

# “Merging” Bargaining Units

Labserv Consulting in Consultation with the MEARIE group

This presentation is for information purposes only and does not reflect MEARIE's position on any of the subject matter. It is also not intended to provide legal advice

# Labour Relations Act Relevant Sections

- ▶ 1.4 Related/Common Employer
- ▶ 58.3 Agreement cannot be terminated before expiry unless approved by the board on joint application.
- ▶ 68 Deals with Mergers, amalgamations. Transfer of jurisdiction Representation vote by the board if required
- ▶ 69 Deals with Selling leasing business and successor rights.
- ▶ It is recommended sections 68 and 69 be read in entirety as these sections will have applicability on merging.

# Relevant Questions

- ▶ Is there more than one collective agreement?
- ▶ Is there more than one trade union?
- ▶ Do the collective agreements have identical expiry dates?
- ▶ Who is excluded from the collective agreement/bargaining unit?
- ▶ Are such exclusions the same in all affected collective agreements?
- ▶ Does the seniority provision identify a difference between bargaining unit seniority and company seniority?
- ▶ Are there non-union locations involved?

# Relevant Questions

- ▶ Are there inside workers and outside workers?
- ▶ Do they have separate collective agreements?
- ▶ What is the geographical scope of the collective agreement?
- ▶ Has there been an overlap/intermingling in the past between these units?
- ▶ Is it the same union involved with different locals?
- ▶ How many employees are in each unit?
- ▶ Are the clerical/office employees covered by the collective agreement?

# Potential Issues

- ▶ Union protectionism. (Preserving/growing their business)
- ▶ Possible greater union strength gaining power through a merger
- ▶ Employee issues regarding maintaining or improving the status quo
- ▶ Seniority Issues (dove-tailed or end-tailed)
- ▶ Labour Relations stability
- ▶ Preservation of union bargaining rights
- ▶ Has there been intermingling of employees in the past? if yes how much?

## General Comments from case law

- ▶ The Ontario board has held that the section of the Act dealing with intermingling [ss. 69 (6)] is directed at remedying a situation in which there is a de facto overlap or merger of bargaining units, so that it is difficult to preserve bargaining rights as they were prior to intermingling without creating operational problems for successor employers or prejudicing the established rights of employees.

## General comments from case law

- ▶ Where there is a “large disparity” in the size of the intermingled groups of employees, **the Board will generally not direct that a representation vote be taken.** The Board has been reluctant to define a minimum proportion of employees in the intermingled unit that a trade union must represent for a representation vote to be ordered.
- ▶ However, it is rare for the Board to order a vote when one trade union represents 80% of the intermingled unit of employees. (Silverwood Dairies, [1980] OLRB Rep. October 1526 at paras. 26-29; Pembroke General Hospital, [1997] OLRB Rep. Sept./Oct. 918 at para. 15).



## General comments from case law

- ▶ Where two or more bargaining units are, as the result of a sale and the intermingling of employees, merged into one, as in the instant case, both the need for stability in collective bargaining relationships and plain common sense would require that, where there is a large disparity in the size of the two groups of employees, there would be no representation vote, with its necessary expense, propaganda and disruption, but rather a declaration should be made that the trade union representing the great majority of the employees is to be bargaining agent for the new bargaining unit.
- ▶ Alliance Dairies



# General Comments from Case Law

- ▶ City of Peterborough decision, the Board observed that it must
- ▶ . . . seek to balance the interests of the employees of the transferred undertaking and their union with the interests of both the employer purchasing the undertaking as well as the interests of that employer's existing employees and their union".

# Considerations!

- ▶ Is more than one collective agreement an option?
- ▶ Will all employees be working out of a single location?
- ▶ What is the relative strength (members) of each union?
- ▶ Should there be a joint application to the Labour Board regarding consequential or agreed to terms to expedite the process?
- ▶ What economies/benefits will the employer receive?
- ▶ What is/has been the relationship with the trade union(s)?
- ▶ What is in the best interest of management?

# Considerations

- ▶ If intermingling causes a vote between two collective agreements, employees will likely be inclined to vote for the richer collective agreement based on self-interest.
- ▶ Management will have to strategize on how to handle the possible “fall out” of merging agreements, which might include some employee discontentment.
- ▶ Placement on the seniority list could be an issue and will depend on whether the seniority is “dove tailed” or “end tailed” In either event, there likely will be employee discontent.

## Favourable Case Law Comment regarding rights of individuals

- ▶ it is important to keep in mind the way in which the Supreme Court of Canada framed the right to freedom of association in *Health Services*. The right is not that of the union. Rather, it is the right of an individual to associate with others to pursue workplace goals through a process of collective bargaining (at para. 3). Sometimes the Supreme Court describes it as a right of employees, sometimes as a right of workers, and sometimes as a right of union members. **However, it is a right of individuals, not of the union as an institution.**



# Votes and Charter Values

- ▶ The issue of mergers is a complex matter. I would recommend reading the Lakeland Power Case and CUPE local(s) 17-1 and 17-04) (Bracebridge and Parry Sound amalgamation) Citation OLRB Case # 0068-14-R Released 2015
- ▶ This case was argued successfully by Richard Charney from Norton Rose Fullbright a leading Labour Law Firm.
- ▶ Rick discusses many complex legal arguments in this case including Charter Values, and it provides valuable information including how to navigate this complex area, and how the vote process is very important.

# Questions Likely to Arise

- ▶ Will this merger result in less outages?
- ▶ Will a merger result in more pro-active and less re-active maintenance of/to the system?
- ▶ Will billing be more accurate?
- ▶ Will regulatory charges be reduced? (now around 3%)
- ▶ Will delivery charges be reduced? (Now around 40%)
- ▶ Will there be a reduction in hydro rates to the consumer?
- ▶ What tangible benefits will there be for the employer and employees?
- ▶ Is a merger better than a sale?

# Workplace Review 2017

- ▶ Final Report Released in May 2017
- ▶ 173 Recommendations
- ▶ Most if not all of the recommendations are 'union friendly'
- ▶ The Government has already implemented some drastic changes such as an increase in minimum wage to \$15,00 per hour by 2019
- ▶ Increase in vacation after five years of service.
- ▶ It is expected many recommendations from the report will find their way into legislation.

# Workplace Review

- ▶ Recommendations: 155
- ▶ The Labour Relations Act, 1995 should be amended based on section 181 of the Canada Labour Code with the important modification that the test should be that the Ontario Labour Relations Board can review the structure if it is satisfied that the bargaining unit or units are no longer appropriate for collective bargaining in the circumstances



# Workplace Review 2017

- ▶ Recommendation 156
- ▶ The Labour Relations Act, 1995 should be amended to provide that where the Ontario Labour Relations Board certifies a union (or council of unions) for a bargaining unit, including certification without a vote under section 1, and the same union or council of unions is certified for a unit of employees in a separate location of the same employer or for an additional bargaining unit at the same location, whether or not a collective agreement is in effect in the prior certified unit, the Board, on request, can review the structure of the bargaining units and consolidate or vary the description as the Board may determine. The Board will have the power to apply, with or without modifications, the terms of an existing collective agreement between that employer and union, to the newly constituted unit. The section will apply in sectors or industries where employees have been historically underrepresented by unions.