

I N D E X

I. INTRODUCTION

II. LEGISLATION

- (A) Introduction
- (B) Trade Union Act - Transfer of Business and Successor Rights
- (C) Labour Standards Code
 - (i) Transfer of Business
 - (ii) Termination of Employment
- (D) Pension Benefits Act
- (E) Human Rights Act
- (F) Occupational Health and Safety Act
- (G) Industry Closing Act
- (H) Workers' Compensation Act
- (I) Summary

III. COMMON LAW

- (A) Introduction
- (B) Years of Service
- (C) Restrictive Covenants

IV. PRACTICAL CONSIDERATIONS

- (A) Information Required by the Purchaser
 - (i) Unionized Employees
 - (ii) Non-Unionized Employees
 - (iii) Statutory Obligations
- (B) Issues of Mutual Concern
- (C) Representations and Warranties

V. CONCLUSION

- SCHEDULE "A" - Directory of Statutory Bodies
- APPENDIX "A" - Trade Union Act, R.S.N.S. 1989, c. 475, s. 31
- APPENDIX "B" - Labour Standards Code, R.S.N.S. 1989, c. 246, as amended, s. 11.
- APPENDIX "C" - Workers' Compensation Act, R.S.N.S. 1989, c. 508, as amended, s. 132(4)
- APPENDIX "D" - Consent Form Regarding a Pension

I. INTRODUCTION

The purchase and sale of a business can have a significant impact on employee issues. Unless the labour relations and employment issues are considered and investigated, the purchase and sale of a business might impose unnecessary and possibly devastating results on the vendor or the purchaser.

The purchase and sale of a business may be structured in a variety of ways; the two most common are an asset sale and a share sale. In this paper I will assume the purchase and sale of the business is an asset sale. An asset sale, as the name implies, occurs when the purchaser only buys some or all of the vendor's assets.

By contrast, in a share sale a purchaser buys the shares of the vendor's business. The purchaser assumes the vendor's business and becomes liable for all obligations and liabilities associated with the vendor's employees.

I will also restrict my comments to a sale and purchase of a business governed by provincial legislation. I note that a sale and purchase of a business in the federal sphere involves similar considerations.

I propose to deal with the employment issues which arise from the purchase and sale of a business under the following headings (a) Legislation; (b) Common Law; and (c) Practical Considerations.

II. LEGISLATION

(A) Introduction

There are numerous legislative enactments in the field of labour relations and employment law today. These statutes provide employees with collective bargaining rights, minimum employment standards, protection for basic human rights, compensation for workplace injury or illness and other safeguards and protection.

Accordingly, any business transaction affecting an employee must be considered in light of the statutory rights protecting employees. Further, it must be remembered that Section 9(5) of the Interpretation Act¹ provides that "every enactment shall be deemed remedial and interpreted to ensure the attainment of its objects ...".

(B) Trade Union Act - Transfer of Business and Successor Rights

Under Section 31 of the Trade Union Act, R.S.N.S. 1989, c.475 (the "Act"), where a business is sold a union retains bargaining rights for the employees of the vendor's business.² Where a collective agreement is in place at the time of the sale,

¹ Interpretation Act, R.S.N.S. 1989, c. 235, s. 9(5).

² Trade Union Act, R.S.N.S. 1989, c. 475, s. 31.

the purchaser is bound by the terms and conditions of that Agreement.³ Where the Union had applied for certification, the purchaser becomes the respondent to the application.⁴ This happens whether or not the purchaser knew of the collective agreement or the application. Thus, the collective agreement automatically flows from the vendor and binds on the purchaser.

The purpose of Section 31 is to protect the rights of the vendor's employees and the Board's past certifications⁵ and to prevent those rights from being subverted through a commercial transaction.

Section 31 applies where there is a sale of a "business or the operations thereof or any part of either of them". The term "business" is not defined in the Act. In determining whether a sale of a business has occurred, the labour relations boards consider whether the effect of a transaction is to put the purchaser in possession of a business which continues to function.⁶ The boards consider many factors, including the transfer of assets, continuity of management, continuity of product, actual transfer of

³ Ibid.

⁴ Ibid.

⁵ Hotel Employees and Restaurant Employees Union Local 662 v. DMJ Holdings Limited, [1990] L.R.B. No. 3610.

⁶ Paperboard Industries Corporation, [1992] O.L.R.B. Rep. Aug. 946 at pp. 951-953.

goodwill, nature of the work performed subsequent to the sale.⁷ No single factor is determinative. The vital consideration is whether the purchaser has acquired from the vendor a "functional economic vehicle".⁸

In summary, the purpose of Section 31 is to continue the bargaining rights of a union after the sale of the business of the employer. Even a purchaser who acquires some of the assets of a unionized vendor must recognize that Section 31 of the Act might cause a union's collective bargaining rights to flow through to the purchaser.

(C) Labour Standards Code

(i) Transfer of business

Under Section 12 of the Labour Standards Code (the "Code"), where a business is sold an employee's period of employment with the vendor is deemed to have been employed with the purchaser and the continuity of employment is not broken.⁹

⁷ Foisy, Lavery and Martineau, Canada Labour Relations Board Policies and Procedures (1986, Butterworths) at pp. 160-162.

⁸ Metropolitan Parking, [1979] O.L.R.B. Rep. Dec. 1193 at pp. 1211-14.

⁹ Labour Standards Code, R.S.N.S. 1989, c. 246, as amended, s. 12.

The effect of Section 12 is two-fold: (1) the employment of the employee is not terminated by the sale; and (2) the employment of the employee with the vendor is deemed to have been employment with the purchaser. This is relevant where entitlement to a benefit under the Code is based on length of service as, for example:

- (1) Termination of employment: Sections 71, 72, 73;
- (2) Pregnancy leave and parental leave: Sections 59, 59(b);
- (3) Vacation pay: Section 32; and
- (4) Holiday pay: Section 42.

Section 12 preserves the employee's entitlement to the benefit as if there had been no break in service resulting from the sale and purchase of the business. Interestingly, Section 12 does not require a purchaser to offer employment to employees of the vendor, nor does it compel an employee to accept employment with the purchaser.

In determining whether there has been a sale of a business for the purpose of the Labour Standards Code, the same considerations apply as with the Trade Union Act.

(ii) Termination of Employment

The termination of employment provisions are set out in Sections 71 to 76 of the Code.

Section 71 requires that an employer have just cause to dismiss an employee with ten or more years of service. Those years of service could be all with the vendor, or a combination of service with the vendor and the purchaser. Accordingly, a purchaser must be aware that employees of the vendor with ten or more years of service can only be terminated with just cause.

The Code also provides, in Section 72, notice provisions for the termination of employees. Where the purchaser does not elect to hire an employee of the vendor, then the vendor must provide appropriate notice under the Code. Where the vendor does not provide that notice, the vendor is liable to make a payment in lieu of notice, equal to the pay which the employee would have been entitled to receive during the required notice period.¹⁰

If the employer elects to employ employees of the vendor, then the purchaser becomes liable to provide notice of termination based on the years of service the employee had with both the vendor and the purchaser. For example, if a purchaser hires an employee

¹⁰ Labour Standards Code, R.S.N.S. 1989, c. 246, as amended, s. 72(4).

of the vendor and then decides to terminate that employee within three months of the date of hire, the purchaser will be liable for notice based on the employee's total years of service with the vendor. In contrast, a new employee hired by the purchaser and terminated within three months would not be entitled to any notice of termination.

The combined effect of the deemed continuity of employment provision in Section 12 and the notice provision in Section 72 prevents a purchaser employer from using the "three month probationary period" designed to allow an employer to review the performance of a new employee.¹¹ Since the employment of an employee of a vendor is deemed continuous, the purchaser is unable to terminate without notice an employee who does not meet the purchaser's standards without providing the appropriate notice under Section 72.

(D) Pension Benefits Act

Pension funds are trust funds. Their purpose is to provide retirement income to plan members on retirement. Accordingly, any purchase and sale of a business which considers an over-funded pension fund as an asset for the advantage of either of

¹¹ Labour Standards Code, R.S.N.S. 1989, c. 246, as amended, s. 72(3)(a).

the purchaser of the vendor begins with a faulty premise and might result in lengthy and expensive litigation.¹²

In the purchase and sale of a business where the purchaser does not assume responsibility for the existing pension plan, then there only exists one risk. That is, there may be outstanding unpaid contributions to the plan which, as a result of the Pension Benefits Act, constitute a statutory lien on the assets of the vendor.¹³

Where there is a collective agreement and successor rights under the Trade Union Act apply, the purchaser may become responsible for the pension plan including its unfunded liability where the pension plan forms part of the employer's obligation under the collective agreement.

In the situation of non-unionized employees, the purchaser does not assume any unfunded pension liability which has accrued up to the date of the closing. Unless the purchaser assumes some liability for the pension plan in the Agreement of Purchase and Sale or by conduct following closing, the

¹² Raymond Koskie, Q.C., "Pension Plan Overview", 1988 Institute at pp. 13-14.

¹³ Pension Benefits Act, R.S.N.S. 1989, c. 340, as amended, s. 46(5).

responsibility for accrued pension benefits remains with the vendor.¹⁴

(E) Human Rights Act

The Human Rights Act, R.S.N.S., 1989, c.214, as amended, does not contain any provisions specifically dealing with the purchase and sale of a business.

However, both the Human Rights Commission (the "Commission"), the body which administers and enforces the provisions of the Act, and boards of inquiry appointed by the Commission to inquire into a complaint under the Act are given very broad powers to ensure the administration and enforcement of the Act.

Accordingly, it is probable that the purchaser of a business where the vendor was a respondent to a complaint could itself as purchaser become liable to satisfy any declaratory relief or monetary remedy in favour of a complainant. Otherwise, the

¹⁴ Ian J.F. McSweeney, "Effect on Employer - Sponsored Pension Obligations of Business Sales and Discontinuance in Ontario", (1988), Canadian Journal of Insurance Law, Vol. 6, No. 5, p. 72.

purpose and protection afforded employees under the Act could be thwarted through a sale of the business.¹⁵

(F) Occupational Health and Safety Act

The Occupational Health and Safety Act, R.S.N.S. 1989, c.320, does not contain any provisions specifically dealing with the purchase and sale of a business.

However, decisions and orders made under the Act would likely be binding on a purchaser who operates the business as a going concern.

(G) Industry Closing Act

The Industry Closing Act provides that an employer about to close down a business where fifty or more employees would be affected shall give three months' notice to the government.¹⁶

Failure to comply with the Act allows the government to cause the business to be re-opened at the expense of the employer for up to three months and subjects the employer to a penalty for

¹⁵ Diane Grale v. Miracle Food Mart and The Ontario Human Rights Commission and United Food Workers International Union, Locals 175 and 633, Board of Inquiry, Ontario, Human Rights Commission, 1992.

¹⁶ Industry Closing Act, R.S.N.S. 1989, c. 226, s. 3(1).

every day that the business was closed or notice was not given as required.¹⁷

The term "employer" is defined in Section 2(b) of the Act to include every person directly or indirectly responsible for the payment of wages to fifty or more employees.

Accordingly, where a vendor of a business subject to the Industry Closing Act does not provide the appropriate notice, then the purchaser might be found to be subject to the provisions in the Act for re-opening, and liable for a penalty.

While I am not aware of any instance where the provisions of the Act have been enforced, a purchaser should be aware of the obligation under the Act.

(H) Workers' Compensation Act

The Workers' Compensation Act, R.S.N.S., 1989, c.508, as amended, ensures that workers who are injured in the course of employment are entitled to compensation.

The Act does not contain any specific provisions dealing with successor employers. Accordingly, there is no specific

¹⁷ Ibid., s. 5.

statutory provision enabling or prohibiting a determination under the Act that a purchaser of business is a successor employer.

Under the Act, Division XII - Liability for Assessment, Section 136(1), provides that the amount of any assessment and costs to enforce and execute on it shall be a first lien on the assets of the employer. Assessment may include the full amount or capitalized value of compensation payable in respect of an accident to a worker whose wages have not been fully reported to the Board.¹⁸ Such an assessment would be substantial where a worker suffered an injury resulting in permanent total disability. The capitalized value of compensation payable in that situation might well be in excess of the value of the assets being purchased.

(I) Summary

Each of the above statutes can impose drastic results on a unsuspecting purchaser of a business. Practical considerations to address the purchaser's potential risk are addressed in the third section of this paper. However, looking at the relevant legislation is not enough - the common law must also be considered.

¹⁸ Workers' Compensation Act, R.S.N.S. 1989, c. 508, s. 132(4).

III. COMMON LAW

(A) Introduction

At common law, the sale of a business automatically results in a termination of employment. The common law does not recognize an assignment of an employment contract except with the consent of the employee.

Assuming for a moment that employment is not for a definite term nor provides for an express period of notice on termination, then an employee terminated as a result of a sale of a business is entitled to the implied term at common law of reasonable notice of termination or payment in lieu of such notice.

The length of notice is not a precise science. The courts in assessing the period of reasonable notice take into account many factors including:

- (1) The length of service of the employee;
- (2) The character of employment;
- (3) The age of the employee; and

(4) Availability of similar employment.

Unless the vendor provides working notice in advance of the sale, the vendor will be liable to pay a terminated employee both salary and benefits during the period of reasonable notice. Based on the above listed factors, an employee may be entitled to as much as twenty-four months notice.¹⁹ More commonly, a supervisor or manager is entitled to between two and three weeks notice for each year of service.

(B) Years of Service

As noted above, one factor the courts consider in determining the appropriate length of reasonable notice on termination is the length of service. In the purchase and sale of a business, the issue becomes whether an employee of the vendor hired by the purchaser enjoys a length of service including his employment with both the vendor and the purchaser.

Under contract law, an employee terminated by the vendor and subsequently hired by the purchaser becomes unable to count

¹⁹ Bell v. Izaak Walton Killam Hospital for Children (1986), 74 N.S.R. (2d) 309 at paragraphs 80 and 81; Knox v. Interprovincial Engineering Ltd. et al. (1993), 120 N.S.R. (2d) 288 at paragraph 33.

service with the vendor as service with the purchaser. However, the courts appear unwilling to accept this result.²⁰

The case of Addison v. M. Loeb Ltd.²¹ involved an employee with eighteen and one-half months of service with the purchaser and twenty years service with the vendor. In a unanimous decision, the Court of Appeal determined that twelve months notice would be reasonable in the circumstances. In another case, Sorel v. Tomenson Saunders Whitehead Ltd., the court held that the purchaser and employee are presumed by implication to intend that the period of employment with the vendor will be credited towards the employee's years of service for the purpose of the new employment contract.

Accordingly, a purchaser who hires an employee of the vendor and subsequently re-organizes the business resulting in the constructive dismissal of that employee may be liable to provide reasonable notice on the basis of years of service worked for both the vendor and the purchaser.

²⁰ Ibid., Knox v. Interprovincial Engineering Ltd. et al. at paragraphs 28 to 30.

²¹ Addison v. M. Loeb Ltd. (1986), 11 C.C.E.L. 100, (Ont. C.A.).

(C) Restrictive Covenants

In the purchase and sale of a business, the purchaser might have an interest in obtaining a restrictive covenant that the vendor will not start a new business after closing.

To be enforceable, the restrictive covenant must be reasonable in terms of duration and geographical location.

If the covenant is found on its face to be unreasonable, a court will find that the covenant is void. Thus, careful consideration must be given to the covenant to ensure that it protects the purchaser's interests but is not so broad that it will be struck down by the courts.

(D) Summary

Planning a successful purchase and sale of a business requires a recognition of the potential problems and conducting the appropriate investigations. Where this is done, the parties can allocate risk more appropriately.

IV. PRACTICAL CONSIDERATIONS

(A) Information Required by the Purchaser

(i) "Unionized" Employees²²

(a) Determine whether a union is certified to represent the vendor's employees, has been voluntarily recognized by the vendor, has applied for certification, or is a party to a collective agreement with the vendor. This can be determined by contacting the Labour Relations Board of Nova Scotia.

(b) Determine whether a purchase and sale of the business falls within the transfer of business and successor rights provision in the Trade Union Act.

(c) Determine whether the vendor is in negotiation for a collective agreement with the union and, if so, make appropriate arrangements with the vendor and possibly the union regarding the

²² Warren Winkler, Q.C., "Labour Relations Issues on the Purchase and Sale of a Business", 1988 Institute at pp. 31-32.

negotiations pending the closing of the purchase and sale of the business.

(d) Obtain and review the vendor's collective agreement, copies of any letter of understanding or letter of intent and any relevant benefit plan. Review the collective agreement in detail.

(e) Obtain copies of all outstanding grievances filed under the collective agreement and determine their impact.

(f) Determine if there are any employment practices which are contrary to the provision of the collective agreement and assess their impact.

(ii) "Non-Unionized" Employees²³

(a) Obtain a list of employees including date of hire, present position and location, salary and benefits. Determine whether there are any

²³ Cheryl Elliott and Stewart Saxe, "Considerations on the Purchase and Sale of a Business", 1988 Institute at p. 20.

specific employment terms regarding termination of employment.

(b) Obtain details of any recent terminations, resignations or layoffs including whether there is any outstanding or contemplated litigation involving such employees.

(c) Obtain details of any trust monies held by the vendor including vacation pay.

(iii) Statutory Obligations

(a) Occupational health and safety

- Determine whether the vendor is subject to outstanding charges, orders or notifications. If so, obtain copies and review.

- Confirm with the department responsible for occupational health and safety the current status of the vendor's business.

(b) Workers' Compensation

- Determine whether there are any outstanding unpaid assessments. Note that assessments might include the full amount or capitalized value of compensation payable in respect of an accident to a worker whose wages have not been fully reported to the Workers' Compensation Board.

- Determine whether there are any existing or possible claims for workers' compensation by employees of the vendor and, if so, assess their impact.

(c) Human Rights

- Determine whether there are any outstanding complaints or potential claims under the Human Rights Act.

(d) Labour Standards

- Determine the amount, if any, of vacation pay accrued and whether there are any outstanding, unsatisfied orders of the Tribunal.

(B) Issues of Mutual Concern

(i) Termination of Employment

Often Purchase and Sale Agreements provide that the vendor will terminate all employees and the purchaser will hire some or all of the same employees. The vendor and the purchaser often believe that such termination will extinguish an employee's right to notice of termination based on their years of service with the vendor and that the employees will begin as new employees with the purchaser.

The risk is that such a termination might result in the employee having a claim against the vendor for pay in lieu of notice. Alternatively, the purchaser on terminating an employee hired from the vendor may be obliged to provide notice based on the employee's years of service with the vendor.

The purchaser may prefer not to hire any of the vendor's employees and thus avoid any later claim for notice based on the employee's service with the vendor. On the other hand, the vendor will prefer, unless the vendor can provide reasonable notice of termination to all employees, to have the purchaser hire all of the vendor's employees on comparable terms and thus extinguish any claim by the employees for notice or pay in lieu of notice from the vendor.

Accordingly, careful consideration must be given to how the vendor's employees will be dealt with as a result of the purchase and sale of the vendor's business. There are many options to deal with these conflicting interests between the vendor and purchaser. For example, the vendor may be willing to reduce the purchase price of the business in exchange for an indemnity from the purchaser to offer comparable employment to all employees of the vendor for a specific length of time.

However, if the purchaser hires employees of the vendor, the purchaser risks, if an employee is later terminated without cause, recognizing the employee's years of service with the vendor.

(ii) Pension Plan

Where the vendor's pension plan is not being assumed by the purchaser, the significant issue is for the purchaser to confirm that there is no outstanding unpaid pension contributions. Otherwise, such contributions constitute a lien on the vendor's assets. The purchaser will require the vendor's consent²⁴ to review the pension plan at the Pension Commission.

Where the vendor's pension plan is not assumed by the purchaser, the plan is subject to the winding up provision under

²⁴ See attached draft consent - Appendix "D".

the Pension Benefits Act.²⁵ Whether the plan is in a surplus or deficit position may have significant impact on how the sale of the vendor's business should be structured.

Where the purchaser intends to assume the vendor's pension plan, the purchaser should:²⁶

- Obtain copies of all documents that create and support the pension plan, including trust deeds, the pension plan and any rules or regulations made by the pension plan administrators.

- Determine whether the employer has made any pension commitments other than those set out in the plan documents.

- Determine whether there are any outstanding contributions to the pension plan.

- Obtain an up-to-date actuarial valuation of the pension plan.

²⁵ Ibid., Pension Benefits Act, s. 71(1).

²⁶ Ibid., "Pension Plan Overview", at p. 15.

- Determine whether the pension plan is in compliance with the Pension Benefits Act²⁷ and, if not, how costly the needed changes will be.

- Review the pension obligations in any employment contracts and collective agreement binding on the vendor and confirm that the terms of the pension plan conform.

- Determine whether the vendor's pension plan is in surplus and the legal entitlements of the various parties to the pension plan to such surplus.

(C) Representations and Warranties

Many of the concerns of the purchaser regarding liabilities it may assume from the purchase and sale of the vendor's business can be adequately covered by appropriate representations, covenants, warranties and indemnities which are set out in the Agreement of Purchase and Sale and noted as surviving closing.

This approach to dealing with various matters in a Purchase and Sale Agreement is worth no more than what the vendor

²⁷ Ibid., Pension Benefits Act.

is worth after closing and at the time when the purchaser finds it necessary to rely on such covenant, representation or indemnity.

V. CONCLUSION

Clearly, there are substantial legal and financial considerations regarding employment issues in the purchase and sale of a business. Considerations which are not dealt with before closing may become a problem afterward. However, with careful planning and frank discussions between the parties, each of the issues can be assessed and addressed, leading to greater certainty and satisfaction for both purchaser and vendor.

SCHEDULE "A"

1. Labour Relations Board (Nova Scotia)
7th Floor, 5151 Terminal Road
P.O. Box 697
Halifax, Nova Scotia
B3J 2T8
Executive Director: Mr. Ken Horne
Phone: 424-6730
2. Labour Standards Branch
P.O. Box 697
Halifax, Nova Scotia
B3J 2T8
Executive Director: Mr. Ross Mitchell
Phone: 424-4311
3. Occupational Health and Safety Division
P.O. Box 697
Halifax, Nova Scotia
B3J 2T8
Executive Director: Mr. Jim LeBlanc
Phone: 424-4328
4. Workers' Compensation Board
Assessments
5668 South Street
P.O. Box 1150
Halifax, Nova Scotia
B3J 2Y2
Supervisor, Assessments: Mr. Glen Knickle
Phone: 424-8324
5. Human Rights Commission (NS)
5675 Spring Garden Road, 7th Floor
P.O. Box 2221
Halifax, Nova Scotia
B3J 3C4
Executive Director: Dr. Bridglal Pachai
Phone: 424-4622
6. Pension Benefits Commission
1723 Hollis Street
P.O. Box 187
Halifax, Nova Scotia
B3J 2N3
Superintendent of Pensions: Percy Fleet
424-8915

APPENDIX "A"

Trade Union Act

Effect of Transfer of business

31 (1) Where an employer sells, leases or transfers or agrees to sell, lease or transfer his business or the operations thereof or any part of either of them and either

(a) the employer or the purchaser, lessee or transferee or any of them is a party to or is bound by a collective agreement with a bargaining agent on behalf of any employees affected by the sale, lease or transfer or contract;

(b) one or more bargaining agents have been certified as bargaining agent for any such employees;

(c) one or more trade unions have applied to be certified as bargaining agent for any such employees; or

(d) one or more bargaining agents have given or are entitled to give notice under either Section 33 or 34 with respect to any such employees.

unless the Board otherwise directs, the collective agreement, certification, application, notice or entitlement to give notice continues in force and is binding upon the purchaser, lessee or transferee.

Employer contracting out work to avoid obligations

(2) Where the Board is satisfied that an employer contracted out or agreed to contract out work regularly done by his employees to avoid obligations under this Act, the Board may direct that this Section applies as if the employer had transferred or agreed to transfer part of his business or the operations thereof.

Onus of Proof

(3) For the purpose of subsection (2), the onus of proving that there has been no contracting out or agreement to contract out work regularly done by employers to avoid obligations under this Act shall be upon the employer.

Application for determination of questions

(4) Any employer, purchaser, lessee, transferee or any bargaining agent, or trade union within subsection (1) or (2) may apply to the Board for the resolution of any question or problem which, as a result of such sale, lease, transfer or contract, has arisen or may arise with respect to any collective agreement, certification, application, notice or entitlement to give notice.

Order of Board determining question

(5) Upon the application being made, the Board shall, by order, make whatever award, give whatever direction or take any other action that in its discretion the Board deems appropriate, to resolve any relevant question or problem, and without restricting the generality of the foregoing, may, by that order or subsequent order,

(a) modify or rescind to the extent that the Board deems necessary or appropriate any collective agreement;

(b) amend or revoke any certification or amend any application for certification;

(c) modify or restrict the operation of any notice or entitlement to give notice;

(d) determine whether employees affected constitute one or more appropriate bargaining units;

(e) if more than one collective agreement is to continue in force, designate which employees are to be covered by each agreement;

(f) modify or restrict the operation or effect of any provision of any collective agreement and define the rights with respect thereto of any employees affected by the sale, lease, transfer or contract;

(g) declare which trade union or trade unions shall be the bargaining agent or agents for the employees;

(h) interpret any provision of any collective agreement.

Suspension of bargaining until question determined

(6) Until the Board has disposed of any application under this Section, a purchaser, lessee, transferee or contractor, notwithstanding any other provisions of this Act, shall not be required to bargain with any bargaining agent with respect to employees to whom the application relates.

Evidence and hearings and examination of records

(7) Where an application is made under this Section, the Board may make or cause to be made any examination of records or other inquiries, and may hold any hearings and take any representation votes that it deems necessary and prescribe the nature of evidence to be furnished to the Board.

Further application of Section

(8) This Section applies to any amalgamation, annexation or other change in a municipality to which the *Municipal Act* applies, a city or a town, or in a board, school board, commission

or agency thereof by or under the *Municipal Boundaries and Representation Act*, the *Education Act* or any other enactment, 1972, c. 19, s. 29.

APPENDIX "B"

Labour Standards Code

Transfer of business

11. Where, in the opinion of the Director of the Tribunal, associated or related activities or businesses are carried on, concurrently or consecutively, by or through more than one corporation, individual, firm, syndicate or association, or any combination thereof, under common control or direction, the Director or the Tribunal may treat the corporations, individuals, firms, syndicates or associations or any combination thereof as constituting one employer for the purposes of this Act. R.S., c. 246, s. 11; 1991, c. 14, s. 3.

APPENDIX "C"

Workers' Compensation Act

Liability of defaulting employer to pay compensation

132 (4) Except in so far as relieved from liability by the Board, the full amount or capitalized value of compensation payable in respect of an accident to a worker whose wages have not been fully reported to the Board, as required by the provisions of this Part, shall be paid by the employer and payment of such amount may be enforced in the same manner as an assessment may be enforced. R.S., c. 508, s. 132.

APPENDIX D

FORM OF CONSENT

TO SUPERINTENDENT OF PENSIONS (NOVA SCOTIA)

The Vendor, as Employer and Administrator of the Retirement Income Plan ("Pension Plan") for Union Employees of the _____, Union and Non-union, hereby gives consent to McInnes Cooper & Robertson of Halifax, Nova Scotia, Solicitors for the Purchaser to review any records maintained by you and to make any inquiries relating to determining whether all required contributions have been made to the Pension Plan Fund and as to whether there are any outstanding administrative orders.

Dated at _____, Nova Scotia, this _____ day of _____ 1994.

The Vendor

Per: _____