The Labour Relations Board
Saskatchewan

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 529, Applicant v. SAUNDERS ELECTRIC LTD., Respondent

LRB File Nos. 214-04 & 019-05; April 27, 2009
Chairperson, Kenneth G. Love, Q.C.; Members: Bruce McDonald and Joan White

For the Applicant: Larry F. Seiferling, Q.C
For the Respondent: Drew S. Plaxton

Reconsideration of Board decision. Board considers criteria for reconsideration of Board Decisions. Reviews criteria in reference to application for certification and timeliness of application for reconsideration. Finds application not timely, nor does it meet any other criteria for review.

Reconsideration of Board decision. Board considers criteria for reconsideration of Board Decisions. Reviews criteria in reference to Court of Appeal decision and other decisions of the Board regarding defence of Abandonment and its applicability in context of a statutory regime of sectoral bargaining. Finds decision of previous Board is precedential and amounts to a significant policy adjudication which the Baord may wish to refine, expand upon, or otherwise change.

Abandonment. Applicability in context of a statutory regime of sectoral bargaining. Precedential issue which amounts to a significant policy adjudication. Board determines to reconsider decision with view to refine, expand upon, or otherwise change.

***The Trade Union Act*, ss. 5(i) & 42**

REASONS FOR DECISION

Background:

[1] International Brotherhood of Electrical Workers, Local 529 (the “Union”) was designated as the certified bargaining agent for an appropriate unit of "journeymen, helpers and apprentices" in the electrical trade that are employees of Saunders Electric Ltd. (the "Employer") based in Prince Albert. The Employer was incorporated in 1959. The original certification Order was issued to the Union's Local 1717 on January 30, 1962. The Order was amended on April 6, 1972 (LRB File No. 198-71) to reflect the merger of Local 1717 with Local 529. That certification Order has not been rescinded.

[2] On January 20, 2005 the Union filed an application with the Board alleging that the Employer committed unfair labour practices in violation of Sections 11(1)(a), (c) and 36 of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act* "), in refusing to bargain collectively with the Union and in refusing to comply with the union security provisions of the *Act* to require that new employees join the Union within (30) thirty days as a condition of maintaining employment.

[3] At the commencement of the hearing, counsel for the parties agreed to the amendment of the Union's application to include reference to an alleged violation of s. 32 of the *Act*, in failing to deduct and remit union dues, assessments and initiation fees on behalf of the employees to the Union.

[4] The Employer, through their counsel, Larry Seiferling, did not deny that it refused to recognize the Union as the bargaining agent for its employees in the appropriate unit. In its reply, the Employer took the position that, because it operated from 1984 to 1998 "without requests from the Union to bargain or to comply with collective agreements or any grievance or complaint from the Union" it committed no unfair labour practices because it felt that the Union had "abandoned" its bargaining rights granted by the Board's certification Order.

[5] The Board issued its decision with respect to the Union's application on the September 23, 2008. In its decision, the Board found the Employer to be guilty of the unfair labour practice alleged in the Union's application. The Board also found the Employer to be in violation of ss. 32 and 36 of the *Act*. The Board's Order provided as follows:

> *1. DETERMINES that the Respondent committed an unfair labour practice within the meaning of s. 11(1)(c) of The Trade Union Act by failing or refusing to bargain in good faith;*
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> *2. ORDERS THAT the Employer is guilty of unfair labour practices within the meaning of each of sections 11(1)(c), 32 and 36 of the Act;*
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> *3. ORDERS THAT the Employer shall forthwith cease and desist from any further violations of The Trade Union Act, and shall fulfill the duties*

imposed by the certification Order and the Act, including, but not limited to, the duty to bargain collectively, and recognition of union security and dues check-off pursuant to sections 32 and 36 of the Act;

4. *ORDERS THAT the Employer shall forthwith advise the Union of the identity of and contact information for all existing employees within the description of the appropriate bargaining unit; and, THAT within five (5) days of the date of this Order, the Employer shall advise all such employees that they must join the Union within a period of 30 (thirty) days as a condition of maintaining employment and must provide the Employer with written authority to deduct and remit union dues on their behalf;*

5. *ORDERS THAT within sixty (60) days of the date of this Order the Employer shall pay to the Union a sum equal to the dues, assessments and initiation fees that it ought to have deducted from its employees in the appropriate bargaining unit and remitted to the Union from and after 2 March 1984; in the event that the parties are unable to agree upon the amount due within a period of fifteen (15) days from the date of this Order, either party may request the Senior Labour Relations Officer/Investigating Officer of the Board to ascertain the amount due, and the Senior Labour Relations Officer/Investigating Officer of the Board is empowered to make any and all inquiries, enter into any premises, and inspect and make copies of any and all documents and records as may required to make the determination;*

6. *ORDERS THAT the Employer shall forthwith post a copy of this Order, the Reasons for Decision, the certification Order, and sections 32 and 36 of the Trade Union Act, in a conspicuous location in the workplace where it is likely to be seen by a majority of the employees in the bargaining unit for a period of sixty (60) days, and shall send a copy of this Order, the Reasons for Decision, the certification Order, and sections 32 and 36 of the Trade Union Act to each of the employees by ordinary mail to their last known address.*

[6] On October 15, 2008, the Employer filed an application for reconsideration of the Board's September 23, 2008 decision. On October 27, 2008, the Employer applied under s. 5.3 of the *Act* for an interim order of the Board staying the effect of the Order

made by the Board on September 23, 2008. A hearing with respect to the application for interim relief was heard by the Board on October 31, 2008. At the conclusion of that hearing, the Board issued an Order staying the effect of its September 23, 2008 Order until 5:00 pm on November 24, 2008, or until further Order of the Board. A hearing of the application for reconsideration was set for November 24, 2008 at the Board's offices in Saskatoon. The hearing did not proceed as scheduled, but the interim order was further continued until further Order of the Board.

[7] On November 18, 2008, the Union through its counsel, Drew Plaxton, requested that the Board also reconsider its decision given in LRB File No. 214-04. That file involved an application by the Union for certification of the Employer by the Union. There are no written reasons given by the Board with respect to the application for certification, but the Board dismissed the Union's application by Order dated December 15, 2004.

[8] The Employer's application for reconsideration, filed on October 15, 2008 on LRB File No. 019-05, asked the Board to reconsider its September 23, 2008 Order on a number of grounds. Those grounds were as follows:

> *(a) The decision turns on conclusions of law and general policy which were not properly interpreted by the original panel. In particular, the panel failed to recognize that the enforcement of rights negotiated under accreditation legislation is done on an individual contractor basis by the Respondent Union and that the Respondent Union failed to enforce any rights for the workers of Saunders Electric for a significant period of time as follows:*
>
> *(i) from 1984 to 1998, when Saunders Electric was openly operating, the Respondent Union presented no evidence as to why it did not enforce its members' rights.*
>
> *(ii) from 1998 to 2004, after the Respondent Union was aware not only that Saunders electric had employees working for them but that the employer's position was that the Respondent Union had abandoned the workers, they took no action to enforce the rights under the Provincial Collective Agreements negotiated by their REO;*
>
> *(iii) by applying for certification in 2004 which action was inconsistent with the assertion of rights to represent the workers prior to the date of the application for certification.*
>
> *(b) The decision is precedential and amounts to a significant policy adjudication which the Board may wish to change. In particular, the*

policy whether a Respondent Union that fails to enforce any rights for a period of time for employees of a contractor can:

i) reclaim the right when they have slept on them with regard to the individual employees working for the contractor;

ii) claim dues for periods that they have not represented the workers to enforce the terms of the Collective Bargaining Agreement against the contractor; and

iii) require an employer to pay dues that would have been paid by the employee for union representation that on the facts the employees did not get.

(c) The Order has operated in an unanticipated way and will have an unanticipated effect:

i) by requiring payment of monies from an employer of monies that would normally be paid by an employee to a union for representation;
ii) requiring an employer to pay monies back to 1984, a period substantially longer than limitation periods in legislation.

(d) The decision constitutes a significant error of law in interpretation of the concept of abandonment in the construction industry.

(e) The decision constitutes a significant and unwarranted departure from previous jurisprudence of the Labour Relations Board in Saskatchewan and elsewhere, in particular, Ontario and Alberta.

(f) The decision is made without evidence on matters found in the original decision. In particular, on the state of the industry and the reasons why the Respondent Union took no action before 1998.

[9] The reconsideration of the certification application, LRB File No. 214-04 by the Union asks that the Board reconsider its Order dated December 15, 2004 on the following grounds:

a) It is respectfully submitted the only conclusion the Labour Relations Board could have come to in dismissing the application for certification was that the union had a valid, subsisting and enforceable certification order for the employees of Saunders Electric Ltd. at this time. The same should have been articulated in reasons that should have been rendered by the Board. The applicant seeks an order of this Honourable Board to like effect.

b) Further, or in the alternative, the Board ought to have made an Order allowing a certification of the amended and expanded collective bargaining unit in which majority support had once again been shown. The applicant seeks an order of this Honourable Board to like effect.

c) The applicant says to allow the employer to avoid its collective bargaining obligations upon reconsideration of the unfair labour practice above-noted would result in a breach of natural justice.

> *d) the applicant says the dismissal of the certification application constitutes a finding of this Honourable Board that the union had a valid, subsisting and enforceable certification order for the employees of Saunders Electric at that time and the same is now res judicatau or otherwise finally determined between the parites.*
>
> *e) The applicant says further to allow the reconsideration of the unfair labour practice would result in the certification order operating in an unanticipated way and/or had an unintended effect.*
>
> *f) The applicant says further to allow the employer's reconsideration application would have the effect of the certification order being based on a conclusion of law or general policy under The Trade Union Act, which was not properly interpreted by the original Panel.*
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> *g) Further, or in the alternative, the original certification application is precedential and amounts to a significant policy adjudication, which the Board may wish to refine, expand upon or otherwise change.*
>
> *h) the applicant says this application and the employer's application for reconsideration of the unfair labour practice application above-noted are inextricably intertwined and asks this application be heard with same, if the Labour Relations Board is to hear the employer's application for reconsideration.*

[10] When dealing with applications for reconsideration, the Board recognizes that there is a balance to be achieved between a request for reconsideration and the value of finality and stability in decision making. As a result, the Board has adopted a two step approach which requires that the Applicant first establish grounds for reconsideration before a decision is made as to whether a reconsideration or some other disposition of the matter is appropriate. This hearing was for the purpose of determining the first step in the process, that is, whether the Applicant can establish sufficient grounds for the Board to determine that it should embark upon a reconsideration of its earlier decision.

[11] The Board has adopted the reasoning in *Overwaitea Foods v. United Food and Commercial Workers No. C86/90,* a decision of the British Columbia Industrial Relations Council. In that case, the British Columbia Industrial Relations Council adopted six criteria in which it would give favourable consideration to an application for reconsideration. Those criteria were set out as follows:

> *In Western Cash Register v. International Brotherhood of Electrical Workers, [1972] 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., BCLRD No. 61/79, [1979] 3 Can LRBR 153, added a fifth and a 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 of [sic] 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.*

LRB File No. 214-04

[12] The Union filed the Affidavit of Garnet G. Greer in respect of both applications. Mr. Seiferling, on behalf of the Employer, objected to the filing of the Affidavit on several basis. Firstly, he objected to matters contained within the Affidavit which were argumentative and speculative and which were not within the personal knowledge of the deponent. Secondly, he argued that some the correspondence attached to the Affidavit had never been seem by him previously. Thirdly, he argued that the Affidavit was an attempt by the Union to supplement the facts of the original application which he argued was improper. As the Board has decided this matter on other grounds, it is unnecessary for the Board to address the issues raised in respect of this Affidavit.

[13] He also argued that the request for reconsideration by the Union was seriously out of time. That is, the Union waited almost four (4) years from the date of the Board's Order dismissing the application before filing the request for reconsideration. He argued that the time for making an application for reconsideration should be measured in months, not years.

[14] Mr. Seiferling provided a transcript of the Board's hearing with respect to the Union's application. He argued that the transcript made it clear that the Board dismissed the application when it was determined by the Board that the Union already held a certification for this Employer.

[15] Mr. Plaxton argued that the materials which were appended to Mr. Greer's Affidavit were brought forward to undermine the absurdity of the situation. That is, how many times must the Union apply for certification. It was certified to represent the employees, has been found by the Board to continue to represent the employees of Saunders Electric and should be allowed to do so.

[16] He acknowledged that the Board, in dismissing the application, relied upon the fact that there was an existing certification Order. He argued, however, that the application for certification in this application was for a different unit of employees and a different geographical area to which the certification applied.

[17] He argued that the application for reconsideration was timely, insofar as it was filed shortly after the Board issued its order in respect to the Employer's application to stay the effects of the Board's decision of September 23, 2008 and shortly after the Employer filed its application for reconsideration. Had the Employer not applied for reconsideration, the Union would not have brought this application for reconsideration.

Relevant statutory provisions:

[18] Relevant provisions of the *Act* are as follows:

> *5 The board may make orders:*
>
> *(i) rescinding or amending an order or decision of the board made under clause (d), (e), (f), (g) or (h), or amending an order or decision of the board made under clause (a), (b) or (c) in the circumstances set out in clause (j) or (k), notwithstanding that a motion, application, appeal or other proceeding in respect of or arising out of the order or decision is pending in any court;*
>
> *…*
>
> *42. The board shall exercise such powers and perform such duties as are conferred or imposed on it by this Act, or as may be incidental to the attainment of the objects of this Act including, without limiting the generality of the foregoing, the making of orders requiring compliance with the*

> *provisions of this Act, with any regulations made under this Act or with any decision in respect of any matter before the board.*

Analysis & Decision:

[19] As noted above, the Board had the benefit of the transcript of the hearing at which the application was considered since there were no written Reasons for the decision to dismiss the application. That hearing, conducted by then Vice-Chairperson Matkowski, occurred on December 10, 2004 in the Board's Saskatoon hearing room. From reading that transcript, it is clear that the Board dismissed the application for certification for the reason that the Union was already certified to represent the employees of Saunders Electric. The Union refused to withdraw the application so the Board had no option but to dismiss the application.

[20] The Board ruled on the application from the bench with these words:

> *The Board advises the following ruling: Given the Union's position that it is relying on its certification Order issued by the Board in LRB File No. 198-71, the Union's second certification application, LRB File No. 214-04 is dismissed.*

[21] This application satisfies none of the criteria on which the Board will allow an application to reconsider its decision. It represents an attempt to keep the issue of certification alive, in the event the Board should determine to reconsider the original certification and then, in the further event that the Board should allow the reconsideration of its September 23, 2008 decision; and, if, following that reconsideration, the Board determines that the original ruling should not stand, that they wish to preserve the certification application. There is far too much uncertainty for this to be a valid rationale for the Board to reconsider its decision to dismiss the certification application.

[22] With respect the Union's delay in bringing the application, Mr. Seiferling relied upon the Board's decision in *Dennis Kinaschuk v. Saskatchewan Insurance Office and Professional Employees' Union, Local 397 and Saskatchewan Government Insurance,* [1998] Sask. L.R.B.R. 528, LRB File No. 366-97. That case was a decision of the Board which dismissed an application by an employee under s. 25.1 of the *Act*. In that case, the Board relied upon an Ontario Labour Relations Board decision in *City of Mississauga* [1982] OLRB Rep. March 420, wherein the Ontario Board says "It is

generally accepted that the scale of delay that the Board would find acceptable is to be measured in months rather than years." That quote was also adopted by the Ontario Board's decision in *Evenlyn Brody v. East York Health Unit*, [1997] O.L.R.D No. 157, wherein the Ontario Board's opinion was as follows, at 19:

> *In determining whether the delay in a particular case is unreasonable or excessive, the Board will consider, among other things, such matters as the length of the delay, and the reasons for it, the time at which the applicant became aware of the alleged statutory violation, whether the remedy claimed would have a disruptive impact upon a pattern of relations developed since the alleged contravention, and whether the claim is such that fading recollection, unavailability of witnesses, and the deterioration of evidence would hamper a fair hearing in the dispute. It is generally accepted that the scale of delay that the Board would find acceptable is to be measured in months rather than years (see City of Mississauga, [1982] OLRB Rep. March 420). However, there is no specified limit with respect to delay, and the Board will consider the circumstances in each case to determine whether the delay is undue. [Emphasis added]*

[23] That case was recently cited with approval by the Board in its decision in *Peterson v. CUPE, Local 1975-01,* [2009] CanLII 13052, LRB File No. 156-08. In that case, the Board also considered the Ontario Board's decision in *McKenly Daley v. Amalgamated Transit Union and Corporation of the City of Mississauga*, [1982] O.L.R.B. Rep. March 420, at 425:

> *It is by now almost a truism that time is of the essence in labour relation matters. It is universally recognized that the speedy resolution of outstanding disputes is of real importance in maintaining an amicable labour-management relationship. In this context, it is difficult to accept that the Legislature ever envisaged that an unfair labour practice, once crystallized, could exist indefinitely in a state of suspended animation and be revived to become a basis for litigation years later. A collective bargaining relationship is an ongoing one, and all of the parties to it - including the employees - are entitled to expect that claims which are not asserted within a reasonable time, or involved matters which have, to all outward appearances, been satisfactorily settled, will not reemerge later. That expectation is a reasonable one from both a common sense and industrial relations perspective. It is precisely this concern which prompts parties to negotiate time limits for the filing of grievances (as the union and the employer in this case have done) and arbitrators to construct a principle analogous to the doctrine of laches to prevent prosecution of untimely claims.*

[24] In the *Peterson* case, *supra*, the applicant under s. 25.1 of the *Act* had not been an employee for some 57 months and had no dealings with the Employer or the

Union for some 43 months. Absent an explanation for the delay, the Board found that those periods of time were excessive and it dismissed the application.

[25] The explanation provided by the Union in this case, which is that it filed the application for reconsideration to keep the certification alive does not provide the Board with a sufficient rationale to ignore the lapse of time which has occurred since the original application was dismissed by the Board.

[26] Furthermore, a reconsideration of this decision would not likely come to a different outcome given the facts of the situation which were considered by the Board. Even if the Board, in the final result, finds that the decision of September 23, 2008 should be reversed, the underpinnings for that application, that is the evidence of support filed for the application, would be stale-dated.

[27] The Union did, by its application which was the subject of the September 23, 2008 decision, what the Board suggested was the appropriate course of action to be taken, rather than its application for certification, which was to enforce its original certification Order. That application, however, was resisted by the Employer based upon its view that the Union had abandoned the certification Order. That resistance formed the basis for the September 23, 2008 decision of the Board which the Employer has now asked the Board to reconsider.

[28] Mr. Plaxton argued that this application was much different from the original certification. That is that the unit applied for was different from that originally certified and it represented a different geographic scope. With respect, this argument has no merit.

[29] If the application was, as Mr. Plaxton suggested, simply an application to change the scope of the bargaining unit and the geographic scope of the Order, an application to amend the original Order would have been the required route. No such application was made in the original application. The transcript shows that the prospect of an amendment was discussed during the original hearing, but it was not pursued by the Union.

[30] For all of the foregoing reasons, the application for reconsideration of the Board's decision on LRB File No. 214-04 is dismissed.

LRB File No. 019-05

[31] The criteria set out above with respect to reconsideration of this Board's decision are equally applicable to this file. For the Applicant to be successful, it must satisfy the Board that one or more of the criteria for review have been met so as to justify the Board in reconsideration of its earlier decision.

[32] The Board is satisfied that the decision in this case is one which is "precedential and amounts to a significant policy adjudication." In its original decision, the Board concluded at paragraphs [77] and [78] of its decision that:

> *[77] It is now clear that the Board does not have the jurisdiction to declare that a trade union has abandoned its collective bargaining rights in the context of a statutory regime of sectoral bargaining in the construction industry. The arguments asserted by counsel for the Employer in this case, are essentially the same as those mounted in Graham LRB, supra, and are as incorrect and unreasonable.*
>
> *[78] Accordingly, on the basis of the decision in Graham CA, supra, we find that the plea of abandonment by the Employer in this case as a defense to unfair labour practices related to refusal to recognize the Union as the certified bargaining agent of its employees in the appropriate unit, is not available.*

[33] These statements are in marked contrast to all of the Board's former jurisprudence and decisions related to abandonment. In making its decision, the Board relied upon its interpretation of the comments of the Court of Appeal in *United Brotherhood of Carpenters and Joiners of America, Local 1985 v. Graham Construction and Engineering Ltd.* ([2008] S.J. No 319, [2008] SKCA 67, 71, Admin LR. (4th) 259, [2008] 8 W.W.R. 421, 311 Sask. R. 1). It appears that the Board interpreted the Court of Appeals decision in Graham as supporting a finding that a defense of abandonment no longer was available in Saskatchewan.

[34] Prior to this decision, the leading case on the defense of abandonment in Saskatchewan was the Board's decision in *Cineplex Galaxy Limited Partnership v. International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists*

and Allied Trades of the United States and Canada, Local 295, [2006] Sask. L.R.B.R. 135, LRB File No. 132-05.

[35] That decision canvassed all of the Board's previous decisions concerning the issue of abandonment. In its decision, the Board determined two (2) principles concerning abandonment in Saskatchewan. Those were:

1. That abandonment was recognized in Saskatchewan, notwithstanding a lack of specific legislative authority for the concept; and
2. Abandonment was available to be used only as a "shield", and not as a "sword".

[36] In the *Graham* decision, *supra,* at paragraph [53], the Court of Appeal concludes that "the Board's implicit decision that it has the authority to find the Unions had abandoned their right to bargain collectively under s. 37 is reasonable." The Court went on to say in that same paragraph "[I]t is a completely foreseeable exercise of a power that may be appropriate to a particular case."

[37] This conclusion by the Court of Appeal is consistent with the Board's previous jurisprudence as outlined in the *Cineplex* decision, *supra*. This conclusion also seems, to be at odds with the Board's conclusion in its decision of September 23, 2008 in paragraphs [77] and [78].

[38] The Court quoted as support for its conclusion, not only the *Cineplex* decision, *supra*, but all of the previous decisions of this Board related to the issue of abandonment.

[39] The Board is of the opinion that the issue of abandonment in Saskatchewan is one which is "precedential and amounts to a significant policy adjudication" by the Board. A defense of abandonment has been recognized by the Board as being available since the Board first allowed an employer to rely upon abandonment to render a certification order void in *International Union of Operating*

Engineers, Hoisting and Portable and Stationary, Local 870 v. Wappel Concrete and Construction Ltd. [1984] Apr. Sask. Labour Rep. 33, LRB File No. 302-83.

[40] For 24 years, the Board has recognized that abandonment may occur and may be used by Employers as a shield to applications from Unions to enforce the provisions of certification orders which have not been utilized by Unions. As noted above, it is a significant departure from the previous jurisdiction of the Board, in reliance upon the Court of Appeal decision in *Graham*, *supra*, to assert that a defense of abandonment is no longer available in Saskatchewan in the context of a statutory regime of sectoral bargaining in the construction industry.

[41] The Board, therefore, agrees that this issue is of sufficient significance and importance to the labour relations community that it wishes to review and reconsider, and possibly expand upon or change its decision. For these reasons, the application for reconsideration of the Board's decision in LRB File No. 019-05 is allowed.

[42] We should also note, in passing, that the issue of abandonment in the construction industry has come to the attention of the legislature. Bill 80 was recently introduced in the Legislature, which, if passed, would amend *The Construction Labour Relations Act, 1992* R.S.S. c. c-29.11 to provide a statutory basis for the concept of abandonment within the construction industry.

[43] There is another aspect of the Board's decision in LRB File No. 019-05 which the Board feels merits reconsideration. This is the provision of the Board's Order that:

> *7. ORDERS THAT within sixty (60) days of the date of this Order the Employer shall pay to the Union a sum equal to the dues, assessments and initiation fees that it ought to have deducted from its employees in the appropriate bargaining unit and remitted to the Union from and after 2 March 1984; in the event that the parties are unable to agree upon the amount due within a period of fifteen (15) days from the date of this Order, either party may request the Senior Labour Relations Officer/Investigating Officer of the Board to ascertain the amount due, and the Senior Labour Relations Officer/Investigating Officer of the Board is empowered to make any and all inquiries, enter into any premises, and inspect and make copies of any and all documents and records as may required to make the determination;*

[44] In making this Order, there is nothing in the decision that shows that the Board considered the impact of this Order on the Employer who had not collected any such dues from the affected employees (who seemingly were not represented by the Union, nor had the benefit of a collective agreement during that period). Nor does it appear from the decision that the Board considered and applied, if applicable, the provisions of *The Limitations Act* R.S.S. c. L-16.1 in making this part of the Order.

[45] If the Board in LRB File No. 019-05 should have considered the impact of limitations legislation, or otherwise failed to consider the hardship that would arise in requiring in excess of 24 years of union dues be paid by the Employer when, arguably, at least the employees on whose behalf such dues were to be remitted were not enjoying the benefit of collective agreements negotiated by their bargaining representative or that such employees had the benefit of representation by the Union during that period, would satisfy the criteria set out in points 3 and 4 of the *Overwaitea, supra,* criteria.

[46] In order to address this concern, the Board is also prepared to review the decision in LRB File No. 019-05 in respect of this issue.

[47] The Order made by the Board on October 31, 2008 staying the effect of the Board's decision on LRB File No. 019-05 is continued until further Order of this Board.

DATED at Regina, Saskatchewan, this **27th** day of **April, 2009.**

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.,
Chairperson