TRADE UNION SUCCESSORSHIPS

INTRODUCTION

Trade unions change. They form, dissolve, merge, divide, affiliate, disaffiliate, and transfer their rights. They do so often and for a host of reasons. Often such a change results in the trade union becoming a different legal entity. This policy discusses the processes by which unions transfer bargaining rights and the Board's approach to union successorships. It covers:

- the Code's union successorship provisions;
- types of successorship transactions;
- successorship and union constitutions;
- successorship and representation votes;
- a typical union reorganization; and
- processing a successorship application.

Sometimes, what appears to be a successorship is actually just a name change. In these cases, the union should file a Trade Union Filing form indicating the new name.

STATUTORY PROVISIONS

Section 49 states:

> 49(1) When a trade union claims that, by reason of a merger or amalgamation or a transfer of jurisdiction of a trade union, it is the successor of a trade union that at the time of the merger, amalgamation or transfer of jurisdiction was the bargaining agent for a unit of employees of an employer, the Board in any proceedings before it or on the application of any person or trade union concerned may declare that the successor trade union has acquired the rights, privileges and duties under this Act of its predecessor.
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> (2) Before issuing a declaration under subsection (1), the Board may make any inquiries, require the production of any evidence or conduct any votes that it considers appropriate.
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> (3) When the Board makes a declaration under subsection (1), the successor trade union shall be deemed to have acquired the rights, privileges and duties of its predecessor, whether under a collective agreement or otherwise.

This provision is mirrored by Section 66 of PSERA. Several features of this provision are noteworthy.

- A successorship declaration is retrospective and confirmatory. It recognizes the validity of a transaction that has already taken place. The prior approval of a Labour Relations Board to a transfer of bargaining rights is not necessary. Any business transacted by the "new"

bargaining agent pending the declaration is valid.

- The Board may grant a declaration in response to an application under Section 49. It may also grant it in the context of another application. For example, the Board may declare a successorship in an unfair labour practice complaint if a party objects that the successor union is not a proper complainant.
- A declaration of successorship is only for the purposes of the *Labour Relations Code*. The Board decides whether a purported transfer is effective to pass a certificate, a voluntary recognition, a collective agreement, or other rights under the Code to the successor. The Board may not rule on the purely internal effects of the transaction, such as whether the parent union or its disaffiliated local owns the funds in the local's hands. This is a matter of contract law for the Courts to decide.

TYPES OF SUCCESSORSHIP TRANSACTIONS

There are several types of transactions.

In a **merger**, one union absorbs another. Typically a small union transfers its bargaining rights to a larger union and goes out of existence. The receiving union normally issues memberships to members of the donor union and acquires all the assets, liabilities and bargaining rights of the donor union. The members of the donor union become bound to the constitution of the recipient union and any parent union it may have.

An **amalgamation** involves two or more unions creating a new union to hold their bargaining rights. The constituting unions go out of existence. The new union extends membership to all members of the constituting unions and acquires the assets and liabilities of each constituting union.

A **transfer of jurisdiction** occurs when one parent union assigns one of its local unions (and its bargaining rights) to another parent union. Occasionally, a local will take over another local. This is also a transfer of jurisdiction. This results in members of the transferred local becoming bound to all or part of the receiving union's constitution. Such a constitutional change is often significant enough to make the local a fundamentally different organization than it was before the transfer.

Mergers, amalgamations and transfers of jurisdiction must not be confused with other types of trade union reorganizations.

A **disaffiliation** is a dissolution of the affiliation between a local and its parent. A disaffiliation need not involve a transfer of bargaining rights. The Board views bargaining rights as usually attached to the *local* union. It is therefore the identity of the local union—the bargaining agent—that is the focus of a successorship application. If a local disaffiliates from its parent but continues under direction of the same officers and similar constitutional provisions, the Board is unlikely to find that bargaining rights were transferred. This is especially so where the local was not created by the parent, but voluntarily affiliated with it. In such a case, the constitutional identity of the bargaining agent has not really changed. All that may be required is a name change *(see below)*.

If the disaffiliation results in a significant constitutional change, however, a transfer of bargaining rights may have occurred. This happens when the disaffiliation removes one set of constitutional provisions and the local union either adopts different provisions or affiliates with another parent. In any such case, the question the Board asks is, has the reorganization resulted in a significant change in the constitutional or jurisdictional identity of the bargaining agent? *See:* [*IWA-Canada 1-207 v. Zeidler Forest Industries Ltd.* [1988] Alta. L.R.B.R. 182].

Sometimes a disaffiliation from one parent and reaffiliation with another parent results in no real change to the local union that is the bargaining agent. This may be the case where an international union splits into two national unions but the constitution of the national parent is very similar to that of its international predecessor. In such a case all that has happened is that the local has substituted one parent for another and the local's business continues exactly as before. There is no transfer of bargaining rights. A successorship declaration is therefore unnecessary. The proper application is an application for a **name change** using the Board's reconsideration power in Section 12(4) of the Code.

Most of the discussion in this policy applies equally to mergers, amalgamations and transfers of jurisdiction. The policy uses the term "merger" to mean all three kinds of successor transactions unless the context dictates otherwise.

THE IMPORTANCE OF UNION CONSTITUTIONS

The Board determines if one union has succeeded to another's bargaining rights by determining whether or not the transfer was done in accordance with the terms of the respective unions' constitutions. A union constitution in law is a contract between its members. Members are free to bind themselves in advance to a procedure for transferring the organization's rights to another entity. They may do so even for such a fundamental change as the organization going out of existence, which extinguishes the contract among members.

Usually boards do not require strict compliance with the union constitutions before they will recognize the transfer of bargaining rights. Substantial compliance is enough. It will ask whether the procedure followed is close enough to the constitutional procedure that it can be said the intentions of those binding themselves to the constitution have been respected. Using this kind of test, labour boards have upheld mergers where strict compliance with the constitution is missing.

VOTES IN SUCCESSORSHIP CASES

Section 49(2) gives the Board the power to conduct a vote in a successorship application. The Board has said that the power to order a vote gives the Board no authority to sanction a merger that the union's constitution does not allow. *See:* [*USWA 5885 v. Home Hardware Ltd.* [1991] Alta. L.R.B.R. 506]. Subsequently, the Board has said that it might be appropriate to order a vote to ascertain employee wishes assuming no third party stands to be damaged and that there is substantial employee support for the merger. The Board would also need to be satisfied that the vote was not a revote on a previously settled constitutional amendment. If the vote was to

determine the wishes of employees who had not been polled on the constitutional question or whose consent had been called into question by procedural defects in the vote, the Board may exercise its discretion to hold a vote. See: [*Staff Nurses Association of Alberta and Rivercrest Lodge Nurses Employees Association v. Rivercrest Lodge Nursing Home Ltd* [1995] Alta. L.R.B.R. 83].

A TYPICAL REORGANIZATION

A typical union reorganization might look like this.

- A union executive resolves to investigate the possibility of merging with another union. It delegates the task of investigating merger partners to one or more of its members.
- The union executive makes contact with a potential merger partner(s) and holds discussions.
- The union executive selects a preferred merger partner and appoints a merger committee to negotiate the terms of a merger agreement. The prospective merger partner designates its own merger committee or executive officer to take part in these negotiations.
- The union executive may seek authority from the membership to enter into merger negotiations. Even if it is unnecessary under the constitution, a vote of members present at a regular meeting can serve as a preliminary "straw poll" of member opinion.
- Negotiations toward a merger agreement take place between the unions.
- The union's executive approves a draft merger agreement. Often the draft is approved by an official of the merger partner as well. If the partner is a larger parent union, this is likely to be a Vice-President or other senior official of the parent union. Almost always these approvals are conditional upon ratification by the persons with ultimate authority to approve the merger. This is usually the membership of the "donor" union and the President or full executive board of the "recipient" union.

Up to this point, the donor union's executive will have taken every step through its general power to transact the business of the union between membership meetings. The final step, however, is usually the subject of specific constitutional provisions that entail:

- The union membership discusses, votes on and approves the merger agreement. Typically this must happen at an annual general meeting or a special meeting of the membership requiring a minimum advance notice to the membership. Union constitutions often specify the notice period required and that the notice must specifically inform members that a motion to merge with the other union is the subject of the meeting.
- Motions to merge often must pass by more than a simple majority of members present. Often it requires a special majority of two-thirds or three-quarters of members eligible to vote *and voting*.
- The recipient union, through its officials, ratifies the agreement. At this point, the merger is substantially complete, even though there may be further steps required by the merger agreement. Further steps might include the issuance of a charter making the donor union a new local, or the formal enrolment of members of the donor local in the recipient union.

If the donor union's constitution contains no merger provision, the union **must** amend its

constitution to give itself the ability to merge. The amendment to the constitution that permits a merger must itself be made according to the union's constitutional requirements. *See:* [*USWA, 5885 v. Home Hardware Ltd.* [1991] above]. Labour boards have held that it is permissible for motions to amend the constitution and motions to merge to pass in succession at the same meeting. They have even held that the motions can be combined into one motion, provided both issues are presented to the membership according to constitutional procedures.

PROCESSING A UNION SUCCESSORSHIP APPLICATION

The section outlines processing successorship applications. This includes describing the application, the necessary supporting information, how to analyze the application, and the officer's report and disposition.

The Application

Unions apply for a successorship declaration by letter or by filing a copy of the Board's optional form. The applicant should serve copies of the application on all affected parties. The form applies to both name change and successorship declarations. Board staff reviews the application for completeness and date- and time-stamp the application as received. The union applying for a declaration of successorship must supply:

- its legal name and former name, if applicable;
- its address, phone and fax number;
- a description of the change or changes made to the organization, with applicable dates;
- a description of the constitutional steps followed to effect the change;
- a description of how the trade union's jurisdiction changed in the process, if a transfer of jurisdiction is claimed; and
- a list of affected bargaining relationships, by employer name and certificate number, if applicable.

The applicant should particularize the constitutional changes well enough that the investigating officer knows generally what kind of change the applicant claims to have occurred, and provide a broad outline of the process by which the transfer took place. If the first review of the application shows that further information is required, the officer contacts the applicant union immediately to request the additional material.

After accepting an application for union successorship, the officer:

- acknowledges the union's application by standard letter and has a notice posted;
- ensures a copy has been served on the other parties;
- searches for all the bargaining relationships that would be affected by the merger;
- gives notice of the application to affected employers with whom the union has bargaining rights; and

- produces and arranges for posting of a Notice to Employees in the workplaces of affected employers telling of the application. As a union successorship application affects both employed and unemployed members of the donor union, it may be appropriate to post notices at union offices. This is especially important for construction unions. The notice invites members who object to the issuance of a successor declaration to contact the Board officer.

Supporting Information

The applicant should supply any relevant supporting documents. Before assessing an application for union successorship, the investigating officer should have:

- The constitutions of the unions involved in the transaction. This includes the "recipient" union in a merger or transfer of jurisdiction.
- The constitutions of any parent union or intermediate union body (such as a District Council) that appears to have had a part in the transaction. Parent and intermediate body constitutions are usually made part of the union local's constitution. They may contain important procedural requirements to govern a transfer of bargaining rights or other fundamental change. All these constitutions are normally already on file with the Board. If any constitutions are missing, the officer gets one from the relevant union as soon as possible.
- Copies of any Notice of Meetings sent to employees, and signed copies of any motions or resolutions passed to effect the transfer of bargaining rights. Such motions may be motions of an executive board authorizing the taking of a preparatory step in the merger process. They may be resolutions of the entire membership authorizing a transfer. The motions required by the officer include any applicable motion of the recipient union accepting employees into membership or accepting the transfer of bargaining rights.
- Sometimes the donor union must first amend its constitution to permit the merger (see below). In such case, the officer requires copies of any notices of meeting called for that purpose, together with the resulting motion and the amendments adopted.
- Copies of any merger, amalgamation or transfer agreement between the unions involved. Such agreements typically make arrangements about affiliation, the status of the donor unit in the recipient's organization, granting of membership in the recipient union, the role of the donor union's officers in the new organization, and disposition of the donor union's funds and other assets. The merger agreement may give the officer a good picture of how the transaction affects the character and day-to-day operations of the donor local.
- Copies of any Declaration of Vote or other official record of vote results, signed by the union's presiding officer, if a vote or votes were taken in the merger process.
- Any charter or other constitutional document issued to the members of the donor union by the merged or amalgamated union that results from the transaction.

There may be other relevant documents. If, for example, the application involves a donor union that is regional or national in operation, there may be Board decisions on the successorship from other jurisdictions.

Analyzing the Application

Once the officer has the necessary information, the officer should go through the following analysis, or as much of it as necessary.

- **What kind of reorganization is this?** There is much confusion about the kinds of reorganizations that require a successorship declaration. Do not rely on the applicant union's characterization. Look closely at the nature of the organization that holds the bargaining rights before and after the alleged transfer. If it is essentially the same organization, with the same officers and roughly the same constitution as before, the transaction is probably only a name change. Name changes are usually not subject to the same detailed constitutional processes that mergers, amalgamations and transfers are. A name change may happen as part of a complex reorganization at the parent union level. In that case, assessing the validity of the name change can involve assessing the validity of the reorganization as a whole. See, for example, [*IWA-Canada 1-207 v. Zeidler Forest Industries Ltd., above*]. On the other hand, it may simply involve a motion of the union executive or the issuance of a new charter from the parent union.

- If the transaction appears to be a merger, amalgamation or transfer of jurisdiction: **Does the donor union's constitution permit the reorganization?** If not,

    - **Is there unanimous consent of the membership to the reorganization?** Unanimous consent is not likely to be present except in small employee associations. If there is unanimous consent then no further examination of the donor union's constitution is necessary. It is probably sufficient that a motion to merge has the unanimous consent of members actually present at a meeting of which the entire membership received adequate advance notice. It is arguable, however, that *all* members must consent to the change. The Board has not ruled on this issue.

    - If unanimous consent is not present: **Has a valid constitutional amendment been passed to permit the merger?** This will involve other questions. What process does the constitution set for its own amendment? Has adequate notice of the amendment been given? Was the amendment made at the proper kind of meeting? Did the motion to amend the constitution pass by a sufficient majority?

- If the union constitution permits the reorganization, or is validly amended to permit it: **Has the constitutional merger procedure been followed?** Within this enquiry, determine:

- **Was the merger motion passed by a person or body authorized to pass it?** If the constitution permits the union executive board to merge into another union, a resolution of the executive board will suffice. If the membership must approve a merger, a motion adopted by the membership is required.

- **Was the motion passed at an appropriate meeting?** Many constitutions require a merger motion to pass at an annual general meeting or a special meeting called for that purpose. This disqualifies regular meetings from authorizing a merger. The reason is that regular meetings are pre-scheduled and no advance notice is given to members. Attendance tends to be too low to authorize so fundamental a change as a merger of the organization.

- **Was appropriate notice given of the merger meeting?** Most constitutions require notice be given to all members in advance of the meeting. They almost always require that the notice set out the meeting's purpose. Was the notice sent out the proper time in advance? Was it given to all members? If some members or groups of members were missed, did they receive any other form of notice? Did they show up at the meeting in any event? Failure to give notice as required by the constitution may not invalidate a merger motion if the great majority of members received reasonable notice. Similarly, any defect of notice may be irrelevant if the affected members in fact attended the meeting.

- **Was the merger meeting conducted in a reasonably democratic manner?** Were there reasonable controls in place to exclude ineligible persons from discussion and voting? Was discussion of the motion allowed? Were there irregularities in the meeting or vote that calls into question the result?

- **Did the motion pass by the required majority?** If the required majority is all members, was attendance at the meeting high enough to meet the requirement? Are there enough affirmative votes to make the required majority? If abstentions and spoiled ballots might make a difference to the outcome, what rules as to voting governed the meeting? Sometimes a union adopts generic rules, like *Robert's Rules of Order*, that can be consulted to resolve these issues. See, for example: [*Home Hardware Ltd*., above]. Note that unless a union constitution provides otherwise, there is no requirement for a secret ballot vote or an officially certified count of votes. Voice- or roll-call votes verified by declaration of the meeting chair are sufficient proof that the motion passed unless there is compelling contrary evidence.

- **Did any bar exist to the passage of the merger motion?** In multi-level unions, the local trade union that possesses bargaining rights can only rarely merge into another union without the approval of its parent. A local union receives benefits from its contract of affiliation with its parent. In return, it gives up its freedom to disaffiliate. If the donor union is a local union, examine the parent's constitution closely. Is disaffiliation or merger of a local union permitted? On what conditions? Has the parent given its consent to a disaffiliation? Has the parent imposed a trusteeship on the local that might prevent its executive or membership from taking a valid merger vote?

- **Have the appropriate officials of the receiving union approved the merger?**

- **Is the transaction substantially complete?** Is the merger still subject to any unfulfilled conditions? This should be apparent from the face of the merger agreement. If anything remains to be done to complete the merger, is it a significant requirement? Is it a real condition whose fulfilment is in doubt, or is it more a case of having to "finish the paperwork?" If the latter, it is fair to say that the transaction is substantially completed and the successorship declaration is not premature.

Officer's Report and Disposition

The officer drafts a report following the investigation of the successorship. It outlines:

- The nature of the transaction. The officer opines whether the application requires a name change or a successorship declaration.
- What was done to effect the transaction.
- An opinion of whether the unions followed their proper constitutional procedure with supporting explanation.
- Defects in the procedure followed.
- Any objections or other information received in the investigation that might affect the disposition of the application.
- A recommendation that the Board grant or refuse the declaration. In difficult cases, the officer (after consultation with the Director of Settlement or Solicitor) may make no recommendation and remit the matter to a Board panel.
- The bargaining relations affected. This is an opportunity for the Board to examine the bargaining relationships the trade union has to determine if they still exist. Non-existent relationships should be identified and revocation recommendations made.

The officer sends the report to the applicant union, the predecessor union, and any employer or employee that has registered a specific objection to the application. The report explains recipients may object to the officer's findings.

If the Board receives no objections, an administrative panel rules on the application.

If objections of substance are received, the application is set for hearing. The officer continues to assist the parties to resolve or narrow the disputed issues.

If a Board panel grants the successorship declaration or declaration of name change, Section 49(3) states that the successor trade union should be deemed to have acquired the rights, privileges and duties of its predecessor, whether under a collective agreement or not. Update all existing bargaining relationships in the Board's database involving the donor union to reflect the new union name. Make the necessary changes to the status of the affected trade unions. Advise the parties by letter of the granted application. Issue a declaration confirming the Board's decision. Issue a new certificate naming the new union as the bargaining agent.