "erred in accepting arguments." As set out earlier herein, the Board has rejected the approach that a reconsideration application should be turned into an appeal. As such, a number of the Unions' arguments were inappropriate and need not be considered on a reconsideration application.

[18] The Unions raised no new arguments before the expanded panel of the Board. Counsel for the Unions challenged the Board's jurisdiction to accept the defence of abandonment. Counsel had previously made this argument before the Board in *Mudjatik*, *supra*. The only new discussion arose as a result of a question from Board Member Wagner relating to

the Board's decision in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. CAA Saskatchewan Emergency Road Service*, [2000] Sask. L.R.B.R. 476, LRB File No. 153-00.

[19] In our view, this is not an appropriate case in which to grant a reconsideration application. The Board's decision has not operated in an unanticipated way and counsel for the Unions did not strenuously argue this point. Counsel for the Unions did argue that the Board's original decision turned on a conclusion of law or general policy under the legislation which was not properly interpreted by the original panel. With respect, the Board does not believe that the original decision turned on conclusions of law and general policy which were not properly interpreted. As stated earlier, the original panel accepted that the principle of abandonment has existed as a Board concept, supported by precedent, since the early 1980's. The original panel accepted that the principle of abandonment should be applied sparingly, depending on the facts of the case. The original panel did not deviate from Board precedent or start a new line of thinking with respect to the abandonment concept. Based on the facts presented before it, the original panel determined that the principle of abandonment applied.

[20] Counsel for the Unions argued that the original decision was precedential and amounted to a significant policy adjudication which the Board may wish to change. This argument is rejected in that the original decision is based on Board precedent which originated in *Wappel*, *supra*. In the Board's decisions on abandonment set out earlier herein, the concept of abandonment is deemed applicable in the construction industry, depending on the facts of the case. In the original decision, the Board applied the principle of abandonment and accepted that it was a ridiculous proposition that a union could be excused from taking action for a period of upwards of fifteen years, banking on a change of law that might improve the union's legal position. As such, the original decision is not precedential or based on a new policy which should be changed, as requested by the Unions.

[21] Finally, the Unions argued that the original panel incorrectly applied *Mudjatik, supra*. Given that the Board in *Mudjatik, supra,* accepted that the concept of abandonment exists, this argument runs counter to the Unions' argument that the original panel could not come to an abandonment conclusion. In any event, counsel for the Unions' secondary argument was that, based on the facts, the Board in *Mudjatik, supra,* found that abandonment was inapplicable. One of the reasons why abandonment was said to be unavailable in *Mudjatik, supra,* was that

province wide bargaining was in effect. Counsel for the Unions argued that the original panel should have arrived at the same conclusion as the Board did in *Mudjatik, supra,* and that, because it did not, the original decision turned on a conclusion of law which was not properly interpreted.

[22] This argument was made before the original panel at the original hearing and is again rejected. The original panel had facts significantly different than those set out in *Mudjatik, supra*, which involved the concept of province wide bargaining which arose after 1992. As set out in the original decision, Graham Construction and Engineering (1985) Ltd. ("Graham 1985") was established in 1985. At that time, province wide bargaining was not applicable and the Unions were required to directly bargain with Graham 1985. They did not. As such, the facts in *Mudjatik, supra,* were very different than those in the original decision and the original panel did not arrive at a decision which incorrectly determined this point.

[23] In conclusion, the Unions have failed to establish that reconsideration is warranted in the circumstances of this case and the application for reconsideration is accordingly dismissed.

DATED at Saskatoon, Saskatchewan, this 4th day of **June**, **2004.**

LABOUR RELATIONS BOARD

Wally Matkowski,
Vice-Chairperson

DISSENT

Background:

[1] This is a dissent from the April 6, 2004 majority decision which denied the Unions' request to argue reconsideration of the November 4, 2003 decision of the Board in *United Brotherhood of Carpenters and Joiners of America, Local 1985 et al. v. Graham Construction and Engineering Ltd. et al.*, [2003] Sask. L.R.B.R. 471, LRB File Nos. 014-98 & 227-00.

[2] At the outset of the hearing on April 5, 2004, there appeared to be some confusion as to whether the proceedings were to be confined to preliminary matters or whether the meat of the reconsideration application would be addressed.

[3] It is my respectful opinion that all concerned were aware of the importance the Board attached to the issues raised by the herein application for reconsideration. Accordingly, it would have been appropriate for the Board to hear the preliminary issues, reserve its decision with respect to same, and then proceed to hear the parties on the substantive issues.

[4] There was also considerable argument over the composition of the panel. This too, in my respectful opinion, was a diversion, since the parties knew in advance that the application was to be heard by a five-person panel of the Board as a result of the importance of the issues. Since reconsideration is not a trial *de novo*, the adding of two more Board members does not prejudice either the Unions or the respondent employers. I therefore agree with the decision of the majority of the Board to operate through the expanded panel.

[5] I agree with the majority decision that the Unions' reconsideration application was based on the following grounds:

a) The Board's ruling of November 4, 2003 operated in an unanticipated way and will have an unanticipated effect;

b) The Board's ruling is precedential and amounts to a significant policy adjudication which the Board may wish to change; and

c) The original decision turns on conclusions of law and general policy which were not properly interpreted by the original panel.

[6] I will comment on each of the grounds advanced by the Unions.

[7] Does the Board's original decision operate in an unanticipated way and does it have an unanticipated effect? In my respectful opinion, the answer is affirmative.

[8] There is no doubt the original panel devoted considerable hearing time and heard voluminous evidence in relation to the Unions' activities following the December, 1983 repeal of *The Construction Industry Labour Relations Act*, S.S. 1979, c. C-29-1 (the "*CILRA, 1979*"). It is my respectful opinion, however, that the line of inquiry related to the allegation of abandonment could only operate to limit the scope of liability of Graham Construction and Engineering (1985) Ltd. ("Graham 1985").

[9] It is my view that the concept of abandonment does not have solid footing in the law of Saskatchewan. Nor is the principle of abandonment set out in any statutory provisions contained in *The Trade Union Act*, R.S.S. 1978, c. T-17.

[10] My views regarding the abandonment argument are buttressed by the Board's comments in *International Brotherhood of Electrical Workers, Local 529 v. Mudjatik Thyssen Mining Joint Venture*, [2000] Sask. L.R.B.R. 332, LRB File No. 140-99 at 341:

> *The Board has considered the abandonment argument on several occasions since the Wappel case, but the defence has not been accepted by the Board outside the two cases cited above…*

[11] The two cases referred to in *Mudjatik, supra*, were *International Union of Operating Engineers, Hoisting and Portable Stationary, Local 870 v. Wappel Concrete and Construction Ltd.,* [1984] Apr. Sask. Labour Rep. 33, LRB File No. 302-83 and *Morin v. Aim Electric Ltd. and International Brotherhood of Electrical Workers, Local 529,* [1985] Feb. Sask. Labour Rep. 27, LRB File No. 331-84.

[12] Both *Wappel, supra,* and *Aim, supra*, were rendered on the heels of the repeal of the *CILRA, 1979*. And, both cases reflect the onset of the chaotic conditions that characterized industrial relations in Saskatchewan's construction industry for most of the 1980's and 1990's.

[13] After considering *The Construction Industry Labour Relations Act, 1992*, S.S. 1992, c. C-29.11 (the "*CILRA, 1992*"), the 2000 amendments to the *CILRA, 1992* closing the spinoff loophole and the Board's decision in *Mudjatik, supra*, I find that both *Wappel, supra,* and *Aim, supra,* are no longer (if they ever were) good law. As a result, the Board's original decision in this case operates in an unanticipated way with the unanticipated effect of giving credence to a defence rejected by the Board, save for two 20-year-old cases.

[14] Is the Board's original decision precedential? And does it amount to a significant policy adjudication which the Board may wish to change? In my view both questions must be answered affirmatively. For the reasons set out below, I would reverse the Board's original finding that the Unions abandoned their collective bargaining rights in relation to Graham 1985.

[15] As already indicated in paragraphs 8 through 12 above, I believe the Board's original decision runs counter to *Mudjatik, supra,* and significantly adjusts clear Board policy in relation to the abandonment argument/defence.

[16] Contrary to the reasoning of the Board in its original decision, I say that *Mudjatik, supra*, closes the door on "abandonment." My opinion is buttressed by the Board's decision in *Saskatchewan Joint Board, Retail Wholesale Department Store Union v. CAA Saskatchewan Emergency Road Service*, [2000] Sask. L.R.B.R. 476, LRB File No. 153-00.

[17] In *CAA, supra*, the applicant union sought to represent all of the employees of the employer, with some exceptions. The employer, CAA, opposed the application on the ground that the union had not applied within the open period specified in s. 5(k) of *The Trade Union Act* as the Chauffeurs, Teamsters and Helpers Local Union 395 (the "Teamsters") held a certification Order for the same group of workers dating from November 9, 1978.

[18] The Board's decision in *CAA, supra*, reveals that a collective agreement never materialized from the Teamsters' 1978 certification Order and that the Teamsters walked away from the bargaining unit after an unsupported effort to mount a strike in 1979. The Teamsters did not oppose the new application for certification filed in May, 2000, however, all parties agreed the application was not filed within the open period specified by *The Trade Union Act*.

[19] Notwithstanding twenty-one years of inactivity by the Teamsters (the originally

certified union), the Board in *CAA*, *supra,* dismissed the May, 2000 application for certification. At 478 and 479, the Board had the following to say:

> *The Board finds that the application for certification was filed outside the time limits set in s. 5(k)(ii) of the Act and must be dismissed. There may be good grounds for arguing in this case that the Teamsters' Union abandoned its certification Order.* ***In our view, however, the doctrine of abandonment, if it were found, does not relieve the Union from the mandatory provisions contained in s. 5(k)(ii).*** *The doctrine of abandonment simply prevents one party from relying on its strict legal rights in situations where it is clear to the Board that the party in question abandoned its legal rights. It does not, in our view, operate to rescind a certification order vis-a-vis third parties. It must be remembered that the principle of "abandonment" is not set out in any statutory provisions contained in the Act and it cannot be extended through creative interpretations to overcome mandatory statutory provisions, such as are contained in s. 5(k)(ii).*
>
> *Although in the present case, it may seem extreme to require employees to apply in the open period of a certification Order that has not been acted on for some 22 years, those employees had an opportunity each year since 1978 to apply to the Board to rescind the certification Order issued to the Teamsters' Union, or to file within the open period set out in s. 5(k) of the Act to join a new trade union. These options remain open to the employees.*

[20] Interestingly, in the *CAA* case*, supra,* counsel for the applicant union argued that the Teamsters had abandoned their certification Order and there was no order to stand in the way of his client's application. The Union also argued that 22 years of inactivity was sufficient evidence of abandonment. On the other hand, the Board summarized the argument of counsel for the employer as follows at 478:

> *. . . the Board's earlier decisions on "abandonment" did not establish that the effect of abandonment is to eliminate a certification order. The Employer argued that the principle of abandonment simply prevented a trade union from relying on its certification order in certain circumstances.*

[21] To my mind, a union might not be able to overcome inactivity in order to claim damages, wages or dues, but there is no bar to reviving a certification order in the same way as a party can serve notice to vacate an estoppel.

[22] In *CAA, supra*, the Board acknowledged that it is the affected workers, and only the affected workers (except in cases of fraud), who can extinguish a union's certification Order

by decertification action pursuant to s. 5(k) of *The Trade Union Act* or by replacing one union with another.

[23] Relying on the Board's conclusions in *CAA, supra*, I believe that the original decision in this case is sufficiently precedential and amounts to a significant policy adjudication warranting reconsideration.

[24] While this might not be a large point, I think it is notable that paragraph 139 of the original decision references it as a "preliminary decision."

[25] The third of the grounds for reconsideration relied upon by the Unions raises the question of whether or not there were conclusions of law and general policy that were not properly interpreted by the original panel.

[26] In my respectful opinion, the original panel erred in law by according the argument of abandonment permanency as it pertains to the relationship between Graham 1985 and the Unions.

[27] Furthermore, as a matter of law and general policy, the original decision of the board imports a principle which is not found in legislation.

[28] In adjudicating on the 1998 and 2000 applications submitted by the Unions, the Board, in its original decision, found that Graham 1985 was a successor employer. Logically, from my perspective, Graham 1985 was, and is, covered by ss. 14 and 15 of the *CILRA, 1992* as amended.

[29] Absent a decertification application brought by affected employees, in my view, the argument of abandonment by Graham 1985 should be limited to the question of damages for the period between 1984 and 1998. The Unions, by virtue of the 1998 and 2000 applications to the Board, vacated any estoppel that might have existed.

[30] I do not agree it would be inequitable to find that Graham 1985 is covered by the pertinent collective agreements. Application of the certification Orders and the collective agreements to Graham 1985 would not be any more or less inequitable than applying a

collective agreement to a successor employer who purchases the business of an already unionized employer.

[31] In the 14 years between 1984 and 1998, employees of Graham 1985 had an annual opportunity to apply to the Board to decertify the Unions. That did not happen.

[32] By virtue of their respective peregrinations, Graham 1985 and the Unions ended up at the Board in 1998 and again in 2000. These applications were combined.

[33] In my respectful opinion, the original decision of the Board runs the risk of opening the door to *de facto* employer applications for decertification which is something *The Trade Union Act* does not provide for, except in the cases of fraud. Accordingly, I would grant the Unions' reconsideration request in relation to the original decision of the Board in *United Brotherhood of Carpenters and Joiners of America, Local 1985 et al. v. Graham Construction and Engineering Ltd. et al.*, [2003] Sask. L.R.B.R. 471, LRB File Nos. 014-98 & 227-00.

[34] In writing this dissent I have considered ss. 3 and 5 of *The Trade Union Act* as well as ss. 14 and 15 of the *CILRA, 1992*.

DATED at Regina, Saskatchewan, this _____st day of **June**, **2004.**

Hugh Wagner,
Board Member

DISSENT

[1] This dissent is based on ss. 5(i) and 13 of *The Trade Union Act*, R.S.S. 1978, c. T-17 in regard to the Union's application that the Board reconsider its decision in *United Brotherhood of Carpenters and Joiners of America, Local 1985 et al. v. Graham Construction and Engineering Ltd. et al.*, [2003] Sask. L.R.B.R. 471, LRB File Nos. 014-98 & 227-00.

[2] The Board, in my opinion, should have allowed the parties to present the

arguments for and against reconsideration.

DATED at Saskatoon, Saskatchewan, this **4th** day of **June**, **2004.**

Duane Siemens,
Board Member