

*Prepared for the Regional Municipality of Niagara
(to be shared with Regional CAOs)
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Regional Transit Integration: Labour Relations and Employment Processes and Implications

Overview

You have asked us to provide a high level overview of how the amalgamation of three existing transit operations into one new entity might take place from a labour and employment perspective and to also highlight any potential issues, risks, or concerns.

We have had a chance to review the relevant law, legislation, and predecessor collective agreements but have not been provided with any employment contracts for review.

This overview is provided for the Regional Municipality of Niagara. We recommend that each of the existing transit units obtain individual legal advice regarding many of the issues raised below.

Factual Background

St. Catharines Transit Commission, Niagara Falls Transit, and Welland Transit are the three main transit units in the Niagara Region. St. Catharines Transit Commission is a stand alone entity and Niagara Falls Transit and Welland Transit are departments in their respective municipalities.

The Region is considering amalgamating these three entities, in addition to inclusion of the remaining nine municipalities without established unionized transit services, into one new Transit Commission.

Each of the three entities has unionized and non-union employees. The unionized employees at each entity are represented by three separate locals of the Amalgamated Transit Union (“ATU”), under three separate collective agreements, each with different terms and conditions of employment. St. Catharines Transit Commission is the largest entity, with more employees than the other two entities combined.

Each of the three collective agreements contemplates amalgamations, mergers, and/or successor rights. That said, these clauses add very little in terms of new obligations (on top of any obligations arising from statute and the common law). One requires 30 days’ notice; one requires that the predecessor employer make every reasonable effort to protect the interests of the bargaining unit employees. In general, the clauses reiterate the state of the law: that the new Transit Commission must recognize the predecessor collective agreements and the ATU’s bargaining rights.

Lastly, we understand that the WEGO service will stay with Niagara Falls Transit, with the operators either maintaining their employment with Niagara Falls Transit or having their employment transferred to the new Transit Commission but still working on the WEGO service.

The Amalgamation Itself: How Does it Occur from An Employment/Labour Relations Perspective

The new Transit Commission will need to pick an Amalgamation Date that will serve as the start date for the employees who are offered employment at the new Transit Commission.

Non-Union Employees

Non-union positions at the new Transit Commission may be filled with new external hires or with employees from the predecessor entities, or a combination of both. This can be determined through job competitions involving only external candidates, only predecessor entity candidates, or a combination of both. Or, the new Transit Commission can simply appoint/make an offer to an existing predecessor entity employee without a competition.

Typically, the majority of non-union employees in the new Transit Commission would come from the ranks of the predecessor entities in order to maintain knowledge transfer and to reduce severance costs, but there is no legal requirement for the new Transit Commission to retain any non-union employee.

Non-union employees from the predecessor entities who are offered employment at the new Transit Commission (either following a competition or without one) should be given two letters simultaneously, ideally at least eight weeks prior to the Amalgamation Date: the first letter is from their existing employer terminating their employment as of the Amalgamation Date, and it should refer to and enclose a second letter from the new Transit Commission offering employment as of the Amalgamation Date. The second letter should indicate the new job title (if any), any changes in terms and conditions of employment, and how the prior employment at the transit unit will be treated at the new Transit Commission for the purpose of various entitlements such as vacation and future termination of employment. This second letter may also include transitional information regarding issues such as pension, vacation, lieu time etc.

Employees from the predecessor entities should be given significant time (at least two weeks) to accept or reject this offer of employment in writing. Those who reject the offer of employment will be the responsibility of the relevant existing transit unit (unless otherwise agreed), but it likely can be successfully argued that they have failed to mitigate their damages and their entitlement is limited to their *Employment Standards Act, 2000* ("ESA") entitlements (this may be affected by any applicable language in any employment contract). Most employees tend to accept offers of this nature as long as the employee is provided with substantially the same terms and conditions of employment.

Some non-union employees from the predecessor entities may not be offered employment with the new Transit Commission. The termination of employment or reassignment of these employees would be the responsibility of the existing transit unit (unless otherwise agreed) and their entitlements would depend on any applicable contractual language and/or the common law.

Unionized Employees

As a basic principle, the new Transit Commission will inherit the existing Union(s) and collective agreements of the predecessor entities. While it need not retain all the unionized employees if it needs fewer employees than the combined existing complement (employees could be, for example, laid off by the predecessor entities prior to the amalgamation), it will be required to fill its complement of unionized employees with the existing unionized employees (i.e. it cannot hire externally for unionized positions unless it has already inherited all the existing unionized employees).

As soon as possible prior to the Amalgamation Date, the employees and the ATU Locals should be informed in writing of the Amalgamation Date and that the employment of the unionized employees who

are employed with the predecessor entity on the Amalgamation date will be transferred to the new Transit Commission. In order to avoid or narrow potential litigation either at arbitration or the Ontario Labour Relations Board (“OLRB”) (likely under the *Public Sector Labour Relations Transition Act, 1997* (“PSLRTA”), negotiations should commence as soon as possible with the ATU Locals regarding:

- Whether all the employees will transfer and, if not, what options will be provided to any non-transferring employees.
- What the appropriate bargaining unit will be (the new Transit Commission should take the position that all employees should be in one bargaining unit, but the details at the edges of that unit will require negotiation).
- Who will represent the employees in the new bargaining unit (presumably one of the existing ATU Locals).
- What the terms and conditions of employment will be in the short term, prior to the negotiation of a new collective agreement (the collective agreements flow through, but items such as the grievance procedure and layoffs/recall are typically immediately harmonized – the parties could agree to something like the Composite Agreement that exists under the *PSLRTA*).
- Any immediate transition issues such as treatment of seniority.

In a situation such as this, where there is one Union (albeit with multiple Locals), it is possible (and perhaps even likely) that all of the above could be negotiated without the need for any litigation or OLRB application. However, if such negotiations are not fully successful, one of the Local Unions or the new Transit Commission could make an Application to the OLRB to resolve outstanding issues.

Primary Issues, Risks, Costs, Concerns

1. **Timing:** There are potentially significant cost savings and labour relations goodwill to be gained by providing significant notice of the Amalgamation Date to the employees and the Unions. Two months would be a minimum (to deal with *ESA* notice issues), but up to 12 months would be ideal in order to allow time for discussions/negotiations to narrow issues in dispute and make the transition as seamless as possible.
2. **Logistics:** There are many different logistical issues related to the new Transit Commission obtaining employees that will have to be considered and planned for, so they are in place by the Amalgamation Date, including but not limited to, setting up payroll, benefits, and pension, training, assignment of work, determining reporting structures, etc.
3. **Terminations of Employment (non-union):** Each non-union employee from a predecessor entity who is not offered employment will be entitled to pay in lieu of notice either at common law or in accordance with an employment contract (if valid).
4. **Layoffs (unionized employees):** Each unionized employee who is not offered employment will need to be laid off in accordance with the terms of the applicable collective agreement.
5. **Recognition of Service/Seniority:** For both union and non-union employees, there are costs associated with prior service whether they be ongoing (vacation) or potential (future termination).

6. Reconciling Seniority (unionized employees): There will be three separate seniority lists that need to be amalgamated.
7. Reconciling/Harmonizing Terms and Conditions of Employment (unionized employees): There will be three different wage grids, vacation entitlements, public holiday entitlements, benefits, pension, etc. All of this will need to be reconciled in a first post-transition collective agreement. This will potentially be costly.
8. WEGO: The exact nature of the arrangement regarding WEGO should be determined as soon as possible as it could result in complications regarding the status of the Niagara Falls Transit collective agreement and the employees operating the WEGO service.
9. Litigation: There may be litigation (arbitration or OLRB, or both) regarding any of the above union issues if they cannot be all agreed upon. For the non-union employees, there could be litigation over any of the terminations of employment.

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