Appendix B

WORKING GUIDE TO THE PUBLIC SECTOR LABOUR RELATIONS TRANSITION ACT, 1997

Revised to include amendments made by the Local Health System Integration Act, 2005 (Bill 36)

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PART 1. INTRODUCTION

This Guide is a version of a document initially created when the *PSLRTA, 1997* first came into force, revised to show how the consequential amendments to the *PSLRTA, 1997* that are contained in Bill 36, the *Local Health System Integration Act, 2005* fit into the scheme of the Act.

***Public Sector Labour Relations Transition Act, 1997* (*"PSLRTA, 1997"*)**

■ The *Public Sector Labour Relations Transition Act, 1997* establishes a separate regime of successor rights governing issues that arise out of restructuring and amalgamations in the broader public sector. In particular, it directs how the following issues will be determined:

- the number and description of bargaining units at the successor employer
- the bargaining agents who will represent the bargaining units at the successor employer
- the status of existing collective agreements and
- the negotiation of new collective agreements and the seniority rights of employees in the bargaining units at the successor employer.

■ In addition, the *PSLRTA, 1997* provides that:

- the first contract arbitration provisions of the *Labour Relations Act, 1995 ("LRA, 1995")* will apply to the first collective agreement negotiations following restructuring (for public sector employees with the right to strike) and
- interest arbitrators acting under the first collective agreement provisions of the *PSLRTA, 1997* must consider enumerated factors which include the employer's ability to pay.

■ The *Local Health System Integration Act* (Bill 36) amends the *PSLRTA, 1997* to cover public sector restructuring going forward, and to add new sections under which the *PSLRTA, 1997* will apply to "health service integrations" including partial integrations.

■ In addition the *Local Health System Integration Act* contains its own provisions specifying circumstances in which the PSLRTA, 1997 will apply, and amends the *Community Care Access Corporations Act, 2001* to add sections specifying circumstances in which the *PSLRTA, 1997* will apply.

WORKING WITH THIS GUIDE

■ This Working Guide tries to clearly set out the different phases of the process under *PSLRTA, 1997.*

■ In trying to solve any particular problem, it is important to refer to the particular wording of the relevant statutory provision as well as this Guide.

PART 2. THE *PUBLIC SECTOR LABOUR RELATIONS TRANSITION ACT, 1997 ("PSLRTA, 1997"*)

OVERVIEW

The *PSLRTA, 1997* sets up successor rights procedures to facilitate public sector restructurings and amalgamations.

Three-Phase Transition

The *Act* contemplates three-phases through which its successor rights regime will be implemented.

■ Phase One - The Changeover Date

■ Phase Two - Revision of the Bargaining Rights (Bargaining Units, Bargaining Agents and Collective Agreements).

■ Phase Three- Collective Agreement Negotiation or Arbitration

An overview of these phases is set out in Chart A at Tab A to this Guide.

Phase One

■ The changeover date triggers the first phase. At this point, the continued application of collective agreements and bargaining rights takes effect.

Phase Two

■ The second phase is the period during which any changes to bargaining units and bargaining rights in the restructured organizations are to be determined. Corresponding changes to the application of collective agreements also take effect.

Phase Three

■ The third phase is the period during which the first new collective agreement after restructuring is reached, either by negotiation or arbitration.

PURPOSES OF THE *PSLRTA, 1997*

■ The *PSLRTA, 1997* specifically states its purposes as follows:

1. To encourage best practices that ensure the delivery of quality and effective public services that are affordable for taxpayers.

2. To facilitate the establishment of effective and rationalized bargaining unit structures in restructured broader public sector organizations.

3. To facilitate collective bargaining between employers and trade unions that are the freely-designated representatives of the employees following restructuring in the broader public sector and in other specified circumstances.

4. To foster the prompt resolution of workplace disputes arising from restructuring." **s. 1**

■ These purposes must be considered when the OLRB is making a s.22 bargaining unit determination or the OLRB or interest arbitrators are determining the first new collective agreement after restructuring.

APPLICATION

General Rule

■As a general rule, the *PSLRTA, 1997* applies to amalgamations and restructurings taking place in the municipal and hospital sectors, and in part of the school sector (non-teaching employees). **s.3-10.**

■The *LHSIA, 2005* amends the *PSLRTA, 1997* by adding a new s.9 specifying the application of the Act to the "health sector", and giving the Ontario Labour Relations Board the power to order that the *PSLRTA, 1997* applies to a "health services integration" - a newly defined term in the Act encompassing certain changes in or to employers who are either 'health service providers' within the meaning of the *LHSIA, 2005* or employers "whose primary function is or will be the provision of services within or to the health services sector'. **s. 2 & s.9**.

■ Originally the *PSLRTA, 1997* applied only during a specified "transitional period". The *LHSIA, 2005* deletes references to the transitional period, and makes the *PSLRTA, 1997* into permanent legislation.

■ Sections 3-13 of the *PSLRTA, 1997* provide detailed application rules.

Other Circumstances where *PSLRTA, 1997* Applies

■The *Act*'s scope can be extended beyond the situations outlined above. Cabinet is given the authority to prescribe that the *Act* will apply to other circumstances or events, such as health services integrations, as may be designated by Regulation: **s. 10(1), s. 40(1)(c), (e), s. 40(3.1)[new]**, **s. 40(5)**.

■ The Act also applies in circumstances specified in the *Local Health System Integration Act, 2005*, and in the *Community Care Access Corporations, 2001*, as amended by the *LHSIA, 2005*

Changeover Date

■ The Act's substantive changes begin to take place on the "changeover date".

Predecessor and Successor Employers

■The employers that existed prior to the changeover date are designated as the "predecessor employers". **s.2**

■The employer which is created as a result of restructuring is the "successor employer". **s.2**

■The *Act* specifically identifies these parties for each sector: **ss. 3(2)-(3), 4(3), 5(2), 6(2), 7(2), 8(2), 9(5)[new], 10(2).**

Section 69 of the *LRA, 1995* does not Apply

■The sale of business/successor rights provisions in s. 69 of the *LRA, 1995* no longer apply to an event to which the PSLRTA *Act* applies either by virtue of the provisions in sections 3 to 10" or "in accordance with the *Local Health Systems Integration Act, 2005*" **s. 13.**

***PSLRTA, 1997* Prevails Over Other Laws**

■Where there is a conflict between the *PSLRTA, 1997* and its regulations and any other Act, the *PSLRTA, 1997* and its regulations **prevails. 39(1).**

APPLICATION IN THE HEALTH SECTOR

Section 8 - Hospital Sector Amalgamations

■The Act continues to apply "upon the amalgamation of two or more hospital corporations" **s.8(1)**.

> Note: prior to amendment by Bill 36 the Act applied to hospital amalgamations only during a transitional period, as defined by regulation. Post-amendment there is no further time limitation on the application of the Act to the public sector restructuring that it covers.

■ A "hospital corporation" is defined as a corporation which operates a hospital. **s.8(4).**

Predecessor and Successor Employers

■ The hospital corporations that are amalgamated are the predecessor employers and the new amalgamated hospital corporation is the successor employer. **s.8(2).**

Changeover Date

■ the date on which the hospital amalgamation takes effect: **s. 8(1),(3).**

Section 9 - HEALTH SERVICES INTEGRATIONS

Applies by Order of the OLRB

■ Bill 36 replaces provisions of the *PSLRTA, 1997* that dealt with the partial mergers of hospitals with a new section detailing the application of the Act where the Labour Board declares that it applies to a health services integration **s. 9(1) & (2).**

■ This section does not apply with respect to an employer that is the Crown: **s. 9(7)**.

Definition of Health Services Integration

■ Health Services integration is defined to include:

> an integration that affects the structure or existence of one or more employers or that affects the provision of programs, services or functions by the employers, including but not limited to an integration that involves a dissolution, amalgamation, division, rationalization, consolidation,

transfer, merger, commencement or discontinuance, where every employer subject to the integration is either,

(a) a health service provider within the meaning of the Local Health System Integration Act, 2005, or

(b) an employer whose primary function is or, immediately following the integration, will be the provision of services within or to the health services sector: **s.2**

OLRB Procedure

- The Labour Board can only make a section 9 order at the request of either
  - an employer that is or will be subject to a health services integration or
  - a bargaining agent representing employees of such an employer: **s. 9(1)**.
- The Labour Board may make a section 9 order
  - before or after the health services integration in question occurs and
  - on such terms as it considers appropriate: **s. 9(4) (a) and (b)**.

Section 9 Considerations

- When making a section 9 order, the Board must consider the following factors:

1. The scope of agreements under which services, programs or functions are or will be shared by employers subject to the health services integration.
2. The extent to which employers subject to the health services integration have rationalized or will rationalize the provision of services, programs or functions.
3. The extent to which programs, services or functions have been or will be transferred among employers subject to the health services integration.
4. The extent of labour relations problems that have resulted or could result from the health services integration.": **s. 9(3).**

Changeover Date

■ Where a s.9 order is made the changeover date is:

- the date specified in the order, which may be a date earlier than the date on which the order is made or

- if there is no date specified in the order, the date on which the health services integration takes effect: **s. 9(6)**.

Application under the *Local Health System Integration Act, 2005*

■ The *LHSIA, 2005* sets out specific circumstances in which the *PSLRTA, 1997* will apply, in addition to those listed in the *PSLRTA, 1997* itself. The *LHSIA, 2005* provides that the PSLRTA, 1997 will apply to the following types of integration:

a) where services are transferred under an integration decision;

b) where all or substantially all of an HSP's operations are transferred under a Minister's Order;

c) where there is an amalgamation under a voluntary agreement facilitated by a LHIN or under a Minister's Order: s.32(1)

BUT it will not apply to one of these events where:

a) the successor employer (i.e. the entity receiving the transferred service or operation, or the newly amalgamated entity) is not a health service provider and the primary function of that person or entity is not the provision of services within or to the health sector: s.32(3)

b) where the successor employer and all the bargaining agents that have (or would have) bargaining rights with that employer agree that the Act does not apply.

c) where the Ontario Labour Relations Board (the Board) issues an order declaring that it does not apply, at the request of any bargaining agent or potential successor employer: s.32(7)

Application under the *Community Care Access Corporations Act*

■ the *PSLRTA, 1997* will apply to amalgamations of Community Care Access Corporations, under consequential amendments to the *CCAC Act* in the *LHSIA, 2005*

Application under *LHSIA, 2005* regulations

■ The *PSLRTA, 1997* will also apply to integrations resulting from Cabinet regulations under the *LHSIA, 2005* ordering the transfer of non-clinical services currently provided by hospitals, unless the regulation expressly states that the *PSLRTA* will not apply: s.33, *LHSIA, 2005*

Changeover Dates

- in the case of an integration resulting from a LHIN Integration Decision or Minister's Order under *LHSIA, 2005*: the changeover date is a date set out in the decision or order: s.32(2)(a) *LHSIA, 2005*

- in the case of an amalgamation of Community Care Access Centres, the changeover date is the date of amalgamation: s.15.3.(6) of the *Community Care Access Centre Act*, as amended by *LHSIA, 2005.*

- in the case of a Cabinet regulation ordering a hospital to transfer non-clinical services, the effective date of the integration or whatever other date the regulation prescribes: s.33(3)(a) *LHSIA, 2005*

MUNICIPAL SECTOR

■ The Act applies in the municipal sector when any of the following events occur: (Note: Section 40(2) of the *LHSIA, 2005*, deleted "during the transitional period" from this provision):

- the amalgamation of two or more municipalities or two or more local boards as defined by the Municipal Affairs Act. (not including a police services or school board.)

- the dissolution of two or more municipalities and the incorporation of their inhabitants into a new municipality,

- the dissolution of two or more local boards and the establishment of a new local board that assumes the powers and authority of the dissolved local boards,

- the dissolution of an upper-tier municipality if, as part of that restructuring, two or more of its constituent municipalities are amalgamated or dissolved and their inhabitants incorporated into a new municipality: **s. 3(1), s.2.**

Changeover Date

■ the date on which the amalgamation or dissolution takes place: **s. 3(4).**

Specific Municipal Applications

■ The *Act* applies to certain specific restructurings, as follows:

New City of Toronto

■ to the incorporation of the new City of Toronto

■ changeover date - January 1, 1998: **s. 4.**

See also the *City of Toronto Act.*

New City of Toronto Local Board

■ to the establishment of a local board of the new City of Toronto to which employees of one or more local boards of the old municipalities are transferred.

■ changeover date - the earliest date on which employees are transferred to the local board of the new city: **s. 5.**

Toronto Hydro Electric Commission

■ to the establishment of the Toronto Hydro-Electric Commission

■ changeover date - January 1, 1998: **s. 6.**

PART 3. PHASE ONE - CHANGEOVER DATE

■ The *Act's* substantive changes begin to take place on the "changeover date".

The table below lists applicable changeover dates in a summary form.

SECTOR	CHANGEOVER DATE
Municipal	Date Amalgamation or Dissolution takes effect
City of Toronto	January 1, 1998
Toronto Hydro-Electric Commission	January 1, 1998
Local Boards of the City of Toronto	Date on which employees of one or more of the local boards are transferred
District School Boards	January 1, 1998
Hospital Amalgamation	Date when amalgamation takes effect
CCAC amalgamation	Date of amalgamation
Health Services Integration by LHIN Integration Decision or Minister's Order	Date determined by decision or order
Health Services Integration - declaration by OLRB under s.9 *PSLRTA, 1997*	Date specified in the order or the effective date of the health services integration
Regulation transferring non-clinical services from a hospital	Date specified by regulation or the effective date of the integration
Other Circumstances Established by Regulation	As determined by regulation

Application of Act to Partial Integrations in the Health Sector

The *LHSIA, 2005* adds a new section to the *PSLRTA, 1997* (s.19.1) to clarify how "Phase One" of the Act is to apply to partial integrations in the health sector.

■ A partial integration takes place when an employer continues to operate after an integration in which some services it provided are moved elsewhere. The Act defines "partial integration" as follows:

a) some or all of the programs, services or functions performed by employees in a particular bargaining unit at a predecessor employer are transferred to or otherwise integrated with a successor employer, and

(b) on and after the changeover date, the predecessor employer continues to operate: **s. 19.1(2)**

- In a health sector partial integration "predecessor bargaining unit" means a bargaining unit of a predecessor employer in respect of which a bargaining agent has bargaining rights, and some or all of the programs, services or functions performed by employees in the unit are transferred to or otherwise integrated with a successor employer.

- "successor bargaining unit" means a bargaining unit of a successor employer in respect of which, on and after the changeover date, a bargaining agent has bargaining rights in accordance with subsection 19.2(2) of the Act: **19.1(2)**.

TRANSFER OF BARGAINING RIGHTS

Bargaining Rights on the Changeover Date

"Like Bargaining Unit"

- On the changeover date, each bargaining agent that had bargaining rights with the predecessor employer immediately before the changeover date continues to have bargaining rights for a "like bargaining unit" at the successor employer. **s.14(1).**

- That "like bargaining unit" will include only employees who immediately before the changeover date were in the bargaining unit with the predecessor employer and employees who are hired to replace these employees: **s.14(1)(a)&(b).**

- In a partial integration, the above provision applies. However the description of the bargaining unit shall include only employees who, immediately before the changeover date were:

  - unionized employees of the predecessor employer who were employed in the delivery of the programs, services, functions that are being transferred or integrated with the successor employer and employees who are hired to replace these employees: **s.19.2(1) and (2)**

- The Act also clarifies that bargaining agents with bargaining rights for non-affected bargaining units do not obtain any bargaining rights with a successor employer. A "non-affected bargaining unit" is a defined term in the Act that refers to bargaining

units that are unaffected by a partial integration, in the sense that their bargaining unit work is not subject to transfer to or integration with a successor employer: **ss. 19.1(2), s. 19.2(3)**

Non-Unionized Employees Excluded

■ Employees who were not unionized immediately before the changeover date do not become part of a bargaining unit with the successor employer on the changeover date: **s. 14(3)¶2.**

Crown Employees Excluded

■ These s. 14 "successor rights" provisions do not apply to a predecessor employer or a successor employer that is the Crown. Therefore, employees who were employed by the Crown immediately before the changeover date do not become part of a bargaining unit with the successor employer on the changeover date: **s. 14(2),(3)¶1.**

TRANSFER OF COLLECTIVE AGREEMENT RIGHTS

Collective Agreements on the Changeover Date

Existing Collective Agreements

■ On the changeover date, the existing collective agreement that applied to employees with the predecessor employer continues to apply with respect to the same employees at the successor employer.

■ The successor employer is bound by the collective agreement as if it had been a party to it. The successor employer is deemed to be the employer under the collective agreement: **s. 15(1),(3).**

Where Expired Collective Agreement

■ If no collective agreement is in operation immediately before the changeover date, the most recent collective agreement, if any, is deemed to be in effect: **s. 15(2)**.

Where no First Collective Agreement

■ The *Act* imposes a statutory freeze employment conditions similar in scope to the statutory freeze under the *Labour Relations Act, 1995:*

- where a bargaining agent has bargaining rights (certified or voluntarily recognized) under s. 14 but had not yet achieved a first collective agreement with the predecessor employer, or

- if a bargaining agent is certified after the changeover date but there has never been a collective agreement between the bargaining agent and the successor employer. **s.15(4)**

■ Alterations to the rates of wages or any other term or condition of employment or any right, privilege or duty of the employer, can only be made by agreement of the bargaining agent and the employer

- until a collective agreement applying to the employees in the bargaining unit of the successor employer comes into effect, or

- unless and until the bargaining rights of the bargaining agent are terminated. **s. 15(4)**.

■ The transfer of collective agreements does not apply to the Crown: **s.15(5)**.

SENIORITY PROVISIONS

■ The Act's provisions regulating seniority determinations apply only where bargaining units are reconfigured and only after the reconfiguration is agreed to or ordered: **s. 25(1).**

■ Until that time, no collective agreement provision binding a successor employer under s. 15 will be applied to prevent the successor employer from hiring or continuing to employ an individual to perform work or assigning work to an individual where two conditions are met:

> "(a) immediately before the changeover date the individual was employed by a predecessor employer that is the Crown or was employed by a predecessor employer but was not employed in a bargaining unit; and
>
> (b) the work the individual performs for the successor employer is essentially the same work that the individual performed immediately before the changeover date for the predecessor employer": **s. 15(7), (8).**

NON-UNIONIZED EMPLOYEES INCLUDING FORMER CROWN EMPLOYEES

■ Where an employee of the successor employer is not in a bargaining unit (i.e: previously non-unionized employees and former Crown employees), the terms and

conditions of his or her employment are the terms and conditions of her or his contract of employment "as it may be amended from time to time": **s. 15(6)**.

HIRING\SEVERANCE OBLIGATIONS

Obligation to Hire Employees of the Predecessor Employer

■ The *Act* does not require a successor employer to hire any employee of a predecessor employer except to the extent that it may be required to do so by a collective agreement binding it: **s. 16**.

TERMINATION OF COLLECTIVE AGREEMENT NEGOTIATIONS\PROCEEDINGS

Conciliation Proceedings

■ Conciliation officer appointments are terminated on the changeover date

■ No new appointments shall be made on or after the changeover date unless

- the bargaining unit is agreed upon under s. 20, or
- the description of the bargaining unit is determined by a s.22 order: **s. 18(1),(2).**

■ In a health sector partial integration existing conciliation officer appointments continue to be valid on the changeover date with respect to the predecessor employer, but have no status with respect to successor employers or bargaining agents with bargaining rights in respect of successor bargaining units.

■ No new conciliation officer appointments shall be made in respect of a dispute concerning a collective agreement for a successor bargaining unit on or after the changeover date for a partial integration unless the conditions described in subsection 18(2) are satisfied: **s. 19.4**.

Interest Arbitrations

■ On the changeover date, interest arbitrations affecting a predecessor or successor employer "in which a final decision has not been issued" are terminated: **s. 18(5)**.

■ In a health sector partial integration interest arbitrations in which a final decision has not been issued are not terminated on the changeover date "unless the arbitrations are otherwise lawfully terminated": **s.19.6(2)**

- Where an interest arbitration is underway between a predecessor employer and a bargaining agent, no final decision shall be issued without the parties having been given an opportunity to make further submissions that address the partial integration. However, the arbitration will not apply in relation to the successor employer: **s.19.6**

Bargaining Obligations

As of the changeover date:

- a notice to bargain that was given prior to the changeover date is not binding on the parties.

- no bargaining agent is under an obligation to bargain as a result of notice to bargain given by a predecessor employer. **s.18(3)**

- similarly, no successor employer is under an obligation to bargain as a result of notice to bargain given to a predecessor employer: **s. 18(3).**

- no bargaining agent or employer shall give notice to bargain on or after the changeover date unless the bargaining unit description is agreed upon under s. 20 or determined by a s.22: s. 18(4).

- In a partial integration in the health sector notice to bargain given before the changeover date continues to be valid with the predecessor employer, but will not apply in respect of the successor employer and a bargaining agent whose rights with a predecessor employer are continued with the successor employer: **s.19.5**

Right to Strike or Lockout

- The right to strike or lockout is suspended unless notice to bargain is given under the *PSLRTA, 1997* or another Act after the changeover date. After notice to bargain has been given, the employees' right to strike is determined under the Act that otherwise governs their collective bargaining **rights: s. 19(1),(2).**

- Sections 81-85 and 100-108 of the *LRA, 1995* apply with necessary modifications to the enforcement of these provisions: **s.19(3)**

PART 4. PHASE TWO - DETERMINING BARGAINING RIGHTS

SECTION 20 AGREEMENTS ON BARGAINING UNITS

■ On or after the changeover date, the successor employer and all of the bargaining agents representing employees of the successor employer under the *LRA, 1995* can execute an agreement either to change or to confirm the number and description of the bargaining units: **s. 20(1),(4).**

■ A successor employer and two or more, but not all, of the bargaining agents representing employees under the *LRA, 1995* can execute an agreement to change the number and description of the bargaining units in respect of which they have bargaining rights, as long as

- the agreement does not change or affect the description of any other bargaining units, and

- does not include in the bargaining units employees who were not in any bargaining unit (i.e. non-unionized employees or Crown employees): **s. 20(2).**

■ The employer and a bargaining agent may agree not to change the description of the bargaining unit in respect of which the bargaining agent has bargaining rights: **s. 20(4)**.

Firefighters

■ Bargaining agents representing firefighters under the *Fire Protection and Prevention Act, 1997* (*"FPPA, 1997")* can likewise make agreements with the successor employer regarding bargaining units. However these agreements must be separate from those which affect employees covered by the *LRA, 1995*: **s. 20(3)**.

Separate Units for Employees under the HLDAA, and the *FPPA, 1997*

■ A bargaining unit agreement cannot include *HLDAA,* or *FPPA* employees with employees whose labour relations are governed by another statute: **s. 20(5)**.

Grandparenting Provision

■ There is one exception to this rule for *HLDAA,* employees. They can be combined in a single bargaining unit with employees governed by another statute if one of the bargaining agents that is a party to the agreement

- has bargaining rights for that unit on the changeover date and

- the bargaining unit resulting from the agreement includes only employees who before the agreement comes into effect are in a combined bargaining unit or are not in a bargaining unit: **s. 20(6)**.

Effective Date of Agreement

■ A post-restructuring bargaining unit agreement is not effective until it is executed by the employer and every bargaining agent who is a party to it: **s. 20(7)**.

■ A s. 20(1) or (2) agreement to change bargaining unit configurations is not effective until the related agreement or order determining bargaining rights comes into effect: **s. 20(8)**.

SECTION 21 AGREEMENT ON BARGAINING AGENTS

■ Where a s.20 bargaining unit agreement is executed, all the bargaining agents that are parties to that agreement can agree upon which bargaining agent will represent each bargaining unit: **s. 21(1)**.

■ Such a s.21 agreement does not come into effect until it is executed by every bargaining agent that is a party to it and a copy is given to the successor employer: **s. 21(2)**.

Effect of Agreement

■ When such an agreement is executed, the agreed-upon bargaining agent becomes the exclusive bargaining agent for the bargaining unit: **s. 21(3)**.

■ If a trade union is made the bargaining agent of the employees in a bargaining unit under the *Act*, the trade union shall be deemed to have been certified or chosen for purposes of the *LRA, 1995*, the *FPPA, 1997* and the *Police Services Act*: **s. 17**.

SECTION 21 OLRB APPLICATION WHERE NO AGREEMENT ON AGENTS

■ If no agreement is in effect within 10 days after the related s.20 agreement on bargaining units is executed, the successor employer or a bargaining agent can request the Board to determine which of the bargaining agents represents each unit: **s. 21(4).**

SECTION 22 ORDER DETERMINING BARGAINING UNITS

■ Upon the application of a successor employer or any bargaining agent that has bargaining rights, the Board may order the number and description of appropriate bargaining units after the occurrence of an event to which this Act applies, such as amalgamations or integrations: **s. 22(1)**.

(Note: the above provision was modified to account for the fact that the *LHSIA, 2005* now also sets out events to which the *PSLRTA, 1997* applies).

Separate Units for Professional Employees

■ When making a bargaining unit order, the Board can order a separate bargaining unit of professional employees: **s. 22(2)**.

■ Section 22(2) provides that:

> Nothing in this section prevents the Board from making an order that results in a bargaining unit of employees who are members of a profession and engaged in a professional capacity and who for that reason commonly bargain separately and apart from other employees through a bargaining agent that according to established trade union practice pertains to the profession unless such an order would result in an unduly fragmented bargaining unit structure.

Separate Units for HLDAA and *FPPA, 1997* Employees

■ Again, employees governed by the *HLDAA,* and *FPPA, 1997* must not be included with employees governed by other statutes with the exception that a unit can combine employees governed by the *HLDAA,* with other employees

- if a unit of a predecessor employer was so combined and
- the Board is of the view that such an order would be appropriate: **s. 22(5),(6).**

Separate Unit for Construction Employees

■ The Board can also order for a unit of employees who do construction work and are represented by a construction union. In making this order, the Board can have regard to its construction decisions under s. 158 of the *LRA, 1995* and its predecessor, but is not required to follow those decisions if inappropriate to do so: **s. 22(2),(4).**

PSLRTA, 1997 Purposes Must be Considered

■ In making a s.22 bargaining unit determination, the Board must consider the purposes of the *Act* set out in section 1, that is :

- the facilitation of collective bargaining,
- the fostering of prompt resolution of workplace disputes,
- encouraging best practices in the delivery of services and
- facilitating the establishment of effective and rationalized bargaining unit structures. **s. 22(7)**

SECTIONS 21 OR 22 ORDER DETERMINING BARGAINING AGENTS

■ The Board must make an order determining who is the bargaining agent for each bargaining unit whose description has changed as a result of a s.20 agreement or a s.22 order where

- a request is made under s. 21(4) or
- where the Board makes a s.22 order determining bargaining unit configuration,: **s. 23(1)**.

■ If the description of a bargaining unit has not changed, the existing bargaining agent continues to hold bargaining rights: **s. 23(10).**

REQUIREMENT TO HOLD VOTE

■ Where it is necessary to determine the bargaining agent, the Board must hold a representation vote by secret ballot: **s. 23(2),(15)**.

■ A representation vote is not required if all the bargaining agents agree upon the bargaining agent and less than 40% of the employees in the unit were not represented by a bargaining agent immediately before the changeover date: **s. 23(11)**.

Crown Employees

■ If any employee in the bargaining unit was previously a Crown employee represented by a bargaining agent under the *Crown Employees Collective Bargaining Act*, *1993 ("CECBA,1993"),* an agreement cannot be made under s. 23(11) unless the former Crown employees' bargaining agent is a party to the agreement: **s. 23(12)**.

■ Although the *Act* expressly provides that former Crown employees are to be treated as non-unionized for purposes of determining whether the option of no union should be included on the ballot because 40% or more of the employees were previously non-unionized, it does not expressly provide that Crown employees are to be similarly treated for purposes of the 40% count in relation to determining whether or not a vote will be required.

Determination of Bargaining Agent Candidates

■ The Board is to determine which choices and candidates for bargaining agent will appear on the ballot: **s. 23(16)**.

Crown Employees

■ Where immediately before the changeover date, any bargaining unit employee was a Crown employee represented by a bargaining agent under *CECBA, 1993*, that bargaining agent must be included on the ballot: **s. 23(4)**.

Non-Unionized Employees

■ In addition, where immediately before the changeover date 40% or more of the employees in the bargaining unit were not unionized, the ballot must include the option of voting to have no bargaining agent: **s. 23(5)**.

■ For this purpose, former Crown employees will be counted as having been <u>not</u> unionized immediately before the changeover date: **s. 23(6).**

OLRB VOTE RULES AND PROCEDURES

■ The Labour Board has issued Rules to govern *Bill 136* applications and representation votes:

■ The Labour Board shall determine the practices and procedures for the vote, subject to the requirements that

- the vote be conducted by secret ballot and

- so as to ensure that one of the choices or candidates on the ballot ultimately receives <u>more than 50%</u> of the votes cast: s. 23(13),(15).

■ The Labour Board

-determines who is eligible to vote: **s. 23(17)**.

-must determine the choices and candidates that are to appear on the ballot in accordance with its practices and procedures: **s. 23(16)**.

40% Non-Unionized Employees or Crown Employees

■ In addition, *where 40% or more* of the employees were not unionized or were Crown employees immediately before the changeover date, the following rules apply:

1. The vote must consist of succeeding votes.

2. In the first vote, the choices on the ballot must be having no bargaining agent as one choice and each of the bargaining agents, each as a separate choice.

3. Every choice on the ballot in a vote, other than the choice with the fewest votes cast in its favour, must be included in a ballot for the immediately succeeding vote": **s. 23(14).**

Who Wins

■ The Board must appoint the bargaining agent with the most votes who receives more than 50% of the votes cast: **s. 23(3)**.

Limitations on Vote Challenges

The *Act* provides that

■ no Board order appointing a bargaining agent can be set aside on the ground of any defect or irregularity if the Board is satisfied that the results of the vote reflect the true wishes of the majority of employees: **s. 23(18)**.

■ the Board is not required to inquire into any allegation of defect or irregularity if it is satisfied that the vote results reflect the majority's true wishes, regardless of whether or not there was an irregularity or defect: **s. 23(19)**.

COLLECTIVE AGREEMENT RULES WHERE BARGAINING UNITS CHANGED

Collective Agreements Terminated Where No Union Option Wins

■ If more than 50% of the votes are in favour of having no union, the Board must order that there is no bargaining agent, in which case every collective agreement that applied

to the bargaining unit ceases to operate and the bargaining rights of the existing bargaining agents are terminated: **s. 23(7),(8).**

Section 24

■ Section 24 sets out how collective agreements will apply where bargaining unit configurations are changed either by s.20 agreement or by s.22 order: **s. 24(1)**.
■ The collective agreements that were continued under s. 15 on the changeover date continue to apply to the individual bargaining unit members who were previously covered by them after the date of the bargaining unit change: **s. 24(2)**.

Where no Collective Agreement

■ If no collective agreement applied to a bargaining unit member immediately before the bargaining unit configuration changed by agreement order, a collective agreement which was or was deemed to be in effect at any time after the changeover date is deemed to continue: **s. 24(3)**.

■ If a collective agreement did not apply to a bargaining unit member immediately before the bargaining unit configuration changed and

- was not in effect or deemed to be in effect after the changeover date,
- the employee's terms and conditions of employment are determined by their contract of employment "as it may be amended from time to time"
- until a new collective agreement for the unit comes into effect: **s. 24(4)**.

COMPOSITE COLLECTIVE AGREEMENTS

Where more than one collective agreement

■ Where more than one collective agreement continues to apply to employees in a new bargaining unit, the provisions of the agreements are deemed to form part of a single "composite agreement" for the new unit: **s. 24(5)**.

One year duration

■ The composite agreement will continue in effect for one year from the s.20 agreement or s.22 order determining the new unit and bargaining agent, or until such other date that the parties may agree upon in writing: **s. 24(7)**.

Parties

■ The only parties to the composite agreement are the successor employer and the single bargaining agent that has been appointed to represent the new bargaining unit: **s. 24(6).**

Implications of Composite Agreements

■ The existence of a composite agreement could produce very complicated results since individual employees in the new bargaining unit will have different conditions and terms of employment. The *Act* seeks to address some of the issues by setting out guidelines to determine which seniority and grievance provisions apply in a composite agreement.

■ These provisions (ss. 25 and 26, discussed below) cease to apply when the first collective agreement is made after notice to bargain is given under the *PSLRTA, 1997* or under the *Act* that otherwise governs the employees' labour relations, eg. *HLDAA, FPPA, 1997*: **s. 25(10), s. 26(6).**

SENIORITY AND GRIEVANCE RULES UNDER COMPOSITE AGREEMENT

Where only one collective agreement with seniority provisions

■ If only one collective agreement containing seniority provisions applies to any employees in the bargaining unit, its seniority provisions will apply to all employees in the bargaining unit: **s. 25(2).**

Where two or more collective agreements with seniority provisions

■ If two or more collective agreements containing seniority provisions apply, the following rules apply:

- Where the successful bargaining agent was a party to only one of the collective agreements in effect immediately before the changeover date, the seniority provisions in that collective agreement apply to all of the employees.

- Where the successful bargaining agent was a party to more than one of the collective agreements in effect immediately before the changeover date,

- then the employer and the bargaining agent may agree as to which collective agreement's seniority provisions will apply to the bargaining unit employees or,

- if they do not agree, either of them may apply to the Board for an order determining which collective agreement's seniority provisions will apply to the employees in the bargaining unit": **s. 25(3).**

Where two or more collective agreements but bargaining agent not party

■ If two or more collective agreements containing seniority provisions apply to the employees in the bargaining unit but the successful bargaining agent was not a party to any of them immediately before the changeover date,

- the employer and the bargaining agent may agree on which seniority provisions will apply or,

- if they do not agree, either of them can ask the Board to order which provisions will apply: **s. 25(4).**

Other Seniority Provisions Cease To Apply

■ Once it is determined which seniority provisions apply, the seniority provisions in the other collective agreements cease to apply: **s. 25(6).**

RULES RE: INTEGRATION OF EMPLOYEES IN NEW OR RECONFIGURED UNIT

Seniority rules

■ The *Act* further regulates seniority determinations by setting out specific rules applying to the integration of employees in a new or reconfigured bargaining unit (these rules also apply to the first collective agreement).

Dovetailing of Seniority

■ In a new or reconfigured unit, seniority is dovetailed on a unit-wide basis.

■ Employees who were previously not unionized are credited with seniority which reflects all periods of similar employment they had with the predecessor and successor employer: **s. 25(5)**,**s. 33(3)&(4).**

Exception for Non-Unionized Municipal Employees

■ The exception to this seniority rule is previously non-unionized municipal employees who are subject to a municipal restructuring proposal under s. 28.2 of the *Municipal Act*.

■ Where such an employee become an employee within a bargaining unit of a new municipality or a local board of a new municipality, the Minister of Municipal Affairs or a commission can order that they shall be credited with seniority that reflects a percentage, up to 100%, of their length of service with the predecessor employer: **s. 25(5)** [by reference to s. 33(4) and s. 12.9(5) of Regulation 143/96 under the *Municipal Act*.]

> **NOTE:** Section 25 does not incorporate by reference s. 33(5) which provides for requirements to determine seniority in a bargaining unit which includes former Crown employees.

Amendment of Seniority Provisions

■ The employer and bargaining agent may :

- by agreement amend the seniority provisions of a collective agreement or

- they may be amended by the Board at the request of the bargaining agent or employer,

as long as the above rules [s. 33(3),(4)] on seniority are respected:
s. 25(7),(8).

"Seniority Provisions"

■ "provisions that give employees rights that depend on seniority.**" s.25(11).**

Rules for Application of One Agreement's Rules to All Bargaining Unit Employees

■ Where the seniority provisions of one collective agreement are made applicable to all bargaining unit employees, the following rules also apply:

> "1. The provisions of that collective agreement respecting the posting of vacancies and new positions, promotions, transfers of employees, lay-offs and recalls also apply to the employees in the bargaining unit.

2. Any other provisions of that collective agreement that the employer and bargaining agent agree should apply, also apply to the employees in the bargaining unit.

3. Subsections (7) and (8) [re: amending seniority provisions] apply, with necessary modifications, to provisions applicable under paragraph 1 or 2.": **s. 25(9)**.

Grievance rules

■ Parallel provisions to the seniority rules set out above apply to determine which grievance procedures apply under a composite agreement.

Where one Collective Agreement

■ If only one collective agreement applies to bargaining unit employees, its grievance provisions apply to all the employees in the unit: **s. 26(2).**

Where two or More Collective Agreements

■ If two or more collective agreements containing grievance provisions apply to unit employees and if the successful bargaining agent was a party to one of collective agreements immediately before the changeover, the grievance provisions in that agreement apply.

■ If the successful bargaining agent was a party to more than one of the agreements, the grievance provisions that apply are those in the collective agreement which contains the seniority provisions which apply under s. 25(3),(ie the collective agreement which contained the seniority provisions which were either agreed upon by the employer and the bargaining agent or ordered by the Board): **s. 26(3)**.

■If the bargaining agent was not a party to the collective agreements, again the grievance provisions that apply are those from the collective agreement whose seniority provisions were adopted under s. 25(4) as detailed above: **s. 26(4).**

Labour Board to Order where Dispute

Where dispute

■If the parties disagree about the application of sections 24, 25 or 26, the employer or the bargaining agent can apply to the Board for an order resolving the dispute: **s. 27.**

RESTRICTIONS ON CERTIFICATION\TERMINATION APPLICATIONS

There are very important restrictions which bar termination and certification applications in certain circumstances after the changeover date.

Where Agreement on Units

■ When a s.20 agreement on bargaining units is made, no person may make a termination application or make an application for a different bargaining agent during the period which begins when the agreement under s. 20 is executed and ends when the first new collective agreement between the parties comes into operation: **s. 28(4)**.

Where s. 22 Application

■ If a s.22 order to determine bargaining units has been requested,

- no application for certification to represent employees of the successor employer who were not unionized when the order was requested can be made
- during the period which begins 10 days after the order was requested and
- ends when the order is made: **s. 28(2).**

■ No person may make a termination application or an application for a different bargaining agent

- during the period which begins when the order was requested and
- ends when the first new collective agreement between the parties comes into operation.

After this point, the timing of these applications is determined by the statute that otherwise governs the employees' collective bargaining: **s. 28(3)**.

PART 5. PHASE THREE - REACHING A NEW COLLECTIVE AGREEMENT

INTRODUCTION

A new collective agreement can be achieved for the new or reconfigured bargaining unit in one of two ways:

■ the parties can agree to, or request the Board to order, a "replacement agreement". **s.29-30.**

■ one party can give notice to bargain for a new collective agreement. **s.31**

REPLACEMENT AGREEMENT

Definition

■ means "a collective agreement that replaces a composite agreement as result of an agreement under section 29 or an order under section 30" **s.2**

By s.29 Agreement

■ The union can first try to negotiate with the successor employer to agree to replace the composite agreement with one of the agreements that is included in the composite agreement. The parties can also agree to amend the replacement agreement: **s. 29(1).**

By Section 30 OLRB Order

Joint Request Needed

■ Alternatively, the parties can ask the Board, where they jointly request, to order that the composite agreement is replaced by one of its constituent collective agreements: **s. 30(1)**.
■

Most Appropriate Agreement Must be Chosen

■ The Board must select as the replacement agreement the included agreement "that is the most appropriate one to apply with respect to all employees in the bargaining unit": **s. 30(2)**.

Restrictions on Amendment

■ The Board can only amend the replacement agreement with respect to the description of the unit and the seniority rights of the employees: **s. 30(3),(4),(5)**.

Term of Agreement

■ The order can specify that the term of the replacement agreement will be one year after the date of the agreement or order determining the new bargaining unit, or such other date that the Board may order: **s. 30(6)**

This power does not displace s. 129 of the *Police Services Act* which requires collective agreements to remain in effect until the end of the year in which they come into effect: **s. 30(7).**

SENIORITY RIGHTS UNDER A REPLACEMENT AGREEMENT

■ Whether the parties agree upon or the Board orders a replacement agreement, the seniority rights of the employees in the new bargaining unit will be determined by the provisions in the *Act*.

■ Generally, this means that their seniority will be dovetailed on a unit-wide basis and that previously non-unionized employees will be granted seniority based on their length of service with the predecessor and successor employers: **s. 29(2), s. 30(5),s.33(3)-(4), s. 34(1)-(3)**.

NOTE: Both the exception for certain municipal employees [s. 33(4)] and any requirements prescribed for bargaining units which include former Crown employees [s. 33(5)] apply.

Determining Seniority-Based Employment Rights

Board May Order Method

■ Where the parties agree to a replacement agreement which contains seniority-based employment rights, either party can request the Board to determine the method to be used to determine seniority: **s. 29(3)**.

Parties may be Ordered to Meet to Resolve Method

■ Where the determination of seniority in relation to a replacement agreement is before the Board, either in relation to an agreed-upon or a Board-ordered replacement agreement, the Board may order the parties to meet and endeavour to reach an agreement about the method to be used to determine seniority: **s. 34(4)**.

APPLICATION OF FIRST CONTRACT PROVISIONS

When do they Apply

■ The first contract provisions in s. 43 of the *LRA, 1995* apply to the negotiation of a new collective agreement after notice has been given under the *PSLRTA, 1997,* in respect of

- parties whose labour relations are governed by the *LRA, 1995*, and
- to whom *HLDAA,* does not apply: **s. 32(1),(4)**.

■ This means, in part, that

- when the parties are unable to achieve a first collective agreement and the Minister has released a no-board report or has released the report of the conciliation board,
- either party can apply to the Board for interest arbitration.
- if the Board directs that there shall be interest arbitration, the right to strike and lockout is suspended: **see s. 43 of the *LRA, 1995*.**

Statutory Criteria

■ When an arbitration board conducts first contract arbitration arising from the *PSLRTA, 1997,* the board shall consider the following criteria in making its decision:

1. The employer's ability to pay in light of its fiscal situation.
2. The extent to which services may have to be reduced, in light of the board's decision, if current funding and taxation levels are not increased.

3. The economic situation in Ontario and in the part of Ontario where the employer is located.

4. A comparison, as between the employees and other comparable employees in the public and private sectors, of the terms and conditions of employment and the nature of the work performed.

5. The employer's ability to attract and retain qualified employees: **s. 32(3).**

■ These factors must also be considered by an interest arbitration board as a result of the *Bill 136* amendments to *HLDAA,* and other public sector interest arbitration statutes.

■ In addition, the interest arbitrator must take into consideration the purposes of the *PSDRA, 1997*: ***PSDRA,* s. 2(1)(e), 2(2)**.

SENIORITY RULES

When and How do they Apply

■ The seniority rules set out above and required by the *PSLRTA, 1997* apply

- when a replacement agreement is agreed upon or ordered, and

- apply to the first collective agreement after notice to bargain is given following restructuring: **s. 33(1)-(2).**

■ In these circumstances, both the exception for previously non-unionized municipal employees and any requirements prescribed for bargaining units which include former Crown employees apply: s. 33(4)-(5).

Determination by OLRB After Notice to Bargain

■ After notice to bargain has been given under the *PSLRTA, 1997* and before a collective agreement is reached, either party may ask the Board to determine the method that will be used to determine the seniority of employees in the bargaining unit: **s. 35(1)-(2)**.

■ The *Act*'s seniority determination rules apply to a Board order: **s. 35(3)**.

■ The Board may order the parties to meet to endeavour to reach an agreement about the method to be used to determine the employees' seniority: **s. 35(4).**

■ If the matters in dispute have been referred to arbitration, the Board can either

- refer the request to the arbitration board or
- make an order itself: **s. 35(5)-(6)**.

■ In the event of conflict where the Board makes an order on seniority, the order of the Board prevails over a decision by an arbitrator or board of arbitration: **s. 35(7)**.

OTHER APPLICATIONS OF THE SENIORITY REQUIREMENTS

■ The *PSLRTA, 1997* seniority provisions can also apply to circumstances that are otherwise not part of the restructuring and amalgamations governed by that *Act*.

Sales of Business to Certain Public Sector Employers

■ Specifically, they will apply

- where a sale of a business as defined in the *LRA, 1995* takes place,
- and the person to whom the business is sold is

  (a) a municipality or local board,

  (b) a district school board,

  (c) a person who operates a hospital or who will do so following the sale, or

  (d) a person in a class prescribed by regulation, **s. 12, s. 36.**

■ However, these provisions do not apply to a sale of business by the Crown: **s. 12(3)**

Labour Board Determination

■ Either the bargaining agent or the successor employer can apply to the Board for a s.36 determination: **s. 36(3).**

HOSPITAL SECTOR HUMAN RESOURCES PLANS

■ Where in the hospital sector there is a conflict between the *Act* and a human resource plan agreed upon by an employer and a bargaining agent, the human resource plan prevails except in the following situations:

HRP Signed before *Act* in Force

■ The s.33 seniority provisions prevail unless the plan is agreed upon before the *Act* comes into force.

However, if the human resource plan is amended on or after the date the *Act* comes into effect, the seniority provisions in s. 33 prevail.

Crown Employees

■ A human resource plan does not prevail over a regulation governing the determination of seniority for employees who were employed by the Crown immediately before the restructuring.

Where Regulations provide Otherwise

■ A human resource plan does not prevail in such circumstances or over such provisions of the *Act* that Cabinet may prescribe in regulations: **s. 39(2)**.

NOTICE TO BARGAIN FOR A NEW COLLECTIVE AGREEMENT

■ A party to a collective agreement that is continued under s. 24(2) or to a composite agreement can given written notice under the *PSLRTA, 1997* to bargain for a new collective agreement;

Replacement Agreement

■ For a replacement agreement, <u>both parties</u> must agree in writing that this notice can be given: **s. 31(1)**.

■ This notice has the same effect as notice to bargain under s. 59 of the *LRA*, *1995* or s. 47(2) of the *FPPA, 1997*: **s. 31(2)**.

Existing Collective Agreement Ceases to Operate

■ The existing collective agreement ceases to operate 90 days after the day on which notice is given: **s. 31(3)**.