



MEMORANDUM

TO: TEAM-IFPTE Local 161
FROM: Kris M. Saxberg
DATED: May 20, 2016
RE: Sale of MTS to Bell Canada (BCE Inc.)

1. Introduction

It was announced on May 2, 2016 that BCE Inc. ("BCE") entered into an arrangement agreement with Manitoba Telecom Services Inc. ("MTS") to purchase MTS. The transaction is currently expected to close in late 2016 or early 2017¹.

The transaction is structured to proceed by way of a court approved plan of arrangement under *The Corporations Act*, subject to a successful vote of shareholders at a shareholders' meeting to be held in late June of 2016. The transaction also requires the satisfaction of other approvals, including receipt of regulatory approvals by the Canadian Radio-television and Telecommunications Commission ("CRTC"), the Competition Bureau and Innovation, Science and Economic Development Canada ("ISED")².

Further information regarding the transaction is expected to be released by MTS to the public in due course including a copy of the arrangement agreement between BCE and MTS³.

The integration of BCE/MTS in Manitoba may result in a pool of non-union employees doing similar, if not identical, work to that done by TEAM members. As a result, D'Arcy & Deacon LLP has been asked to provide its opinion on whether TEAM, the Collective Agreement or the bargaining unit is at risk as a result of the sale.

2. Successorship Provisions in the Canada Labour Code

Collective bargaining rights flow through changes in ownership, as long as there is a continuation of the business. It is the business, not the owner, to which collective bargaining rights attach.

¹ See *MTS Press Release*, May 2, 2016 (<http://about.mts.ca/bce-to-purchase-mts/>)

² *Ibid.*

³ *Ibid.*

Pursuant to the *Canada Labour Code*, when an employer sells a business the union that is a bargaining agent for employees employed in the business continues to be the bargaining agent of its members. Furthermore, the purchaser of the business continues to be bound by the terms of any collective agreement that is in place at the time of the sale, unless or until the *Canadian Industrial Relations Board* ("the Board") says otherwise.

In other words, a union associated with a company that has been sold retains its representative rights in a "like bargaining unit" to that which existed prior to the sale.

Accordingly, BCE's purchase of MTS will not negate or nullify the collective bargaining agreement that TEAM is in the process of renewing with MTS.

3. Intermingling of Employees and Adjusting Bargaining Units

On application by an employer or a union, pursuant to the *Canada Labour Code*, the Board is permitted to review the structure of any particular bargaining unit after a sale and may determine that certain adjustments to the bargaining unit are necessary.

With respect to BCE's purchase of MTS, it remains a possibility that there will be a merger of unionized employees (TEAM members) and non-unionized employees from BCE⁴ who perform work similar to the work performed by TEAM members. In such a scenario, if an application is brought before the Board, the Board may adopt one of several approaches depending on a number of different factors including the extent to which non-TEAM members are conducting TEAM bargaining unit work. For instance, in the event there is nominal intermingling of BCE employees conducting TEAM bargaining unit work, the Board may simply declare that said employees are represented by TEAM. Conversely, if there is significant intermingling of employees then the Board may order a representative vote take place to determine if the BCE employees should be included in TEAM's bargaining unit.

Given that the specific details regarding the transaction between BCE and MTS are not currently known, including, more importantly, the extent to which any intermingling of employees will occur, it is very difficult to speculate as to the approach and/or decision the Board would make in the event such an application is brought before it.

A concern that TEAM has asked its legal counsel to consider is the scenario wherein BCE asks the Board to create a single multiple province bargaining unit and then order a vote of employees, both union and non-union, to determine whether or not the employees accept the bargaining unit and want to be represented by TEAM or any other union.

This is the scenario that played itself out in 2009 in the case of ***G.S.U. v. Viterra Inc.*** 2009 CIRB 465 when Saskatchewan Wheat Pool purchased the shares of Agricore United. After the sale, a new integrated company, Viterra, was created.

Viterra asked the Board to create a single bargaining unit across multiple provinces merging union and non-union employees. Viterra also asked the Board to require employees to vote on whether they wanted to be unionized. The Board denied Viterra's request and enunciated the

⁴ Current information indicates that BCE does not have a bargaining unit similar to that of TEAM (i.e. a supervisory employee unit) which is why the example of non-unionized employees of BCE is provided.

following principles to govern future similar applications:

Where several different bargaining unit reconfigurations exists, and some do not involve the possible disappearance of a long term standing bargaining agent, then those which promote collective bargaining will be preferred.

The intent of the sale of business provisions in the Canadian Labour Code is to preserve collective bargaining rights.

The Board, as part of a sale of business process covered by section 45, is determining "whether employees effected constitute one or more units appropriate for collective bargaining". It would be rare for the Board to adopt a reconfiguration, when several other options exist (including the status quo), which could have, as a foreseeable consequence, the elimination of a bargaining agent which has represented employees for over 60 years.

The Board found that the basic principles governing certification should apply to the Board's determination on what happens after the sale of a business. The two main principles the Board adopted are (1) it is the trade union who should decide the scope of its representation (i.e. the bargaining unit composition), subject to Board scrutiny and review and (2) bargaining rights are to be preserved following the sale of a business.

The Board emphasized that a debate about which bargaining agent should represent employees when unions are consolidated is very different from a debate about whether employees should have a bargaining agent at all.

4. Conclusion

To sum up, BCE cannot take steps to eliminate TEAM or to defeat the collective bargaining agreement about to be renewed. In terms of the TEAM bargaining unit, if the number of non-union employees in Manitoba doing work similar to TEAM members is relatively modest, those new employees may be rolled into TEAM. If the number is more substantive, there will likely be a representative vote required of the new employees to determine if they wish to join the TEAM bargaining unit.

TEAM will monitor this matter closely and will continue to update its members as to any pertinent developments.