

CUPE EDUCATION DEPARTMENT

A GUIDE TO MERGERS



A GUIDE TO MERGERS

The main purpose and objective of any transfer of jurisdiction, merger or amalgamation of local unions, should be to unite CUPE members so that they can better represent the rights of their collective membership when dealing with their employer(s). The principal objective must always be the strengthening of the membership (bargaining leverage, effectiveness, and financial stability). Therefore, a transfer, merger or amalgamation may or may not be warranted, but often is.

Many CUPE locals have merged over the years to form a local that better answers their needs in today's world of difficult negotiation and representation. In the interests of greater bargaining leverage, of increased effectiveness, and of improved financial strength, mergers of local unions often make very good sense.

Before deciding if merging is the answer to a local's problem, it is important to assess the needs of the local and analyze how best to respond to those needs. While a merger is very often a positive reaction to address the problems that locals face, it may not be the right answer. We should not be afraid to address these concerns and explore all avenues open to us, in order to rectify the problems, whatever they may be.

Many major unions have decided that a merger is the right answer for them. The Airline Division of CUPE, support staff at Simon Fraser University, and many others have explored the road to a better future. For the most part, they have found that the positives far outweigh the negatives.

DEFINITIONS

- TRANSFER:** This involves the transfer of jurisdiction of a bargaining unit from one local to another.
- MERGER:** This involves the integration of one local by another, where the former (predecessor) local ceases to exist.
- AMALGAMATION:** This involves the combination of two or more locals to form a completely NEW and different local.

OBJECTIVES

Normally, the combined membership strength created through transfer, merger or amalgamation should be capable of more effectively attaining the following objectives:

- The gathering together of experience and talent, which in turn heightens the Local Union's sophistication in preparing and presenting contract demands and members' concerns to the employer(s);
- The building of a stronger nucleus of union activists to better defend against employer assaults on the membership;
- The selection of greater numbers of officers and stewards, which enhances the expertise, credibility and professionalism of the Local Union and cultivates increased membership interest, participation and support;
- The ability to improve the financial base of the Local Union and to encourage a more efficient administration, as well as to use the Local Union's stronger financial structure to offer greater membership opportunities for participation in seminars, schools, conferences, conventions and other union and community activities;
- The ability to broaden the members' community of interest, which enables the Union to develop a higher public and political presence and thereby enhances the capacity for positive presentation of, and response to, the Local Union's goals;
- The more effective use of time and resources, which enriches personal satisfaction and encourages additional individual commitment. More can be accomplished!

As with any joint venture, honesty and full communication must be the cornerstone of a transfer, merger or amalgamation. What is the goal of the merger? What is to be gained by the merger - for the combined group, for the membership, and for the occupational groups within? What are the benefits? What are the disadvantages?

Disadvantages must be faced squarely - and dealt with concretely - so that they do not surface later to create havoc within the group. Opposing opinions must be given their "time in court" before the transfer, merger or amalgamation, with every effort made to address their concerns.

Transfers, mergers or amalgamations must be "voluntary". They should bind the group together. The merger should enhance and reinforce the collective strength of the group, and as a result, should help develop a more effective outlook. There can be diversity in occupations, but there should be a unanimity in pride for the resultant merged Local Union. Transfers, mergers or amalgamations that are forced upon one group by another won't work! Using a merger to dominate part of a group won't work! Using an amalgamation to enhance or expand an individual's or a clique's personal power won't work!

If you have decided to explore a merger with another union, or you are in the process of discussing the formation of a totally NEW local union with another union; what do you do?

The merger of two local unions must start with the formation of a merger committee with equal representation from each local union. The committee should operate on a consensus basis.

The role of the committee will be to assess the needs of the locals involved, analyze those needs and recommend a course of action to the executives and memberships of each local union. (Refer to attached checklist for guidance.) If the course of action recommended by the committee is to merge, it is imperative that the committee prepare a merger agreement (Appendix I) for the membership of the newly formed local. This will avoid any misunderstanding in the future.

GUIDELINES

A successful transfer, merger or amalgamation should arise naturally between groups who recognize a potential community of interest and have the vision to act on it. To be successful, the real concerns of all affected groups must be recognized and addressed in the resultant structure.

Successful discussions should follow an orderly process by:

- i) setting objectives and determining the proper methods to be used to achieve those objectives;
- ii) seeking input from as many members as possible; through an agreed to method (one on one, surveys, meetings by department, etc.)
- iii) studying and finding ways to keep the membership informed of each step of the process.

The committee will look into the following areas prior to implementing an action plan.

1. The labour laws of the province (see Appendix II);
2. The relationship between the numbers of one group to the other group, and the "need" for all to feel that they belong;
3. The creation of an appropriate structure and by-laws that consider and protect minorities and special concerns;
4. Ensuring proper representation from each sector of the groups involved;
5. The establishment of strong, effective and meaningful communications between all sectors of the group.
6. The establishment of practices that are acceptable to ALL concerned.
7. A recommendation to the new local as to which affiliates it should have (CUPE division, CUPE council, federation of labour, labour council, etc.)

ACTION PLAN/PROCEDURE

1. Study and recommend how to proceed on a vote with the two locals on the merger question and any other area of concern.
2. Prepare proper notices of motion, meeting notices and arrange for distribution. (Appendix III)
3. Prepare the motion to be voted on. (Appendix IV)
4. Advise the National Office, in writing, of its decision by sending to the National Secretary-Treasurer a copy of all motions adopted by the membership of both locals and the newly formed local, where applicable.
5. Set in motion an agreed to process to ensure the proper conduct of a further vote after twelve months (see Article 3.9 of the National Constitution - Appendix V)

SOME OTHER POINTS TO CONSIDER

A. Distribution of Funds and Properties in Certain Cases

Where a bargaining unit receives a new charter or its jurisdiction is moved from one local to another, it shall be entitled to a pro-rated portion of the transferring or predecessor Local Union's funds and properties. If the parties cannot reach an equitable agreement with respect to the distribution of the funds and properties, the matter shall be referred to the National Executive Board, whose decision shall be final and binding on all parties. (See National Constitution Section 3.11 - Appendix VI)

B. Distribution of Funds and Properties when a Local Union Disappears

In situations which involve the termination of a Local Union's existence, care must be taken to provide for the transfer of its assets. Real property (land and buildings) held by the local should be catalogued, and it should be determined who holds the title to the property, since this will dictate which steps must be taken to ensure the proper transfer, if required, to the successor Local Union. (Usually real property will be held by a trustee(s) or by a non-profit corporation on behalf of the disappearing local.) CUPE's Legal Department is available to provide assistance in all such cases.

C. Protecting the Bargaining Rights Involved

Whether a transfer, merger or amalgamation is involved, all parties should ensure that they have protected the bargaining rights to be moved from one local to another. Protecting the bargaining rights can be done generally in two ways: voluntary recognition, or a successor rights application. These will now be elaborated further:

i) Voluntary Recognition

Under the laws of most provinces, it is possible for the successor Local Union to have the employer involved recognize it as the new bargaining agent with respect to the bargaining rights held by the predecessor Local Union.

It will be necessary, depending on the circumstances, to amend any collective agreement between the predecessor local and the employer involved and/or amend any existing collective agreement between the successor local and the employer involved to include language recognizing that the successor local is now the exclusive bargaining agent with respect to the bargaining rights of the predecessor local.

Advantages of Voluntary Recognition

It is simple, and avoids any expense and delay associated with bringing forward a successor rights application.

Disadvantages of Voluntary Recognition

Generally, bargaining rights and collective agreements acquired by way of voluntary recognition are not as secure as those that have been formally recognized by a Labour Relations Board, either through certification or a successor rights declaration. For example, in some provinces, a collective agreement concluded pursuant to voluntary recognition need not be a bar to a subsequent application for certification by another union.

ii) Successor Rights Application

Under most jurisdictions, it is possible for the successor Local Union to formally apply for a declaration that it be recognized as the exclusive bargaining agent with respect to the bargaining rights that have been the subject of the transfer, merger or amalgamation.

But note this important consideration with respect to a successor rights application. There has to be total and complete compliance with the requirements of CUPE's National Constitution, and the application will generally only be considered after the internal requirements of the Constitution have been met.

CUPE EDUCATION DEPARTMENT

A GUIDE TO MERGERS
APPENDICES



