

**BRITISH COLUMBIA LABOUR RELATIONS BOARD**

CAN-AM PRODUCE & TRADING LTD.

(the "Employer")

-and-

RETAIL WHOLESALE UNION, LOCAL 580

(the "Union")

PANEL:	Frances R. Watters, Associate Chair (Adjudication) Lisa Hansen, Vice-Chair and Registrar Mark J. Brown, Vice-Chair
COUNSEL:	Brent Mullin and Norm Trerise, for the Employer Carolyn Askew and Sara Slinn, for the Union
CASE NO.:	42014
DATE OF HEARING	June 6, 2000
DATE OF DECISION:	November 27, 2000
DATE OF REASONS:	January 22, 2001

**DECISION OF THE BOARD**

I. **NATURE OF APPLICATION**

1           The Employer applied under Section 141 of the *Labour Relations Code* seeking leave and reconsideration of BCLRB No. B60/2000 (the "original decision"). In the original decision, the panel granted the Union's certification application for a bargaining unit described as "truck drivers at and from 886 Malkin Avenue, Vancouver, BC".

2           The Employer argued that the original decision was inconsistent with the principles expressed or implied in the Code. The Employer argued that because of overwhelming evidence of functional integration the original panel erred in concluding that the bargaining unit was appropriate. The Employer argued that the fundamental error of the original panel was the concentration on core duties which minimizes the extent of the functional integration. The Employer argued further that the original panel exercised its discretion in an inappropriate manner when it excluded three individuals from the proposed bargaining unit.

3           The Union argued that the Employer failed to establish a basis for reconsideration.

4           In BCLRB No. B454/2000, we granted leave and dismissed the Employer's application. These are the reasons for that decision.

II. **ORIGINAL DECISION**

5           The Employer's workforce totals 44 employees, 11 of which are drivers. The original panel described some of the drivers' duties, over and above driving duties as follows:

Drivers are expected to work cleaning up in the warehouse if time permits. This usually involves 5 or 6 drivers. All employees are expected to participate in clean-up. From time to time, a driver may assist a salesperson in loading an order for a cash and carry customer. In addition to their driving duties, drivers interact with customers on their route, obtaining signatures on a manifest, doing credit notes, and picking up returns and COD cheques. Drivers are also required to identify on their manifest time in and out of the depot and at each stop.

(para. 15)

6           The Employer argued that the Union's proposed bargaining unit was inappropriate due to functional integration between the drivers and warehouse employees. The original panel described the relationship between the two groups:

There is an interface between the warehousing and delivery functions of the Employer. The business is based upon the existence of both of these functions. However, there are at least two distinct groupings of employees; those who primarily work in warehousing and selling the product and those who primarily deliver the product to customers. Drivers do not engage in the selling or warehousing of the product. With limited exceptions which will be discussed later, warehouse and sales employees do not deliver the product to customers.

The work performed by both groupings is incidental to their core responsibilities. Time spent by drivers, filling in time by cleaning at the warehouse, is not significant. On the evidence, this may be performed for up to a quarter of the regular workday but is not part of the drivers core duties. However, overtime for drivers is frequent and not all drivers perform this task for this period of time. Trucks are dispatched as loaded and only those on the last trucks work at warehouse duties are at the warehouse for this longer period of time. Drivers in the first trucks, loaded by the nightshift, leave the depot once any additions to their orders are completed. The goal is to dispatch all trucks as quickly as possible. Further, there is no evidence that clean-up forms a core duty of any other grouping. Time spent doing work that is not core to a person's duty is not evidence of functional integration.

Warehouse employees help drivers load shortages onto trucks. Similarly a driver may from time to time assist in loading a cash and carry customer's vehicle. These activities do not constitute functional integration. Rather, it displays a reasonable and expected functional relationship between the functions of warehousing and delivery. This only demonstrates a well functioning workplace where all employees assist for the common good at the point where their duties interface. If this creates work jurisdiction issues, these may be addressed in collective bargaining.

With respect to the unloading of returns, the evidence suggests that the primary responsibility of the drivers is to clear their trucks and the primary responsibility of the warehouse or sales personnel is to check the returns for accuracy and inventory purposes. In the unloading, the drivers may transfer the product into the warehouse, but they do not sort it back into inventory as they do not have the necessary knowledge. This is done by the warehousing and sales staff. Both groups have a functional relationship which manifests itself upon the return of product, however there are distinct responsibilities and duties.

(paras. 33 - 36)

7 In considering whether a rational and defensible line could be drawn around the drivers, the original panel concluded:

The real issue to be addressed in this decision is whether the driving responsibilities of the three non-drivers are sufficient to call into question whether a rational and defensible line can be drawn around the drivers' bargaining unit. There is also an issue as to whether I should exercise my discretion under Section 22(1) of the Code if the non-drivers are sufficiently integrated into the unit to create difficulties which cannot be addressed in collective bargaining.

Certain employees who are not drivers do deliver product to customers. On the evidence, these non-drivers deliver product on approximately 4.5% of the total person days devoted to deliveries. Oftentimes, this is to a single customer. Often, it is on a Sunday. At times it is in an employee's personal vehicle.

Driving is not a primary duty of any of the three non-drivers. Ma is the assistant shipper. Yang is a warehouse employee. Hing is a salesperson.

While Ma drove on 46 days, his average time in the truck was between a half and three-quarters of his full shift. The 46 days represents approximately 30% of the days he worked. Based upon Mah's estimate of the time per shift spent driving, Ma spends between 15 and 23% of his work time driving. Yang's 30 days was approximately 19% of his total shifts and between 10 and 14 % of his total work time. Hing's driving time is negligible. For these calculations, I have assumed a 6 day week during the period of six months in evidence. Taken together with the small percentage of total driving days upon which these individuals performed deliveries, these percentages do not demonstrate the extent or type of functional integration which is sufficient to override the principle of access to collective bargaining.

When driving, these individuals carry out most of the functions of the drivers. However, there is a major exception. They have not filled in all of the information required with respect to delivery times or times in and out of the depot. While I accept the evidence that this function is required, but an oversight on the part of the non-drivers, it is an uncorrected oversight carried on over a six month that distinguish their delivery work from that of the drivers.

(paras. 38 - 42)

8 The original panel then went on and stated that "[i]n any event, the principle of access may be preserved in another manner" (para. 43). The original panel exercised its discretion under Section 22(1) of the Code and excluded the three non-drivers:

I find that this is an appropriate case to use my discretion. The functional integration of the three non-drivers and the drivers is minimal. However, any uncertainty as to the non-drivers status may create unnecessary issues in collective bargaining. I have considered the inclusion of the non-drivers, but this would create difficulties as they would clearly be outside of the unit for a portion of their worktime while performing their own core duties. The best solution is to remove any uncertainty and declare them to be excluded from the bargaining unit.

(para. 47)

### III. LEAVE FOR RECONSIDERATION

9 An application brought under Section 141 is required to meet the Board's established test before an applicant will be granted leave for reconsideration. To succeed an applicant must demonstrate "a good arguable case of sufficient merit that it may succeed on one of the established grounds for reconsideration": *Brinco Coal Mining Corporation*, BCLRB No. B74/93 (Leave for Reconsideration of BCLRB No. B6/93), (1994), 20 CLRBR (2d) 44, 93 CLLC ¶16,043. A *prima facie* case will not suffice; an applicant must raise a serious question as to the correctness of the original decision.

10 We concluded that the Employer's application met the standard and leave was granted.

### IV. ANALYSIS AND DECISION

11 The Employer argued that the original decision was inconsistent with the principles expressed or implied in the Code, and contrary to the Board's policies as set out in *Island Medical Laboratories Ltd.*, BCLRB No. B308/93 (Leave for Reconsideration of IRC No. C217/92 and BCLRB No. B49/93), (1993), 19 CLRBR (2d) 161 ("*IML*") and *Lifestyle Retirement Communities Ltd.*, BCLRB No. B452/97 (Leave for Reconsideration of BCLRB No. B163/97) (1997), 39 CLRBR (2d) 202 ("*Lifestyle*").

12 The Employer argued that the original panel minimized the extent of the functional integration. The Employer argued that the error was caused by the original panel concentrating on the concept of "core duties". The Employer argued that *IML* defines functional integration and that *Lifestyle* defines the degree of functional integration which will not be accepted in respect to an initial application for certification. Neither decision contemplates an analysis that is based on core duties.

13 The Employer argued further that the original panel's exercise of discretion under Section 22(1) was also in error and inconsistent with the principles of the Code for three reasons. First, it was never intended in *IML* or *Lifestyle* that the exercise of discretion allow for a "novel means of circumventing that basic balancing of the rights and

interests of the parties". Second, this case is not about the *de minimis* circumstances as expressed in *Lifestyle*. Third, the exercise of discretion is not used to create an appropriate bargaining unit. The intent was to use discretion to determine inclusions or exclusions, if necessary, to define the constituency of an otherwise appropriate unit.

14 At the reconsideration hearing, the Employer raised a new argument asserting that the certification should not have been granted as it was for a unit comprised of a single classification. In *IML*, at page 184, the Board stated it would not certify a single classification unless it happened to include the majority of employees at a certain geographic location or the employees fell within the traditionally difficult to organize doctrine.

15 The Union argued the Employer failed to demonstrate any basis for reconsideration. The Union argued the Board's jurisprudence directs that it inquire into the core duties of employees within the proposed bargaining unit and the core duties of those employees outside the proposed unit. Incidental or minimal crossover of duties is not sufficient to defeat a finding of appropriateness. The Union argued that the original panel applied the law and policy of the Code in a consistent manner. The original panel properly considered the nature, type and extent of any overlap in duties. The Union argued that the overlap in duties was incidental, not daily or regular. The Union argued further that the Employer's application essentially asked the reconsideration panel to review the original panel's findings of fact. The reconsideration panel should not interfere with the original panel's exercise of discretion relating to Section 22(1).

16 The first issue we will address is the limited scope of review under Section 141 of the Code. We agree with the Union that the Board is reluctant to review findings of fact or inferences drawn from the evidence. The Board's policy in this regard was set out in *Roberts Roofing and Sheet Metal Ltd.*, BCLRB No. B313/94 (Leave for Reconsideration of BCLRB No. B369/93) at pages 7 and 8.

17 In any event, in the case at hand, the Employer does not dispute the original panel's findings of fact. The Employer does argue that the original panel's conclusions are not consistent with the law and policy of the Code.

18 The second issue that we will address is the new argument raised by the Employer regarding whether the certification should have been issued because the bargaining unit is comprised of only one classification including a minority of employees. This argument is not based on new evidence that was not available to the Employer at the time of the original hearing. It is not an argument that was before the original panel; nor was it raised in the Employer's Section 141 application or in its reply to the Union's submission. The argument was raised for the first time in the Employer's oral submission at the reconsideration hearing. We conclude that this new argument should not be considered by the Panel. At the very least the new argument should have been raised in the reconsideration application. In addition, given that the new argument is not based on new evidence that was not available to the Employer at the time of the original hearing, the argument should have been put before the original panel. It would be

unfair to the Union to consider this argument now when it did not have the opportunity to present its case before the original panel with this argument in mind.

19 We now turn to the other arguments raised by the parties. The test for the appropriateness of a proposed bargaining unit is set out in the Board's leading authority, *IML*. Community of interest is the test for determining an appropriate bargaining unit. An appropriate bargaining unit must have a rational and defensible boundary and the structure that is created must be one that is conducive to viable collective bargaining and collective agreement administration. In an application for an initial certification the predominant concern is access to collective bargaining, although industrial stability is also a consideration. The first four *IML* community of interest factors are considered: similarity in skills, interests, duties and working conditions; the physical and administrative structure of the employer; functional integration; and geography. In an application for a second or additional certification the predominant concern is industrial stability, although access to collective bargaining remains a consideration. In addition to the first four *IML* community of interest factors noted above, the Board also considers the fifth and sixth *IML* factors: the practice and history of the current collective bargaining scheme, and the practice and history of collective bargaining in the industry or sector.

20 Since the *IML* decision was issued, functional integration has emerged as the most important factor when considering the appropriateness of initial bargaining units. Functional integration was defined in *IML*:

The third factor is functional integration. This was first identified by Chair Munroe in *Canadian Kenworth, supra*. A distinction was made between "a functional *relationship* between *departments*" and "a functional *integration* between *employees*" (p. 68; italics in original). Any employer concerned with productivity and efficiency will, of course, try to achieve as much functional integration, coherence or relationship as possible. In that sense these terms tend to overlap, but for the purposes of defining community of interest, Chair Munroe's distinction is helpful. A functional relationship between departments is to be expected in any business and would in itself not prevent a community of interest being found in any single department. (And of course it goes without saying that it would not prevent a finding of a larger community of interest). However, the functional integration of employees in several departments - employee interchange, shared duties, etc. - would require all such departments within one unit. This functional integration - employee interchange, job duties integrated - must be on a day-to-day basis, reflecting a consistent managerial policy of functional integration, and not simply amount to holiday relief or the replacement of sick employees. There are also the integrated work processes that go beyond a functional relationship between departments. A continuous work process (e.g., assembly line), overlapping and shared duties, team processes, all require a single bargaining unit. The focus of this

criterion is therefore upon how the employer has organized itself operationally. (p. 181 - 182)

21 In subsequent Board decisions, the issue of whether a viable collective bargaining regime can be established when an employee may work both in and outside of the proposed bargaining unit has been addressed. In *Richmond Elevator Maintenance Ltd.*, BCLRB No. B119/97, (1997) 35 CLRBR (2d) 110 the Board stated:

The cumulative message that can be drawn from these cases is that the Board must be able to satisfy itself that the potential difficulties of having an employee included in or excluded from a bargaining unit when some work done by that employee for the employer takes place inside of the collective bargaining relationship, and some work outside of the collective bargaining relationship can be addressed in a way that allows a viable collective bargaining relationship. Generally, it is the extent of the employee interchange or cross-over that is critical in determining whether collective bargaining is viable. As was stated in *Ely Publications*, "not all levels of functional integration will necessarily result in a conclusion that the unit is inappropriate" (p.19). For example, in *North Shore Disability Resource Centre Ass'n*, the organizational structure of the employer provided the Board with the necessary measure of assurance that a viable collective bargaining regime was available. (para. 16)

22 The Board expanded on this theme in *Lifestyle*:

The original panel expressed concern about the fact that these employees would be working for the employer both in and out of the bargaining unit. In so doing, the original panel recognized that the nature and extent of functional integration in these circumstances poses potentially serious problems for both collective bargaining and ongoing collective agreement administration (see paras. 41-47). Those problems became the primary focus of, and were more fully explored by, the parties in the s. 141 submissions and in their oral submissions. This further exploration in considering the functional integration problems addressed in the original hearing in the context of *IML*, also considered the additional issue of potential problems arising from the scope of permissible collective bargaining under the Code.

A trade union is certified to represent *employees* and not merely the *work* which they perform. For example, jurisdiction over work (e.g., assignments between job classifications, contracting out and so on) is properly the subject of collective bargaining. In contrast, while the scope of representational rights may be discussed, the issue cannot be taken to impasse in the event the parties disagree. See *Vancouver Symphony Society and I.A.T.S.E., Local 118* (1993), 17 CLRBR (2d) 161 (B.C.I.R.C. No. C3/93); and *Northwood Pulp & Timber Ltd. and C.E.P., Local 603*

(1994), 23 CLRBR (2d) 298 (BCLRB No. B271/94). This inability to take to impasse matters beyond the representational rights granted in a certification stands as a potential obstacle to complete resolution where some employees work both in and out of the bargaining unit. If the parties cannot reach agreement in collective bargaining on issues that flow from this dual existence, then the inability to achieve finality under the Code is problematic to viable collective bargaining.

One potential problem arising from functional integration is the negotiation of provisions dealing with hours of work, overtime and seniority - *i.e.*, given the fact that some employees will work both within and outside the bargaining unit.

Another serious area of difficulty is discipline and discharge where the employer might rely on employee conduct at both the union and a non-union facility. A series of questions immediately arises, including some recognized by the original panel: Would there be recourse to the grievance and arbitration procedure if an employee was disciplined while working at the non-union facility? If a culminating incident occurred at the union facility, could the employer rely on conduct at the non-union facility (where there was no ability to grieve earlier discipline when it was imposed)? What jurisdiction would an arbitrator have to deal with matters which did not occur during the employment relationship governed by the collective agreement?

The original panel, while vexed by these potential problems, determined that they could be resolved at collective bargaining and if not, by an arbitration board. We agree that a solution might be reached by agreement. However, it is also necessary to consider what will happen if there is no such agreement. That issue was not addressed in the original decision. Thus, the concern about potential problems of having no Code means of resolution in such situations was included in assessing the potential viability of collective bargaining. Nor was consideration given by the original panel to how the parties might address the impact of external legislation (such as the *Employment Standards Act*, R.S.B.C. 1996, c. 113) where the overall relationship of several employees would be subject to both a collective agreement and an individual contract of employment.

These questions merely highlight the potential difficulties for collective bargaining of permitting employees to be governed in part by a collective agreement and in part by a common law contract of employment. Subject of course to the positions taken by the parties, important matters affecting the employment relationship could not be finalized in negotiations; nor would the parties be able to resort to economic sanctions as a means of breaking the impasse. In this case, the nature and extent of functional integration as described by the original panel, when

combined with the potential difficulty of reaching final resolution, creates a level of concern about the viability of collective bargaining, including ongoing collective agreement administration, so as to render the proposed bargaining unit appropriate. (paras. 37 to 42)

23 *IML* and *Lifestyle* provide guidance to the community in the effort to define and apply the difficult concept of functional integration. In summary form, the principles and concepts set out in *IML* and *Lifestyle* are as follows:

- A functional relationship between departments is to be expected in a workplace in order that it operate in an efficient manner. This is especially true in today's workplaces. Competing in a global economy has resulted in employers and employees becoming increasingly concerned with productivity issues and better management of employees. A strong functional relationship between departments to ensure a smooth running efficient workplace is common.
- Functional integration is different than a functional relationship. It refers to employee interchange, shared duties, integrated job duties, overlapping duties, team processes and continuous work processes.
- Functional integration must reflect a consistent managerial policy. It must be regular and not simply based on relief or replacement of employees. We conclude that it need not be daily, but regular. The reference to "day-to-day" in *IML* was a phrase used to compare regular as opposed to incidental, but did not reflect a need that the functional integration be daily.
- Not all levels of functional integration will result in a determination that a bargaining unit is inappropriate.
- The Board will examine the nature, type and extent of functional integration to determine whether the proposed bargaining unit structure will result in viable collective bargaining given the principle of the importance of access to collective bargaining.

24 We agree with the Employer that the consideration of functional integration is not limited to an employee's core duties. The Employer argued that the Board has strayed from the above-noted principles in recent cases by relying on an analysis of core duties, rather than all duties, to determine whether the facts of a certain case reflect functional integration. We conclude that it is unnecessary to review all the cases put before this Panel. It is true that in determining whether functional integration exists some panels have used the term "core" duties in analyzing functional integration; other panels have referred to "primary" duties; still others have reviewed percentages of time spent by employees performing certain functions.

25 We conclude that in the cases cited by the parties, previous panels clearly had the principles of *IML* and *Lifestyle* in mind when the panels were analyzing the relevant

evidence. Given the difficult nature of analyzing functional integration, the Board cannot issue a "cookie cutter" type policy statement wherein a certain percentage of overlap in incidental duties, or a predetermined amount of shared primary duties, would constitute a sufficient amount of functional integration to render a proposed bargaining unit inappropriate. Such a policy statement would not serve the community well. Board policy must provide guidance and certainty to the community but it must also be flexible enough to be responsive to the nuances of different workplaces.

26 In past Board cases the use of the terms core or primary duties was simply a way used by the panels to describe a significant part of an employee's job. The use of the terms incidental or peripheral duties is a way to describe a job duty that does not form a significant part of an employee's job. These terms describe the nature and type of a job duty that may be shared in a particular workplace.

27 Where job duties are shared, a panel must assess the evidence put before it to determine whether the nature, type and extent of the functional integration is to the degree that a viable collective bargaining relationship cannot be established. For this reason each case is fact driven. That is why it is unnecessary for counsel to put numerous decisions before a panel in argument. It is necessary to apply the *IML* and *Lifestyle* principles to the particular circumstances and only refer to cases that may elaborate on a specific principle that is critical to the parties' argument.

28 The original panel looked at functional integration in two areas; the duty of clean-up which was shared by the drivers and the warehouse employees, and the amount of driving performed by three non-drivers (a salesperson, a warehouse employee and an assistant shipper).

29 With respect to the first area, the original panel concluded that the cleaning function was not a core duty of any specific employee group. In the last sentence of paragraph 34, the original panel concluded that "[t]ime spent doing work that is not core to a person's duty is not evidence of functional integration". We agree with the Employer that the statement taken in isolation is not the policy of the Board. Shared job duties may well demonstrate a level of functional integration regardless of whether the duties are "core" or "incidental". The question is not whether the duties are "core" or "incidental" but whether the level of functional integration created by employees sharing job duties is such that the proposed unit is not appropriate for collective bargaining or collective agreement administration. Miscellaneous or minor jobs assigned to all employees to be performed as required or as time permits (i.e., miscellaneous cleaning) may not render a unit inappropriate.

30 It follows that the original panel would have erred if it had disregarded or discounted the shared duty of cleaning simply because it was not "core" to the driver's job. However, in reading the paragraph as a whole, we are satisfied that the original panel did, in fact, analyze the nature, type and extent of the shared duty. For example, it found the drivers performed clean-up work in the warehouse *if* time permits, and that only five or six of the 11 drivers are involved in the clean-up (paras. 15 and 32). Having done so, the original panel concluded that time spent by drivers filling in on clean-up in

the warehouse was "not significant" (para. 33) and the level of functional integration was therefore minimal. The shared duty of clean-up did not render the proposed unit inappropriate. Given that the original panel applied the correct approach, we will not, on reconsideration, interfere with the conclusion. We conclude that the last sentence in paragraph 34 when read in the context of the entire paragraph is certainly an overstatement, but not an error.

31 The second area addressed by the original panel was the amount of time spent by the three non-drivers performing driving duties. The Employer argued that the original panel erred in disregarding this overlap because it found that driving was not a core duty of the three non-drivers.

32 Again, if that was the case we would agree that the original panel did err. However, when we read paragraphs 39 to 42 as a whole, we conclude that the original panel applied Board policy properly. The original panel considered the nature and type of the shared duty (i.e., three non-drivers were performing driving duties). While it was not their primary duty, the original panel did analyze the extent of the overlap with the drivers. If the original panel had actually concluded (as set out in paragraph 34) that "time spent doing work that is not core to a person's duty is not evidence of functional integration", there would have been no reason to consider the extent of the overlap.

33 Instead, the original panel did consider the extent of the overlap. The three non-drivers performed driving duties on "approximately 4.5% of the total person days devoted to deliveries". The original panel also considered the amount of time spent by each non-driver performing the driving function.

34 Given that we have concluded that the original panel applied Board policy in a proper manner, it is beyond our scope of review to consider the facts before the original panel to determine whether we would have reached the same conclusion.

35 Given our conclusions above, it is unnecessary to deal with the original panel's alternative approach when it proceeded to exercise discretion under Section 22(1) of the Code to exclude the three non-drivers in order to eliminate any uncertainty at collective bargaining. This principle was addressed in *Lifestyle*:

Moreover, we do not accept the union's argument that *A.S. King Logging* can be distinguished on the basis that employees there were both within and outside the bargaining unit during a single day. On the other hand, we have difficulty accepting the employer's *de minimis* argument based on *A.S. King Logging* (i.e., the suggestion that only one employee working between two or more locations will preclude the Board certifying one of those locations by itself). Since the degree of functional integration here exceeds any notion of *de minimis*, we expressly leave this issue undecided. While the option was not suggested in this case, it may be more consistent with Board policy in appropriate cases to exclude persons who "straddle" a bargaining unit (see s. 22(1) of the Code), rather than to dismiss a certification application

altogether. In other cases, it may be more appropriate to sweep in the entire person. None of this needs to be decided in this case. (para. 44)

36           However, for the benefit of the community we make the following comments. We agree with the Employer that *Lifestyle* does not stand for the proposition that the Board should include or exclude employees who "straddle" a proposed bargaining unit to finesse the effect of functional integration in order to make what would normally be an inappropriate bargaining unit appropriate, or *vice versa*. The principle in *Lifestyle* is that once a panel has determined that a proposed bargaining unit is appropriate because the nature and extent of the functional integration is minimal, a panel may exercise its discretion and exclude or include persons who straddle the bargaining unit in order to ensure that collective bargaining and ongoing collective agreement administration remains viable. Or a panel may simply leave the matter for the parties to address in collective bargaining. If during collective bargaining the parties reach an impasse on the exclusion/inclusion of a person, either party may apply under Section 139 of the Code for adjudication of the matter.

V.     CONCLUSION

37           For the foregoing reasons, leave for reconsideration was granted. The Employer's reconsideration application was dismissed on the merits.

LABOUR RELATIONS BOARD

**"FRANCES R. WATTERS"**

FRANCES R. WATTERS  
ASSOCIATE CHAIR (ADJUDICATION)

**"LISA HANSEN"**

LISA HANSEN  
VICE-CHAIR AND REGISTRAR

**"MARK J. BROWN"**

MARK J. BROWN  
VICE-CHAIR

