Update

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SUMMARY OF *BILL 136*

PUBLIC SECTOR TRANSITION STABILITY ACT, 1997

FINAL VERSION

OVERVIEW

In response to opposition by the labour movement, the Harris government has made significant changes to the first reading version of *Bill 136* which was introduced in June, 1997.

Most notably:

- the proposed provisions for creating two new tribunals, the Labour Relations Transition Commission and the Dispute Resolution Commission, have been eliminated, with the result that the Labour Relations Board will administer the new successor rights provisions

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and interest arbitrations will continue to be conducted by arbitrators and boards of arbitration

- the right to strike over the first collective agreement after public sector amalgamations has been restored, although temporarily suspended until notice to bargain has been given after the changeover date at which point exercise of the right is determined under the statute that usually governs the employees' labour relations.

At the same time, *Bill 136* continues to make a number of important changes to labour relations in the broader public sector, both during and after the impending restructuring in this sector.

Bill 136 is an omnibus bill with four separate components.

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

The *Public Sector Labour Relations Transition Act, 1997*, Schedule B to the *Bill*, establishes a separate regime of successor rights governing matters 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 the seniority rights of employees in the bargaining units at the successor employer.

In addition, the first contract arbitration provisions of the *Labour Relations Act, 1995* will apply to the first collective agreement negotiations following restructuring, 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.

2. *Public Sector Dispute Resolution Act, 1997* (*PSDRA, 1997*)

The *Public Sector Dispute Resolution Act, 1997*, Schedule A to the *Bill*, makes various amendments to interest arbitration provisions in the statutes governing hospital employees, firefighters, municipal police and the Ontario Provincial Police.

A number of the changes applying to firefighters and the police serve to clarify and enhance the rules by which interest arbitrations in these sectors are to be conducted.

Other changes, which are made in different ways and to different extents in the four sectors, are intended to achieve greater efficiency in the interest arbitration process. The government had sought to achieve this objective in the first reading version of *Bill 136* through the proposed establishment of a Dispute Resolution Commission with broad powers to impose limits on the adjudication process.

With the present amendments, the efficiency objective is largely achieved by creating

authority for government intervention in the interest arbitration process. In the hospital employee and firefighter context the intervention authority is given to the respective Ministers. The Chair of the Ontario Police Arbitration Commission is given these powers in the police context.

3. Amendments to the *Pay Equity Act*

Bill 136 amends the *Pay Equity Act*'s sale of business provisions to permit renegotiation of pay equity plans following restructuring, and to remove the protection against lowering pay equity adjustments following the sale of a business.

4. Amendments to the *Employment Standards Act*

Bill 136 amends the *Employment Standards Act* to remove the wage protection program and to add successor obligations in the context of Crown transfers.

< In Force on a Date to be Named by Proclamation

Bill 136 was given Royal Assent on October 10, 1997 and is to come into effect on a date to be named by proclamation. That date has not yet been named.

THE *PUBLIC SECTOR LABOUR RELATIONS TRANSITION ACT, 1997(PSLRTA, 1997)* - SCHEDULE B TO *BILL 136*

In this discussion, section number references are to the *PSLRTA, 1997* except as otherwise noted.

Purposes of the *PSLRTA, 1997*

The purposes of the *Act* are:

"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**

Ontario Labour Relations Board Will Administer and Enforce the *PSLRTA, 1997*

The powers and duties of the Ontario Labour Relations Board ("the Board"), as set out in sections 96(4),(6)-(7), 110 to 118, 122 and 123 of the *Labour Relations Act, 1995* apply, with necessary modifications, to anything the Board does under the *Act*: **s. 37(1), (10).**

Decisions of the Board under the *Act* will not be made by panels of the Board. Instead, where the Board has the power to make a decision, determination or order under the *Act*, it will be made by the chair, the alternate chair or by a vice-chair selected by either the chair or alternate chair: **s. 37(2)**.

The Board can authorize a labour relations officer to inquire into and to try to settle any matter that comes before it under the *Act*: **s. 37(3).**

The Board is required to make its decisions, determinations and orders under the *Act* "in an expeditious fashion": **s. 37(8)**.

The Board can exercise the same powers it has under s. 110(18) of the *Labour Relations Act, 1995* to make rules to expedite proceedings: **s. 37(4).** Rules made under this authority apply despite anything to the contrary in the *Statutory Powers Procedure Act*: **s. 37(5).**

The *Act* gives the Board the power to make interim orders with respect to a matter that is or will be the subject of a pending proceeding**: s. 37(7)**. This language is broader than the Board's general interim order power under s. 98 of the *Labour Relations Act, 1995* and arguably gives the Board more scope in relation to requests for interim orders under the *PSLRTA, 1997*.

A decision, determination or order by the Board is final and binding for all purposes: **s. 37(9).**

Application of the *PSLRTA, 1997*: Who is Affected and When Does the Act Apply?

The *Act* applies to amalgamations and restructuring which take place during the "transitional period" in the municipal and hospital sectors, and in part of the school sector. The "transitional period" begins when the definitions section of the *PSLRTA, 1997* comes into force and ends on December 31, 2001 or such later date as may be prescribed: **s. 2**.

The substantive changes provided for in the *Act* begin to take place on the "changeover date". The changeover date is designated in the legislation and differs depending on when the restructuring or amalgamation is to take place in a particular sector.

In all sectors, the employers that existed prior to the changeover date are designated as the "predecessor employers" and the employer which is created as a result of restructuring is the "successor employer". The *Act* specifically identifies these parties for each sector: **ss. 3(2)-(3), 4(3), 5(2), 6(2), 7(2), 8(2), 10(2).**

< Section 69 of the *Labour Relations Act, 1995* does not Apply

The *Act* also specifically provides that the sale of business/successor rights provisions in s. 69 of the *Labour Relations Act, 1995* do not apply to any of the restructuring identified in sections 3 to 10 of the Act: **s. 13.**

< Municipal Sector

The *Act* applies in the municipal sector when the following events occur during the transitional period:

- C the amalgamation of two or more municipalities or two or more local boards,
- C the dissolution of two or more municipalities and the incorporation of their inhabitants into a new municipality,
- C 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).**

The act also applies to the following event without expressly requiring it to occur during the transitional period:

C 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: **s. 3(1)(c).**

NOTE: The dissolution, amalgamation or establishment of "local boards", above, does not apply to either police services boards or school boards. The *Act* defines "local board" specifically to exclude these two types of boards: **s. 2**.

The changeover date in the municipal sector is the date on which the amalgamation or dissolution takes place: **s. 3(4).**

The *Act* applies to the incorporation of the new City of Toronto and for this purpose the changeover date is January 1, 1998: **s. 4.**

The *Act* also applies 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. The changeover date for these purposes is the earliest date on which employees are transferred to the local board of the new city: **s. 5.**

It also applies to the establishment of the Toronto Hydro-Electric Commission and for this purpose the changeover date is January 1, 1998: **s. 6.**

< School Sector

In the school sector, the *Act* applies when a district school board assumes the jurisdiction of two or more old boards, or assumes the jurisdiction of the minority language section of two or more old boards. The changeover date in the school sector is January 1, 1998: **s. 7(1), (4).**

The *Act* applies to all school board employees with the exception of employees whose labour relations are currently governed by the *School Boards and Teachers Collective Negotiations Act*, i.e. teachers: **s. 7(3)**. Teachers' labour relations issues which arise out of restructuring and amalgamations are expected to be dealt with by separate legislation.

< Hospital Sector

In the hospital sector, the *Act* applies when two or more hospital corporations amalgamate during the transitional period. The changeover date is the date on which the amalgamation takes effect: **s. 8(1),(3).**

The Board can by order declare that the *Act* will also apply as result of:

"(a) the merger of all or part of the operations or administration of two or more employers who operate hospitals during the transitional period; or

(b) a substantial restructuring of two or more employers who operate hospitals during the transitional period": **s. 9(1).**

The Board can only make such an order at the request of either an employer operating a hospital that may be the subject of such an order or a bargaining agent representing

employees at such a hospital: **s. 9(4),(5)**. However, this section does not apply to an employer that is a municipality or local board or the Crown: **s. 9(7)**.

When making such an order, the Board must consider the following factors:

"1. The scope of agreements under which services are shared by the participating hospitals.

2. The extent to which the participating hospitals have rationalized the provision of services.

3. The extent to which programmes have been transferred among participating hospitals.

4. The extent of labour relations problems that have resulted or could result from the agreements, rationalizations or transfers": **s. 9(6).**

Where an order is made under s. 9, the changeover date is the date on which the order is made or such other date during the transitional period, that the order may specify including a date prior to the order: **s. 9(3)**.

< Other Circumstances in which the *PSLRTA, 1997* Applies

The *Act*'s scope could also be extended beyond the situations outlined above. Cabinet is given the authority to prescribe that the *Act* will apply to other circumstances or events that occur during the transitional period: **s. 10, s. 40(1)(e)**.

 # Substantive Changes Made by the Act

< Three-Phase Transition

The *Act* contemplates a three-phase transitional period during which its successor rights regime will be implemented.

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

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

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

The nature of these changes will be addressed in the order they will arise.

1. Changeover Date: Transfer of Existing Bargaining Rights and Collective Agreements

< Bargaining Rights on the Changeover Date

On the changeover date, each bargaining agent that had bargaining rights with the predecessor employer continues to have bargaining rights for a bargaining unit at the successor employer. That 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).**

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.**

C *Crown Employees Excluded*

The exception is that these "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.**

< **Collective Agreements on the Changeover Date**

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:
s. 15(1),(3).

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)**.

If a bargaining agent has bargaining rights 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, the *Act* imposes a statutory freeze similar in scope to the statutory freeze under the *Labour Relations Act, 1995*. Until a collective agreement applying to the employees in the bargaining unit of the successor employer comes into effect, 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:
s. 15(4).

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

Where an employee of the successor employer is not in a bargaining unit (ie: 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 or Continuing Employment of Employees of the Predecessor Employer**

Until the *Act*'s provisions regulating seniority determinations apply, no provision in a collective agreement that binds 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 if

> "(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).**

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).

< **Scope of Obligation to Hire Employees of the Predecessor Employer**

The *Act* stipulates that it 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: **s. 16**.

For employees who will not have the benefit of collective agreement protections, i.e. Crown employees and previously non-unionized employees, the successor rights provisions in the *Employment Standards Act* will apply. As is discussed below, it is important to note that one of the amendments *Bill 136* makes to the *Employment Standards Act* is to extend the application of these provisions to the Crown.

Under the *Employment Standards Act*, the predecessor employer is liable for severance pay in respect of any non-building service employees who are not employed by the successor employer: ***ESA*, s. 13(3)**. Where building service employees are not employed by the successor employer, the successor is liable for severance pay: ***ESA,***
s. 13.1(4).

< **Termination of Collective Agreement Negotiations Proceedings on the Changeover Date**

Conciliation officer appointments are terminated on the changeover date, and 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 an order under s. 22:
s. 18(1),(2).

In addition, on the changeover date interest arbitrations in which a final decision has not been issued are terminated: **s. 18(5)**.

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. 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 description of the bargaining unit is agreed upon under s. 20 or the description of the bargaining unit is determined by an order under s. 22:
s. 18(4).

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 *Labour Relations Act, 1995* apply with necessary modifications to the enforcement of these provisions: **s. 19(3)**.

2. After the Changeover Date: Determining Bargaining Units,

Bargaining Agents and Collective Agreement Application

< **Agreements on Bargaining Units**

On or after the changeover date, the successor employer and all of the bargaining agents representing employees under the *Labour Relations Act, 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 *Labour Relations Act, 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: **s. 20(2).**

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

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).

C *Separate Units for Employees under the Hospital Labour Disputes Arbitration Act and the Fire Protection and Prevention Act, 1997*

An agreement with respect to bargaining units cannot include employees whose labour relations are governed by the *Fire Protection and Prevention Act, 1997* or the *Hospital Labour Disputes Arbitration Act* together with employees governed by a different statute:
s. 20(5).

However, the *Act* contains grandparenting provisions by which employees governed by the *Hospital Labour Disputes Arbitration Act* and those governed by another statute can be combined in a single bargaining unit. This can be done if one of the bargaining agents that is a party to the agreement has bargaining rights with respect to such a 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)**.

C *Effective Date of Agreement*

An agreement with respect to post-restructuring bargaining units does not come into effect until it is executed by the employer and every bargaining agent that is a party to the agreement: **s. 20(7)**.

An agreement under s. 20(1) or (2) to change bargaining unit configurations does not come into effect until the related agreement or order determining bargaining rights comes into effect: **s. 20(8)**.

< **Order Determining Bargaining Units**

Upon the application of a successor employer or any bargaining agent that has bargaining rights, the Board may by order determine the number and description of appropriate

bargaining units after the amalgamation: **s. 22(1)**.

C *Separate Units for Professional Employees*

When making an order with respect to bargaining units, 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."

C *Separate Units for Employees Governed by the Hospital Labour Disputes Arbitration Act and the Fire Protection and Prevention Act, 1997*

Again, employees governed by the *Hospital Labour Disputes Arbitration Act* and the *Fire Protection and Prevention Act, 1997* must not be included with employees who are not governed by those statutes with the exception that a unit can combine employees governed by the *Hospital Labour Disputes Arbitration Act* 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).**

C *Separate Unit for Construction Employees*

The Board can also make an 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 decisions regarding construction units under s. 158 of the *Labour Relations Act, 1995* and its predecessor, but it is not required to follow those decisions if it is of the view that it would not be appropriate to do so: **s. 22(2),(4).**

C *Regard to the Purposes of the PSLRTA, 1997*

In making a bargaining unit determination, the Board is required to have regard to the purposes of the *Act*: **s. 22(7)** [these purposes are set out at p. 3 above]**.** In addition to the facilitation of collective bargaining and the fostering of prompt resolution of workplace disputes, the stated purposes also include encouraging best practices in the delivery of services and facilitating the establishment of effective and rationalized bargaining unit structures.

< **Agreement on Bargaining Agents**

Where an agreement on bargaining units is executed under s. 20, all of the bargaining agents that are parties to the agreement can agree upon which bargaining agent will represent each bargaining unit: **s. 21(1)**. Such an 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)**.

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

If no agreement is in effect within 10 days after the related agreement on bargaining units under s. 20 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).**

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 *Labour Relations Act, 1995*, the *Fire Protection and Prevention Act, 1997* and the *Police Services Act*: **s. 17**.

< **Orders with respect to Bargaining Agents**

Where a request is made under s. 21(4) or where it makes an order determining bargaining unit configuration. The Board must make an order determining who is the bargaining agent for each bargaining unit whose description has changed as a result of an agreement under s. 20 or an order under s. 22: **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).**

C ***Requirement to Hold Vote***

The Board must determine bargaining rights by holding a representation vote by secret ballot: **s. 23(2),(15)**.

However, 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)**.

If any employee in the bargaining unit was previously a Crown employee represented by a bargaining agent under *Crown Employees Collective Bargaining Act*, 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)**.

> **NOTE:** Whereas 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.

C *Determination of Candidates*

The Board is to determine which choices and candidates for bargaining agent will appear on the ballot: **s. 23(16)**. However, where immediately before the changeover date any employee in the bargaining unit was a Crown employee represented by a bargaining agent under the *Crown Employees Collective Bargaining Act, 1993*, that bargaining agent must be included on the ballot: **s. 23(4)**.

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 the purposes of s. 23(5), former

Crown employees will be counted as having been not unionized immediately before the changeover date: **s. 23(6).**

C *Practices and Procedures*

The 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 more than 50% of the votes cast: **s. 23(13),(15).** The Board has the discretion to determine who is eligible to vote: **s. 23(17)**. It must determine the choices and candidates that are to appear on the ballot in accordance with its practices and procedures: **s. 23(16)**.

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).

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

C *Limitations on Challenges to Votes*

The *Act* provides that no order of the Board appointing a bargaining agent shall 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)**.

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

< **Collective Agreements in the New Bargaining Unit**

Section 24 of the *Act* sets out how collective agreements will apply where bargaining unit configurations are changed: **s. 24(1)**.

The collective agreements that were continued under s. 15 continue to apply to the individual bargaining unit members who were previously covered by them: **s. 24(2)**.

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)**. The composite agreement will continue in effect for one year from the agreement or order determining the new unit and bargaining agent, or until such other date that

the parties may agree upon in writing: **s. 24(7)**. 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).**

If no collective agreement applied to a bargaining unit member immediately before the bargaining unit configuration changed, 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)**.

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: **s. 25(10), s. 26(6).**

C *Seniority Provisions in and Determinations made under a Composite Agreement*

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).**

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

"1. If the bargaining agent representing the employees in the bargaining unit was a party to one of the collective agreements immediately before the changeover date, the seniority provisions contained in that collective agreement apply to all employees in the bargaining unit.

2. If the bargaining agent representing the employees in the bargaining unit was a party to more than one of the collective agreements immediately before the changeover date, the employer and the bargaining agent may agree as to which collective agreement's seniority provisions will apply to the employees in the bargaining unit 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).**

If two or more collective agreements containing seniority provisions apply to the employees in the bargaining unit but the 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).**

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

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).

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)**, [by reference to s. 33(3)].

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.

The parties may 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 [i.e. s. 33(3),(4)] on seniority are respected: **s. 25(7),(8).**

Where the seniority provisions of one collective agreement are made applicable to all the employees in the bargaining unit, 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)**.

C *Grievance Provisions in a Composite Agreement*

Parallel provisions apply to determine which grievance procedures apply under a composite agreement applying to a new or reconfigured bargaining unit.

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

If two or more collective agreements containing grievance provisions apply to employees in the bargaining unit and if the bargaining agent was a party to one of collective agreements, the grievance provisions in that agreement apply. If the 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): **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): **s. 26(4).**

C *OLRB Can Determine Disputes*

If a dispute arises 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 and Termination Applications Following the Changeover Date**

When an 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 an order to determine bargaining units has been requested, no application for certification to represent employees of the successor 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).** In addition, 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)**.

3. Reaching A New Collective Agreement

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

C the parties can agree to, or request the Board to order, a "replacement agreement", or

C one party can give notice to bargain for a new collective agreement.

< **Replacement Agreement**

C *By Agreement*

First, the successor employer and the bargaining agent can 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).**

C *By Order of the OLRB*

Alternatively, the parties can jointly request

the Board to order that the composite agreement is replaced by one of its constituent collective agreements: **s. 30(1)**. 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)**. 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)**.

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).**

C *Seniority Rights*

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. 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.

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)**.

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)**.

< Notice to Bargain

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; for a replacement agreement, both parties 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 *Labour Relations Act, 1995* or s. 47(2) of the *Fire Protection and Prevention Act, 1997*: **s. 31(2)**.

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

C *Application of First Contract Provisions*

The first contract provisions in s. 43 of the *Labour Relations Act, 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 *Labour Relations Act* and to whom the *Hospital Labour Disputes Arbitration Act* 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 *Labour Relations Act, 1995*.**

C *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).**

In addition, the interest arbitrator must take into consideration the purposes of the *Public Sector Dispute Resolution Act, 1997* [which are cited at p. 19 below]: ***PSDRA*, s. 2(1)(e), 2(2)**.

• *Seniority Rules*

The seniority rules set out in the *Act* (discussed at p. 15 above) apply when a replacement agreement is agreed upon or ordered, and apply to the first collective agreement after notice to bargain is given following restructing: **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).**

C *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 seniority provisions in the *Act* can also

apply to circumstances that are otherwise not part of the restructuring and amalgamations governed by the *Act*. During the transitional period, where a sale of a business as defined in the *Labour Relations Act, 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,

the *Act*'s seniority provisions will apply: **s. 12, s. 36.** However, these provisions do not apply to a sale of business by the Crown: **s. 12(3)**

Either the bargaining agent or the successor employer can apply to the Board for a 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 respects:

< The seniority provisions in s. 33 of the *Act* 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.

< 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.

< 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)**.

***PSLRTA, 1997* and its Regulations Prevail Over Other Statutes**

In the event of a conflict between the *PSLRTA, 1997* or a regulation made under it and any other Act, the *PSLRTA, 1997* and the regulations made under it prevail: **s. 39(1).**

NOTE: The Ontario Court General Division has already stated that a provision which allows regulations to prevail over statutes is a highly extraordinary grant of power. After regulations have been made under the *Act*, questions may arise about the constitutionality of this conflict provision.

THE *PUBLIC SECTOR DISPUTE RESOLUTION ACT, 1997 (PSDRA, 1997)* - SCHEDULE A TO BILL 136

Application of the *PSDRA, 1997*

The *PSDRA, 1997* applies and makes changes to the interest arbitration regimes established by the following statutes:

- arbitrations conducted under the *Hospital Labour Disputes Arbitration Act* (*HLDAA*)
- arbitrations conducted under s.50 of the *Fire Protection and Prevention Act, 1997* (*FPPA, 1997*)
- arbitrations conducted under s.122 of the *Police Services Act* [municipal police forces]
- arbitrations conducted under s. 26 of the *Public Service Act* [Ontario Provincial Police]

Unless otherwise noted, the section numbers referred to in this discussion are to the relevant amended statute.

Purposes of the *PSDRA, 1997*

< Additional New Statutory Criteria

The *Act* introduces three new criteria which interest arbitrators and arbitration boards are directed to take into account. These new criteria are in addition to any other criteria, which include the statutory criteria introduced last year by Schedule Q of *Bill 26*.

< *Schedule Q* Criteria

Schedule J of *Bill 26* added the following new criteria for interest arbitrations under *HLDAA*, the *Fire Departments Act* [now replaced by *FPPA, 1997*], the *Police Services Act* and the *Public Service Act*:

- The employer's ability to pay in light of its fiscal situation.
- The extent to which services may have to be reduced, in light of the decision or award, if current funding and taxation levels are not increased.
- The economic situation in Ontario and the relevant municipality [Ontario only for the OPP].
- A comparison, as between the employees and comparable employees in the public and private sectors, of the terms and conditions of employment and the nature of the work performed.
- The employer's ability to attract and retain qualified employees.

Two additional factors apply to municipal police forces:

- The interest and welfare of the community served by the police force.
- Any local factors affecting that community.

< *PSDRA, 1997* Purposes

The three new criteria, set out as the purposes of the *Act*, are:

"1. To ensure the expeditious resolution of disputes during collective bargaining.

2. To encourage the settlement of disputes through negotiation.

3. To encourage best practices that ensure the delivery of quality and effective public services that are affordable for taxpayers.": ***Bill 136*, s. 1**

NOTE: *Bill 136* introduces a number of changes to the arbitration process which are designed to place controls over the process in place of the

Dispute Resolution Commission alternative which was provided for in the first reading version. For employees governed by *FPPA, 1997* and *HLDAA*, these changes include new Ministerial powers over the process. For employees governed by the *Police Services* and *Public Services Acts*, similar powers are established but are to be exercised by the Chair of the Police Arbitration Commission.

< ***PSDRA, 1997* Purposes Also Apply to *OLRA* Interest Arbitrations Arising out of Public Sector Restructuring Affected by *Bill 136***

The *Act*'s purposes will also have to be taken into consideration by arbitration boards and arbitrators under ss. 40 and 43 of the *Labour Relations Act, 1995*, as they apply under *Bill 136*: ***Bill 136* s. 2(1),(2).**

Termination of Existing Proceedings

< Automatic Termination of Proceedings

For *HLDAA* proceedings, the *Act* automatically terminates "proceedings before an arbitrator or arbitration board" commenced before the date on which the provision comes into force. Any decision in such proceeding is void: *HLDAA, s. 17(1)*

For all other proceedings, the *Act* provides for the automatic termination of "proceedings in which a hearing was commenced" before an arbitrator or board of arbitration before the date on which the provision comes into force. Any decision in such proceedings is void: *FPPA, 1997, s. 50.8(1); Police Services Act s. 122.1(1) Public Service Act, s. 26.4(1)*;

NOTE: Section 17(3) of the *PSLRTA, 1997*, by which interest arbitrations in which a final decision has not been issued are terminated, would also appear to apply.

< Exceptions to Automatic Termination

The provision for automatic termination of proceedings and voiding of decisions does not apply with respect to proceedings in which a hearing was commenced before June 3, 1997 if:

- C a final decision is issued on or before June 3, 1997, or
- C a final decision is issued after June 3, 1997 and the decision is served before the amending provisions come into effect: *HLDAA*, s. 17(2); *FPPA, 1997*, s. 50.8(2); *Police Services Act*, s. 122.1(2); *Public Service Act*, s. 26.4(2).

These provisions also do not apply if the parties agree in writing to continue the proceedings. Under *HLDAA* and *FPPA, 1997*, this written agreement must be made after the date the amending provision comes into effect: *HLDAA*, s. 17(3); *FPPA, 1997*, s. 50.8(3). Under the *Police Services Act* and the *Public Service Act*, the agreement can made any time after June 3, 1997: *Police Services Act*, s. 122.1(3); *Public Service Act*, s. 26.4(3).

Ministerial Powers in Relation to the Constitution of the Arbitration Board under *HLDAA* and *FPPA, 1997*

With respect to *HLDAA* and *FPPA, 1997*, the *Act* gives the relevant Minister the following powers over the interest arbitration process.

< **Power to Replace Board Members**

If the Minister is of the opinion that a member has failed to enter on or carry out their duties so as to enable the board to render a decision within the statutory timeframe, the Minister may appoint a replacement member after consulting the party whose point of view was represented by that member: *HLDAA*, s. 6(9); *FPPA, 1997*, s. 50.2(13).

< **Power to Replace Chair of Board**

If the chair is unable to enter on or carry out their duties so as to enable the board to render a decision within the statutory timeframe, the Minister may appoint a person to act as chair in their place: *HLDAA*, s. 6(10); *FPPA, 1997*, s. 50.2(14).

< **Ministerial Power to Replace Single Arbitrator**

If a single arbitrator jointly appointed by the parties dies before completing their work or is unable to enter on or carry out their duties so as to enable them to render a decision within the statutory timeframe, upon notice or complaint the Minister may, after consulting with the parties, notify them that the arbitrator is unable to enter on or carry out their duties and the provisions relating to appointing a board of arbitration will apply with necessary modifications: *HLDAA*, s. 6(11); *FPPA, 1997*, s. 50.2(15).

< **Exception: Ability to Recommence with New Board**

If any member of the board was appointed by the Minister, the parties may jointly serve written notice on the Minister that they have agreed that the arbitration should be recommenced before a different board at any time before the arbitrator or board renders a decision: *HLDAA*, s. 6(18.1); *FPPA, 1997*, s. 50.2(25).

If notice is served on the Minister, the appointment of all members are terminated effective the day the Minister is served: *HLDAA*, s. 6 (18.2),(18.3); *FPPA, 1997*, s. 50.2(26),(27). Within seven days after notice is served on the Minister, the parties must jointly appoint either a single arbitrator or their members to an arbitration board: *HLDAA*, s. 6(18.4); *FPPA, 1997*, s. 50.2(28).

Ministerial Powers in Relation to Interest Arbitration Proceedings under *HLDAA* and *FPPA, 1997*

< **Minister to Select Method of Proceeding Where Minister Selects the Chair under *HLDAA* and *FPPA, 1997***

Where the chair of the board is appointed by the Minister, the Minister shall also select the method of arbitration: *HLDAA*, s. 6(7.1); *FPPA, 1997*, s. 50.2(8).

The Minister must select mediation-arbitration, unless the Minister is of the view that another method is more appropriate: *HLDAA*, s. 6(7.2); *FPPA, 1997*, s. 50.2(9).

The Minister cannot select final offer selection without mediation: *HLDAA*, s. 6(7.3); *FPPA, 1997*, s. 50.2(10).

The Minister cannot select mediation-final offer selection unless the Minister in her/his sole discretion is of the view that it is the most appropriate method having regard to the nature of the dispute: *HLDAA*, s. 6(7.4); *FPPA, 1997*, s. 50.2(11).

NOTE: The Chair of the Ontario Police Arbitration Commission has similar powers where she or he has appointed the arbitrator or chair of an arbitration board: *Police Services Act*, s. 122(2)¶4; *Public Service Act*, s. 26.2(2)¶4.

< **Hearing Schedule**

The chair of the board shall fix the time and place of the first or any subsequent hearing, with the qualification that the first hearing must be held within thirty days after the last (or only) member is appointed:; *HLDAA*, s. 6(13),(13.1); *FPPA, 1997*, s. 50.2(16),(17).

Notice of hearings is to be given by the Chair to the Minister who will notify the parties and the members of the board (if any): *HLDAA*, s. 6(13); *FPPA, 1997*, s. 50.2(16).

The thirty-day time limit applies similarly to the commencement of mediation-arbitration or mediation-final offer selection: *HLDAA*, s. 6(13.2); *FPPA, 1997*, s. 50.2(18).

NOTE: A thirty-day commencement deadline also applies to the police: *Police Services Act*, s. 122(3),(3.1); *Public Service Act*, s. 26.2(3),(4).

< **Ministerial Power to Expedite**

The chair of a board must keep the Minister advised of the progress of the arbitration. Where the Minister is advised that the board has failed to render a decision within the relevant statutory timeframe, after consulting the parties and the board the Minister may issue whatever order she/he considers necessary in the circumstances to ensure that a decision will be rendered within a reasonable time: *HLDAA*, s. 6(15); *FPPA, 1997*, s. 50.2(20).

C *Deadline for Decision*

The decision shall be rendered within ninety days after the last (or only) member is appointed, although The parties may agree to extend the time either before or after it has passed: *HLDAA*, s. 9(4),(5); *FPPA, 1997*, s. 50.5(5),(6).

NOTE: There are similar deadlines for the police but without a corresponding power to expedite: *Police Services Act*, s. 122(3.5),(3.6); *Public Service Act*, s. 26.2(8),(9).

< **Deadline for Presenting Information in Mediation-Arbitration or Mediation-Final Offer Selection**

If the Minister selects mediation-arbitration or mediation-final offer selection as the method of proceeding, the chair may, after consulting with the parties, set a date after which a party may not submit information unless the information was not available prior to that date, the chair permits its submission and the other party is given an opportunity to make submissions concerning the information: *HLDAA*, s. 6(16.1); *FPPA, 1997*, s. 50.2(23).

NOTE: The arbitrator or chair in police arbitration has a similar power: *Police Services Act*, s. 122(3.2); *Public Service Act*, s. 26.2(5).

< Ministerial Power to Delegate

The Minister may delegate to any person the power to make an appointment, order or direction:; *HLDAA*, s. 9.2(1); *FPPA, 1997*, s. 50.7(1),

 # Other Amendments to *FPPA, 1997*

The *Act* repeals the current s. 50 of *FPPA, 1997* and substitutes a new set of provisions governing interest arbitration for firefighters. In addition to the provisions outlined above, *Bill 136* includes the following provisions for firefighter interest arbitration.

< Mandatory Referral to Arbitration

Where the Minister has informed the parties that the conciliation officer has been unable to effect a collective agreement, the matters remaining in dispute must be decided by arbitration in accordance with *FPPA, 1997*: **s. 50**.

< Arbitration by Single Arbitrator

Where the parties agree to have the matters in dispute decided by a single arbitrator, they must jointly appoint a person to act within seven days after the Minister has informed them that the conciliation officer has not been able to effect a collective agreement: **s. 50.1(1), s. 50.2(1)**. It is not clear whether the provision in s. 50.2(2) to extend this deadline for a further period of 7 days by mutual agreement for appointments to boards also applies to single arbitrator appointments.

As soon as a single arbitrator has been appointed by the parties, they must notify the Minister of the person's name and address: **s. 50.1(3)**.

A single arbitrator will constitute a board of arbitration and will have the same powers and duties as the chair of a board of arbitration: **s. 50.1(2)**.

< Appointment of Board of Arbitration

Each party must appoint a member within seven days after the day on which the Minister has informed them that the conciliation officer has not been able to effect a collective agreement: **s. 50.2(1)**. This deadline may be extended for one further seven-day period by mutual agreement in writing: **s. 50.2(2)**. Both the other party and the Minister must be notified of the name and address of a member appointed as soon as the appointment is made: **s. 50.2(6)**.

Where a party fails to appoint a member by the statutory deadline, the Minister shall appoint the member upon the written request of either party: **s. 50.2(3)**.

Where a member appointed by a party or by the Minister is unable to attend the first hearing, upon the request in writing of the chair the party shall appoint a new member within five days of the date of the request. Where the appointment is not made within five days, upon the written request of the chair the Minister shall appoint a new member: **s. 50.2(19)**.

If a member fails to enter on or carry out duties, the Minister must appoint a replacement member after consulting the party whose point of view was represented by the member: **s. 50.2(13)**. The Minister must also appoint a replacement, after consulting the party whose point of view was represented by the member, for a person who ceases to be

a member because of resignation, death or otherwise before the board has completed its work: **s. 50.2(12)**.

The members must appoint a chair within ten days after the day on which the second member was appointed: **s. 50.2(4)**. The Minister must be notified of the name and address of the third member appointed as soon as the appointment is made: **s. 50.2(7)**. Where the members fail to agree on a chair by the statutory deadline, notice must be given forthwith to the Minister who will appoint as the chair a person who is, in the opinion of the Minister, qualified to act:
s. 50.2(5).

< **Powers of Boards and Arbitrators**

The chair and members of a board have all the powers respectively of a chair and members of a board of arbitration under the *Labour Relations Act, 1995*: **s. 50.2(29)**.

Where members of a board cannot agree on matters relating to procedure or the admissibility of evidence, the decision of the chair will govern: **s. 50.2(22)**.

< **Matters to be Decided**

The board is required to examine into and decide matters in dispute and any other matters that appear to the board necessary to be decided in order to conclude a collective agreement: **s. 50.5(1)**.

Where during bargaining or arbitration proceedings the parties agree on some matters and notify the board of the matters agreed upon, the board's decision is to be confined to matters not agreed upon and to such other matters that appear necessary to the board to be decided to conclude a collective agreement: **s. 50.6(3)**. Where the parties have not notified the board in writing of their agreement on some of the matters, the board must decide all matters in dispute and such other matters as appear necessary to the board to conclude a collective agreement:
s. 50.6(4).

Where the parties agree on all matters to be included in a collective agreement during bargaining or during the proceedings before a board, they must put them in writing and execute the document: **s. 50.6(1)**. If the parties fail to put their agreement in writing or one of them fails to execute the written agreement within seven days after it was executed by the other party, they will be deemed not to have made a collective agreement and the interest arbitration provisions will apply: **s. 50.6(2)**.

< **Multiple Disputes**

Where there are matters in dispute to be decided by more than one arbitration, the parties may agree in writing to have them decided by one board: **s. 50.4(1)**. In this instance, the bargaining agents for or on behalf of any firefighters shall be one party and their employers shall be the other party: **s. 50.4(2)**.

The board may make a decision on matters of common dispute between all parties and refer matters of particular dispute to the parties concerned for further bargaining: **s. 50.4(3)**. The board shall decide these matters of particular dispute if they are not resolved by further collective bargaining: **s. 50.4(4)**.

< **Decision is Made by a Majority of Members or by the Chair**

The decision of a board is the decision of a

majority of members or of the chair if there is majority: **s. 50.2(24)**.

< Board to Remain Seized

The board shall remain seized of and may deal with all matters in dispute until a collective agreement is in effect: **s.50.5(4)**.

< Preparation of Collective Agreement

The parties must prepare and execute a collective agreement giving effect to the decision of the board and their agreement, if any, within five days of the date of the decision or such longer period as they may agree to in writing: **s. 50.6(5)**. If the parties fail to prepare and execute a collective agreement within the statutory timeframe, one or both parties must notify the chair and the board must prepare the document: **s. 50.6(6)**. If one or both parties fail to execute the collective agreement prepared by the board within five days of the board submitting it to them, the document shall come into effect as though it had been executed by the parties: **s. 50.6(7).**

< Remuneration and Expenses

Each party will pay the remuneration and expenses of their member, and one-half of the chair's remuneration and expenses:
s. 50.5(7).

< Enforcement

Where a party or firefighter fails to comply with any of the terms of the decision, any party or firefighter affected by the decision may file a copy in the Ontario Court General Division and enforce it in the same way as a judgment or order of the court: **s. 50.5(8)**.

< *Arbitration Act, 1991* and *Statutory Powers Procedure Act* do not Apply

The *Arbitration Act, 1991* and the *Statutory Powers Procedure Act* do not apply to these arbitrations. **s. 50.5(9).**

< No Review of Appointment or Proceedings

Where a single arbitrator or the three members of a board have been appointed, it shall be conclusively presumed that the board has been established in accordance with the *Act*. No judicial review application can be made to challenge the establishment of the board or the appointment of a member, or to prohibit or restrain its proceedings: **s. 50.3**.

< Designation of Managers

If two or more municipalities employing firefighters amalgamate after the amending provisions come into effect, the amalgamated municipality will be entitled to designate as managers under s. 54(4) the sum of the numbers which the predecessor municipalities would have been able to designate: **s. 54(8.1)**. Likewise, if two or more municipalities employing firefighters are dissolved and a new municipality is incorporated, the new municipality will be able to designate as managers under s. 54(4) the total of the numbers which the previous

municipalities would have been able to designate: **s. 54(8.2)**.

< Regulation-Making Power

The Minister will continue to have the power to make regulations governing the appointment of conciliation officers and the selection of arbitrators, but will no longer have

the power to make regulations governing the appointment of members of an arbitration board: **s. 57**.

Other Amendments to the *Police Services Act*

< No Arbitration Until After Conciliation

Neither party can give a notice requiring matters in dispute to be referred to arbitration under s. 122 until a conciliation officer has been appointed, has endeavoured to effect an agreement, has reported to the Solicitor General and the Solicitor General has informed the parties of the conciliation officer's report: **s. 121(5)**.

A party may give written notice to the other party and the Chair of the Arbitration Commission referring to arbitration matters which are outstanding after bargaining and conciliation: **s. 122(1)**.

< Composition of Arbitration Board

If the arbitration board is to consist of one person, the parties shall appoint him or her jointly. If they are unable to agree on a joint appointment, the person shall be appointed by the chair of the Arbitration Commission: **s. 122(2)¶2**.

If the arbitration board is to consist of three persons, the parties shall each appoint one person and shall jointly appoint a chair. If they are unable to agree on a joint appointment, the chair shall be appointed by the chair of the Arbitration Commission:
s. 122(2)¶3.

< Hearing Process

If the method of arbitration selected by the chair of the Arbitration Commission is conventional arbitration, the board must hold a hearing but the chair or sole arbitrator has discretionary authority to impose limits on the submissions of the parties and the presentation of their cases: **s. 122(3.3).**

< Consolidation of Disputes

Disputes may be arbitrated together only if all the parties to the disputes agree:
s. 122(3.4).

< Remuneration and Expenses

The parties are each to pay the remuneration and expenses of a member appointed by them or on their behalf, and one-half of the chair's or sole arbitrator's remuneration and expenses. **s. 122(3.7).**

< Consultation Before Chair of Arbitration Commission is Appointed

No person will be appointed as chair of the Arbitration Commission after this provision comes into force unless the Solicitor General or his or her delegate has first consulted with or attempted to consult with:

> bargaining agents that, in the opinion of the Solicitor General or his or her delegate, are reasonably representative of the bargaining agents that represent members of police forces, and
>
> employers or employers' organizations that, in, the opinion of the Solicitor General or his or her delegate, are reasonably representative of the employers of members of police forces:

s. 131(6.1).

< Roster for Appointments

The chair of the Arbitration Commission shall establish and maintain a roster of persons who may appointed under s. 122:
s. 131(6.2).

The chair of the Arbitration Commission may appoint a person under section 122 who is not on the roster only after first consulting with, or attempting to consult with, the other members of the Commission: **s. 131(6.3).**

No person shall be placed on or removed from the roster unless the chair of the Arbitration Commission has first consulted with, or attempted to consult with, the other members of the Arbitration Commission:
s. 131(6.4).

 # Other Amendments to the *Public Service Act*

< Negotiating Committee

The OPP Negotiating Committee will continue. It will be composed of three members appointed by the Association, three members appointed by the employer and a chair appointed by the members. The Chair shall not be a member of the staff side or of the employer side and shall not vote:
s. 26(5),(6).

< Grievance procedure

The Negotiating Committee may establish a binding arbitration procedure to deal with any grievance concerning working conditions or terms of employment, unless they are governed by the *Police Services Act* or relate to pensions, or concerning the interpretation or clarification of any clause in an agreement:
s. 26(13).

< Conciliation

If a majority of the members of the Negotiation Committee is unable to agree upon a matter concerning the amendment or renewal of an agreement or any matter that may be the subject of bargaining, the chair shall, at the request of a member, request the Solicitor General to appoint a conciliation officer, and the Solicitor General shall appoint a conciliation officer upon receiving the request: **s. 26.1(1).**

The conciliation officer shall confer with the Negotiating Committee and endeavour to effect an agreement and shall, within fourteen days after being appointed, make a written report of the results to the Solicitor General: **s. 26.1(2).** The fourteen-day period may be extended by agreement of the parties or by the Solicitor General on the advice of the conciliation officer that an agreement may be made within a reasonable time if the period is extended: **s. 26.1(3).**

When the conciliation officer reports to the Solicitor General that an agreement has been reached or cannot be reached, the Solicitor General shall promptly inform the Negotiating Committee of the report:
s. 26.1(4).

< Referral to Arbitration

If the Solicitor General has informed the Negotiating Committee that the conciliation officer was not able to effect an agreement, the chair shall, at the request of a member, refer the matter to arbitration: **s. 26.2(1).**

< Composition of Arbitration Board

The parties shall determine whether the board shall consist of one person or of three persons. If they are unable to agree on this matter, or if they agree that the arbitration board shall consist of three persons but one of the parties then fails to appoint a person in accordance with the agreement, the arbitration board shall consist of one person: **s. 26(2)¶1**

If the arbitration board is to consist of one person, the parties shall appoint him or her jointly. If they are unable to agree on a joint appointment, the person shall be appointed by the chair of the Arbitration Commission: **s. 26.2(2)¶2**

If the arbitration board is to consist of three persons, the parties shall each appoint one person and shall jointly appoint a chair. If they are unable to agree on a joint appointment, the chair shall be appointed by the chair of the Arbitration Commission: **s. 26.2(2)¶3**

< **Hearing Process**

If the method of arbitration selected by the chair of the Arbitration Commission is conventional arbitration, the board must hold a hearing but the chair or sole arbitrator has discretionary authority to impose limits on the submissions of the parties and the presentation of their cases: **s. 26.2(6)**

< **Consolidation of Disputes**

Disputes may be arbitrated together only if all the parties to the disputes agree: **s. 26.2(7)**

< **Pensions Cannot be Arbitrated**

No matter relating to pensions for members of the Association shall be referred to arbitration and no arbitration board shall decide any matter relating to pensions for members of the OPP: **s. 26.3.**

PAY EQUITY ACT AMENDMENTS

< **Overview of Changes Ultimately Made by of *Bill 136***

C *Provisions Removed from the First Reading Version*

The following provisions in the First Reading version have been removed from the *Bill*:

< The provision which would have excluded private home day-care workers from the *Pay Equity Act*

< The provisions which would have limited public sector employers' retroactive liability for pay equity adjustments; thus, liability will not be restricted to the date of a complaint and the original compliance dates will continue to apply.

C *Provisions Retained and Modified from the First Reading Version*

The following provisions have been retained from the first reading version, in some instances with modifications as noted:

< The provisions which addressed the transfer of pay equity plans upon the sale of a business have been retained but modified in a way which may permit a broader scope of negotiation

following the sale of business; these provisions repeal the guarantee that pay equity adjustments following a sale of business would not be lower than they were before the sale.

< The new sale of business provisions continue to apply to both public and private sector workplaces.

< The new sale of business provisions also continue to expressly apply to amalgamations and restructuring which occur under sections 3 to 10 of the *Public Sector Labour Relations Transition Act, 1997*.

< **Sale of A Business and Transfer of Pay Equity Plans**

Prior to *Bill 136*, the *Pay Equity Act* provided that on the sale of a business the purchaser is bound to make the compensation adjustments required by the seller's pay equity plan for the positions that are maintained by the purchaser. Where, as a result of the sale, the employer or union believe that the seller's plan is no longer appropriate, the parties can enter into negotiations for an amended plan. Where the employees are not unionized, the employer can unilaterally prepare a new plan. If a new or amended plan was prepared under s. 13(2) or under the changed circumstances provisions in s. 14.1 and s. 14.2, compensation adjustments in the new plan could not be lower than the adjustment that would have been made under the predecessor's plan.

Bill 136 amends the sale of business provisions in the *Pay Equity Act* so that following a sale, a purchaser can negotiate or prepare a replacement pay equity plan that provides for pay equity adjustments that are lower than those that would have been made under the seller's plan: ***Bill 136*, s. 4.**

This is accomplished by repealing sections 13.1(3) and (4) of the *Pay Equity Act* and substituting the following:

> **13.1(3)** Clause 14(2)(a), subsections 14.1(1) to (6) and 14.2(1) and (2) apply, with necessary modifications, to the negotiation or preparation of a new plan.

These changes have the following effects:

< **"No Reduction" Protection Removed**

By repealing s. 13.1(4), *Bill 136* removes the "no reduction" protection in the context of the sale of a business. This is reinforced by the new s. 13.1(3) which expressly provides that the no reduction protections in s. 14.1(7) and s. 14.2(3) also do not apply on the sale of a business.

Accordingly, under the *Bill 136* amendments an employer who purchases or sells a business can renegotiate the pay equity plan and can provide a pay equity adjustment that is lower than that which was required by the previous plan.

It should be noted, however, that in a unionized workplace the employer cannot unilaterally impose lower pay equity adjustments. The amended plan must still be negotiated with the union. If the parties do not reach agreement following negotiations, the appropriate adjustment may have to be determined by a Review Officer or ultimately by the Pay Equity Hearings Tribunal.

< **Renegotiation of Pay Equity Plans**

The new s. 13.1(3) provides that clause 14(2)(a) now applies to negotiations to amend a pay equity plan following the sale of a business. Section 14(2)(a) did not apply previously upon the sale of a business under either the previous *Pay Equity Act* or the first reading version of *Bill 136*.

By s. 14(2)(a), the employer and bargaining agent are required to negotiate in good faith and endeavour to agree upon the gender-neutral comparison system that will be used to evaluate and compare the job classes that are covered by the plan.

By incorporating this provision, the new s. 13.1(3) broadens the scope of negotiations that can take place following the sale of a business.

If the parties are required to negotiate with respect to the gender-neutral comparison system, it is possible that the entire pay equity plan may be opened for revision. For example, if the parties agree upon a gender-neutral comparison system which is different from that under which the job classes were previously evaluated, rated and compared, the job classes may need to be re-evaluated and the comparisons redone. The amended plan may provide for entirely different pay equity adjustments than had been provided under the earlier plan. Again, there is no protection to ensure that the amended adjustments will not be lower than those which had previously been negotiated.

- **Application to Public Sector Amalgamations and Restructuring**

Finally, the section by which the new sale of business provisions are made applicable to public sector amalgamations and restructuring which take place under the *Public Sector Labour Relations Transition Act, 1997* has been retained, unmodified, from the First Reading version.

Bill 136 introduces a new s. 13.1(4.1) to the *Pay Equity Act* which states as follows:

> **s. 13.1(4.1)** This section applies with respect to an occurrence described in sections 3 to 10 of the *Public Sector Labour Relations Transition Act, 1997*. For the purposes of this section, the occurrence shall be deemed to be the sale of a business, each of the predecessor employers shall be deemed to be a seller and the successor employer shall be deemed to be the purchaser.

The "occurrences" set out in section 3 to 10 of the *Public Sector Labour Relations Transition Act, 1997* are

- Municipal sector amalgamations or dissolutions: s. 3
- New City of Toronto and local boards amalgamations or dissolution and new Toronto Hydro Electric Commission: s. 4 to 6
- School board amalgamations (excluding Bill 100 teachers who are expected to be dealt with under separate legislation): s. 7
- Hospital sector amalgamations or dissolutions: s. 8 to 9
- Other situations which Cabinet, by regulation, decides should be covered:

s. 10.

EMPLOYMENT STANDARDS ACT AMENDMENTS

No changes have been made to the first reading version of the amendments to the *Employment Standards Act*. These amendments:

- provide that where an employer who sells a business pays an amount as severance pay which equals the amount that a purchaser employer would have owed to a person not employed in a sale of business under s. 13, the amount paid by the vendor employer will be treated as severance pay,

- extend the application of the sale of business provisions to the Crown, and

- eliminate the Wage Protection Program effective as of the date the repeal comes into force; the Program will continue to apply only to wages that become due and owing before it is eliminated.