

**HUMAN RESOURCES
CONSIDERATIONS**

FOR

**MENTAL HEALTH REFORM
IN
ONTARIO**

October 21, 2002

PREAMBLE

I have been asked to provide a written report with recommendations regarding the human resources and labour relations implications of mergers and/or amalgamation of Community Mental Health Agencies into Lead/Integrated Community Agencies/Amalgamations. It is intended that the report will be a guide for Mental Health Implementation Task Forces in Ontario to determine the probable human resources and labour relations implications of mergers and/or amalgamation.

Mental Health Implementation Task Forces in Ontario, in their exploration of mental health reform, should consider the contents of this report with respect to mergers and/or amalgamations of Mental Health Agencies.

As an example, one District has approximately thirty-three (33) Community Health Associations which will be amalgamated into five (5) Lead/Integrated Community Agencies/Amalgamations. In addition a Mental Health Governing Structure will be established as a mental health system manager for the District. I am informed that similar circumstances exist in other areas in the Province.

Although, in an amalgamation there are workforce issues to be addressed which apply to all employees, these matters may affect unionized and non-unionized workers differently. In addition, there are issues which apply specifically to those employees who are represented by trade unions and are covered by trade union bargaining rights. For convenience I have referred below to the former as Category I issues and to the latter as Category II issues. A third category deals with potential employer obligations and challenges.

The written materials and briefings provided did not present detail concerning the number of employees unionized or the particular unions involved and the relevant provisions of their collective agreements. Consequently, the discussion and some of the recommendations below are general in nature.

In developing human resources integration strategies it is important to keep in mind that the current Associations differ greatly with regard to function, structure and size. Many of them appear to be very small, to have limited administrative support and to rely upon employees who work for them on a less than full-time basis. There are, of course, some with larger and full-time complements and more administrative infrastructure.

Integration will bring together, under one employer, an interdisciplinary staff from diverse Agencies and locations accustomed to different working conditions. The Lead/Integrated Community Agencies/Amalgamations will provide a wider range of services than the disparate Associations currently do. While this can result in greater professional scope for employees, it is important to remember that the restructuring of work with its attendant uncertainty can also be a source of concern and stress for employees. Timely communication with employees about process and plans can, to a significant degree, alleviate employee anxiety.

Fortunately the proposed amalgamation in the delivery of mental health care comes at a time when many unions and employers have already experienced the implications of amalgamation and consolidation. Parties in the hospital sector have negotiated multi-union; multi-employer Human Resources plans which facilitate the types of amalgamation contemplated by the Task Forces. The experience gained in these processes should enhance the prospects for successful integration in Mental Health. Prospects for success in the Province will also be enhanced because it is anticipated that all employees will be retained in employment for the foreseeable future. In almost all cases the new employer will be one of the Lead/Integrated Community Agencies/Amalgamations.

In hospital restructuring unions and management were each motivated by similar considerations when negotiating Human Resources Plans. They recognized the importance of providing fairness and predictability to all employees in order to maintain high levels of employee support which was essential for the continued delivery of quality patient care. It is reasonable to anticipate that similar considerations and motivation will exist in the amalgamation of Community Health Associations. The mechanism most commonly used in hospital restructuring was the establishment of community-wide human resource negotiations. This process would bring together, at one table, representatives of all hospitals and unions in the sector in the geographic area. Facilitators and/or

mediator/arbitrators often assisted these negotiations. In a number of areas the parties agreed, in advance, to terms of reference for negotiations. Key in these terms were provisions for agreed timetables with mediation and arbitration of issues not resolved within the agreed time frame.

In addition to a shared commitment to fairness and predictability, successful implementation requires that employers and unions anticipate carefully the issues which must be addressed from both employee and employer perspectives. Key issues have been detailed below, but others may emerge in the course of discussions. The parties must each understand and appreciate the concerns of the other. Communication and disclosure are vital. It is also essential that there be sufficient time to work out the necessary plans.

Ideally, all issues should be resolved and, where necessary, Human Resources Plans should be concluded before the actual amalgamation is implemented. There may be issues which involve both union and non-union employees. Integrating union and non-union employees from separate Associations presents a number of issues, for example, whether a new Integrated Community Agency will be unionized and what terms and conditions of employment will apply?

In discussions to resolve these issues, questions may arise as to who represents the interests of non-union employees. There are no accepted mechanisms for non-union employees to select their representatives. And experience has shown that it is not productive to appoint a non-union employee to speak for fellow non-union employees. Where employees have elected not to be represented by a bargaining agent or are not eligible to be so represented, the employer(s) should accept the responsibility to ensure fairness for these employees.

OVERVIEW OF ISSUES

Category I: Issues Which May Affect All Employees

Issues in this category relate to job security, the right to follow work to other locations, the continuation of service and benefit plans in cases where there is a change of employer, and the terms and conditions of employment under the new employer. Issues also arise where formerly non-unionized employees are merged with employees already represented by a bargaining agent.

Category II: Issues Which Affect Employees Covered By A Collective Agreement

Issues arise in amalgamation where terms and conditions of employment are contained in collective agreements which are employer specific and have coverage limited to a specific location or geographic areas.

Other issues have to do with trade union bargaining rights as Associations are merged, especially where more than one union is involved. In addition, seniority and service rights present complications. Changes in these rights, which have been guaranteed in collective agreements must be negotiated between the bargaining agents and ratified by members of the union.

It is worth noting that in Ontario trade unions have a statutory duty of fair representation. A complaint by any bargaining unit employee that a union has acted in an arbitrary or discriminatory manner will be heard by the Ontario Labour Relations Board and the union(s) and the employer(s) will likely be co-respondents.

Category III: Issues Arising From Employer Obligations And Concerns

Existing Associations will be concerned that there be an orderly amalgamation which protects client interests and maintains continuity of care. Closely

connected with this is maintaining employee morale and confidence in the process. In the unlikely case that any employees are not to be employed by the new employer, the Associations may have notice and termination obligations under the Employment Standards Act.

The new employer will have concerns arising from provincial statutes, especially the Labour Relations Act and the Pay Equity Act. There may also be some workplace safety issues.

All of these issues are addressed more fully below.

Category I: Issues centre around job security and continuity, the effects of being in a larger agency, possible changes in job content or work location. Additional issues involve the effects of intermingling formerly unionized and non-unionized employees. Some of the issues detailed below may be resolved for unionized employees in existing collective agreements, where they apply.

- **Job Security Issues**

- Continuity of employment
- The right to follow the work if it is transferred
- Consideration for employment if the work changes, including retraining opportunities where appropriate

- **Other Continuity Issues**

- Continuity of terms and conditions of employment
- Continuity of benefit and pension plans under the new employer
- Credit for service with the previous employer for service-related benefit entitlements

- **Effects Of Being In A Larger Agency**
 - Altered prospects for promotion and career development including training and continuous learning
 - Protection against job displacement in a larger pool of employees
 - Changes in supervision and in the degree of autonomy permitted
 - Changes in work scheduling
 - Changes in vacation scheduling

- **Other Issues**
 - Assurances of continued allocation of hours, especially important for those who work less than full-time
 - Assurances of continued flexibility of hours in relation to work and family responsibilities
 - Reimbursement for additional work-related travel costs caused by the larger geographic area of employer

- Voluntary exit provisions for redundancies caused by amalgamation or to provide options to employees who cannot meet additional travel requirements or other requirements of the new employer.

- **Issues Arising If The Formerly Non-Unionized Work Becomes Unionized**
 - Rights and obligations for non-union employees in the new unionized setting
 - Credit for past service on a dove-tailed seniority list

Category II: Issues in this category affect employees currently represented by a bargaining agent. These issues arise from the amalgamation of union and non-union employees or of employees represented by different bargaining agents and involve reconciling different sets of rights, benefit plans and other entitlements guaranteed by different collective agreements.

- **General Problems Arising From Amalgamation**
 - Merging of seniority lists when unionized units are merged
 - Determining wage schedules for the amalgamated unit
 - Determining benefit and pension plans for the amalgamated unit and ensuring these plans are acceptable to both employees and employers
 - Training and retraining entitlements

- **Bargaining Agent Issues**
 - Determining whether the amalgamated unit will be unionized if only some of the previous unit had been unionized
 - Competing claims for bargaining rights by unions seeking to represent employees in amalgamated units
 - Dealing with rights and expectations of previously non-unionized employees who become unionized.

Category III: Potential Employer Obligations and Challenges. Many of these issues mirror employee concerns listed above, although there are issues which do not arise until the new Integrated Community Agency is in place.

- **Probable Concerns Of Existing Agencies And Associations**
 - Possible costs of amalgamation through severance and termination obligations or through voluntary exit take-up
 - Predictability in the transfer of employees and functions in order to provide the necessary assurances for clients and employees

- **Issues For New Employers As Functions And Employees Are Transferred**
 - Establishing and harmonizing job descriptions, pay grids, benefit plans. Some red circling may be required to avoid continued

anomalies or ratcheting upwards

- The new Integrated Community Agency may assume all the liabilities of the Associations with regard to promises made to employees, particularly in individual contracts. These prospects suggest a keen need for a due diligence type of process.
 - Unions will fight hard for elevation of employees to the highest examples of wages and benefits and preservation of superior conditions.
 - Voluntary employee terminations triggered by the amalgamations, may leave vacancies in classifications in which there is a shortage of competent, trained personnel available in the labour market.
- **Issues Arising Under The Labour Relations Act**
 - Under Section 1(4) of the Act unions may apply for and obtain Ontario Labour Relations Board declarations that there is one employer in a district, where there is sufficient common direction and control. This may not be a disadvantage.
 - Determination of who will be the bargaining agent(s) may be complicated by the order in which the transfers take place.
 - Collective agreement(s) will probably be negotiated in an environment which requires job function redefinition due to the amalgamations
 - **Issues Arising Under The Pay Equity Act**
 - The Act will require that new pay equity plans be developed, negotiated with the bargaining agent(s) and developed by the employer for non-bargaining agent jobs. Clearly this cannot be done until the bargaining agents are known.
 - Joint negotiations (collective agreement and pay equity plan) may be acceptable to the unions, but this could complicate negotiations.

The Pay Equity Act provides that parties may call for the assistance of review officers if there is failure to agree in 120 days.

- Pay equity comparators within the establishment may be difficult to identify, requiring reliance on the proxy comparison method.
- Costs may be substantial. Some costs can be attributed to plan development but the major costs are likely to be in pay adjustments. The Act requires new employers to provide equitable pay from the start of their operations; delay in implementing plans can result in considerable retroactivity.

There could also be issues in relation to the Workplace Safety and Insurance Act.

In all cases terms such as amalgamation or consolidation should be carefully defined in order to reduce the risk of future disputes with regard to any entitlements emanating from the amalgamation. The management of the new Integrated Community Agency should be encouraged to retain legal counsel to assist in the management of issues arising from the amalgamations.

Finally, timely communication with employees about goals, plan and timetables can help allay anxiety in a time of change. While unions will keep their members informed, management should ensure that non-union members are aware of developments.

Recommendations

- There should be a communications plan, probably at the district level, to ensure uniformity and accuracy of communications across the affected district. Early communications with employees, written and/or at meetings, should establish management's credibility in a commitment to share relevant information as soon as reasonably possible. Province-wide

communications, to all amalgamation projects, would keep those involved abreast of developments and experiences in other areas.

- Given that major structural reform in the delivery of mental health care is imminent across the province, the approach to human resources adjustment should be multi-level. The remaining recommendations provide an outline of a possible approach. However, it should be recognized that management, at all levels, and the union representatives will have ideas on the process. These parties should be encouraged to agree to processes which meet their interests.
- The provincial lead agency should commence a dialogue with the senior representatives of the affected unions. There should be full disclosure to the unions at the provincial level concerning the overall objectives of the structural reform. These discussions should be initiated by senior officials of the Provincial Agency, or the Minister of Health and Long Term Care might be requested to appoint a neutral person to act as convenor/facilitator. The latter was the process used by the Health Services Restructuring Commission in large centres such as Toronto and Ottawa, with the Commission making the appointment.
- Plans should then be made for negotiations between the District employers and District union representatives, including local union leaders where necessary. At this level there should be full disclosure with respect to the structural reform planned for the District.
- At the District level the parties should plan for and monitor local meetings between:
 - The local Association management and the management of the Lead/Integrated Community Agency/Almagations into which the Association will be amalgamated
 - Lead/Integrated Community Agency/Almagations management and a small number of persons selected by the Associations and the affected unions; and

- Where necessary, meetings between union and local Associations to prepare for negotiations at meetings between the Lead/Integrated Community Agency/Almagations management, representatives of the local Association and the affected unions.
- At the District level the parties should assume additional responsibilities for overall monitoring of development of Human Resources Plans on an Lead/Integrated Community Agency/Almagations basis.
- Management at the District level should be prepared to meet with local management and board members as required to assist in resolution of issues between Associations and Agencies and also to ensure that there is coherence at the tables where issues are to be resolved.
- Category I issues which require union agreement should be taken to meetings between the Lead/Integrated Community Agency/Almagations and Association management and the unions. All issues in Category II should be taken to the local tables.
- If any services will be transferred to employers other than the Lead/Integrated Community Agencies/Amalgamations, those employers should also be involved in discussion and Human Resource Plans should also take those employees into account.
- The order in which the amalgamations occur should be decided by the new governing structures, it will probably make sense to proceed first with those having the least complexity and being the most amenable to amalgamation. It may be most advantageous to have the issues of who will be the bargaining agents settled early. Where union representation rights are not resolved by negotiations within a reasonable timeframe, legal advice should be sought to determine whether the matter should be referred to the Ontario Labour Relations Board.

Conditions which will enhance the prospects for success in resolving human resources and labour relations issues are as follows:

- Clarity in the issues and coherence in pursuit of each party's interests
- Willingness to use the interest-based approach to issue resolution wherever possible
- Firm deadlines by which implementation of the reform will commence
- Shared agreement on terms of reference for negotiations. These terms should include: reasonable timetables for negotiations, selection of facilitator if required, a provision for binding arbitration on any issues not resolved within the time agreed
- Negotiators competent, caring and able to anticipate and understand the interests of all parties
- The appointment and remuneration of outside facilitators, if necessary, to assist in the development of Plans to enable amalgamation to proceed
- Continuous leadership and assistance from the provincial lead Agency and the District monitoring group.

In conclusion, it is worth reiterating that a successful series of amalgamations is dependent upon all parties anticipating and understanding potential problems, planning for their resolution, with sufficient participation of all parties for acceptance and buy-in.

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