NUGENT Law Office

10020-82 Ave
Edmonton Alberta T6E 1Z3
www.nugentlawoffice.ca
T 780 439-3232
F 780 439-3032

Our File No: 250092

May 31, 2023

VIA EMAIL: alrb.edm@gov.ab.ca

Alberta Labour Relations Board
501, 10808 – 99 Avenue
Edmonton, AB T5K 0G5

Attention: Tannis Brown, Director of Settlement

Dear Madam:

RE: An application for reference of a difference brought by Certain Employees of Alberta Health Services and Covenant Health affecting Alberta Health Services, Covenant Health, Alberta Union of Provincial Employees, and United Nurses of Alberta - Board File No GE-08940

We are legal counsel for the Alberta Union of Provincial Employees (the "Union"). The Union writes further to the Board's request for a response to the April 25, 2023 application (the "Application") brought by a group of 5 licensed practical nurses (the "Applicants").

As background to explain the Union's interest in this matter, the Union represents approximately 11,840 licensed practical nurses ("LPNs") in various bargaining units. Approximately 7,670 of these LPNs are employed by Alberta Health Services ("AHS") and are members of AHS' auxiliary nursing care ("ANC") unit. Approximately 1,210 are employed by Covenant Health, and the remainder are contained in other ANC bargaining units with different employers.

It is the Union's position that the Application is improper, without merit, and bound to fail. As such, the Union wishes to notify the Board that it intends to make a summary dismissal application pursuant to s 16(4)(e) of the *Code*.

Briefly stated, the basis for the Union's application is as follows.

First, the Applicants seek to have the Board amend the existing bargaining unit structures of AHS, taking LPNs from its ANC unit and placing them in AHS' direct nursing care and nursing instruction

("DNC") unit. The Board, however, has already ruled that it lacks the power to take such an action. In *Good Samaritan Reconsideration*, the Board stated[1]

> [G]ranting the applications would effectively amend the auxiliary and direct nursing care units, a power the Board correctly concludes it no longer possesses since the passage of Bill 27. As discussed in the Determination Decision, this legislative scheme effectively removed the Board's power to make changes to these quasi-statutory units. Although the Board continues to have the power to decide whether an individual is included or excluded from a unit, it does not have the power to make material changes to these units such as effectively gutting the auxiliary nursing unit by removing LPNs from the unit.

As the Board properly recognized in *Good Samaritan Reconsideration*, the scope of AHS' bargaining units are set by the *Regional Health Authority Collective Bargaining Regulation*, Alta Reg 80/2003. The Board cannot remove the LPNs from AHS' ANC unit.

Second, it would be inappropriate to permit the Application to proceed. The Applicants are seeking to have the Board make a massive change to long-established healthcare bargaining unit structures based on their contention that LPNs are performing direct nursing care. If successful, the Application would affect thousands of LPNs across Alberta. The Applicants, however, have provided no particulars about the specific work these thousands of LPNs are performing to show that the work they perform actually constitutes direct nursing care. The Applicants have not even made any assertions about the specific work that they personally perform. The Applicants instead simply rely on the generic scope of practice that an LPN is qualified and permitted to perform, either by virtue of being a licensed LPN or by virtue of that LPN having received additional training/supervision.

The Applicants are accordingly seeking to have the Board redraw the bargaining unit lines based essentially on accreditation, rather than work performed or the duties of affected LPNs. The Board has repeatedly rejected that it will allocate individuals to bargaining units based simply on qualifications. Instead, the Board will consider the actual work an individual performs on a case-by-case basis to decide what bargaining unit the individual should be placed in. For example, Information Bulletin #22 states:[2]

> The Board does not make determinations about a classification or a position. There must be a person in the position. The Board determines whether a person is a member of a bargaining unit using the prime function test. This test evaluates the functions performed by the employee during a reasonable period of time surrounding the date of the application.

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[1] *Good Samaritan Society (A Lutheran Social Service Organization) (Re)*, [2010] A.L.R.B.D. No. 64 at para 34, emphasis added [*Good Samaritan Reconsideration*] [**Tab 1**].

[2] Alberta Labour Relations Board Information Bulletin #22 Determinations at 7, emphasis added [**Tab 2**].

Similarly, in the seminal case of *UNA v Alberta Hospital Association*, where the Board sought to delineate the boundary between the DNC unit and other standard healthcare bargaining units, the Board wrote[3]

> We do not accept the notion of a primary nursing unit (to adopt a neutral term), the boundaries of which are determined by the professional qualifications of the incumbents of any position. This would create much unnecessary uncertainty and confusion. The Board has consistently chosen to base its bargaining unit descriptions on the functions persons perform, not the titles or qualifications they hold.

Any kind of application seeking to place LPNs into a DNC unit must account for the actual work performed by the LPNs that are the subject of the application. The Union acknowledges that the Board previously indicated that it may be appropriate to use a reference of a difference as a way to decide the boundaries between the ANC and DNC units. However, it would be problematic if this process somehow relieved an applicant of the obligation to show that a given nurse was engaged in auxiliary or direct nursing care based on the duties actually performed. It cannot be that simply by invoking the magic words "reference of a difference" the Applicants can transform an improper, meritless, and redundant application into something the Board should hear on its merits.

Furthermore, it is notable that the Applicants here are only five LPNs. They explicitly do not purport to speak on behalf of any other LPNs. It would be problematic to permit five individuals to upset long-established and stable bargaining units.

Third, even if the Board found it would be appropriate to allow the Application to proceed despite the absence of a meaningful factual matrix, the Board has already decided this issue numerous times in the last twenty years. As the Board is aware, the United Nurses of Alberta ("UNA") has brought several applications seeking to have LPNs moved from ANC units to the DNC units. Without exception, these applications have all failed.[4]

Good Samaritan is the most instructive example in illustrating why the Application here is bound to fail. There, UNA brought determination applications, seeking to have LPNs working in 5 different locations for 5 different employes be included in DNC units. The Board summarily dismissed the applications. Notably, for the purposes of the summary dismissal applications, the Board accepted that the LPNs in question performed essentially the same work as registered nurses ("RNs") in those areas. Nonetheless, this fact was not sufficient to convince the Board that the LPNs should be placed in DNC units. The Board instead found that it should maintain the *status quo*, with LPNs remaining in the ANC units. Among other factors, the Board put particular

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[3] [1986] Alta. L.R.B.R. 610 at 9, emphasis added [**Tab 3**]. See also, to similar effect, *Alberta Health Services (Re)*, [2019] A.L.R.B.D. No. 32 at paras 101-103 [*AHS 2019*] [**Tab 4**].

[4] See, for example, *Good Samaritan Society (A Lutheran Social Service Organization) (Re)*, [2009] A.L.R.B.D. No. 1 [*Good Samaritan*] [**Tab 5**], *Good Samaritan Reconsideration*, *supra* [**Tab 1**] and *Alberta Health Services (Re)*, [2012] Alta. L.R.B.R. LD-050 [**Tab 6**].

emphasis on the community of interest and the Board's historical practices. Notably, the Board in 2019 reaffirmed that its approach in *Good Samaritan* was appropriate.[5]

Nothing has changed since the *Good Samaritan* decision that would suggest that a change to boundaries of ANC and DNC units is necessary, or even desirable. The fact that the scope of work an LPN could potentially perform has increased or is somehow more similar to that of RNs does not help the Applicants. Again, the Board *Good Samaritan* specifically assumed, for the purposes of the summary dismissal application, that the LPNs and RNs at issue in that application performed essentially the same work.

Conversely, community of interest factors support the continued separation of LPNs and RNs. Among other things, LPNs and RNs are regulated by separate governing bodies. Moreover, the governing body of LPNs, the College of Licensed Practical Nurses of Alberta, is expanding in scope because of legislative changes to also regulate health care aides ("HCAs").[6] The Board has previously recognized HCAs as falling inside ANC bargaining units.[7] The fact that LPNs and HCAs will be regulated by the same college actually demonstrates that the community of interest between members of ANC bargaining units has <u>increased</u> since *Good Samaritan*.

Similarly, the Board has noted that its historical practice is "not one that ought to be easily disturbed at least in the absence of there being valid labour relations purposes for making what has the appearance of a significant change."[8] The Applicants have offered no real valid labour relations purpose that would justify the remedy they seek. The Applicants state that morale is at an all-time low, but that moving LPNs into the DNC unit would help raise moral. However, at least some (if not all) of the evidence of low morale cited by the Applicants appears to discuss low morale in nurses generally, and among nurses in DNC units specifically. For example, the Applicants reference the quote that "Morale has never been lower" from a Vice President of UNA.[9] He was presumably speaking on behalf of his members, who are nurses in DNC units. It is not clear how moving LPNs into DNC units would help LPN morale, if morale in those units is already the lowest it has ever been.

The Applicants also suggest that LPN wages are "significantly lower than the Ontario-west average" because LPNs are "grouped with lesser trained and nonprofessional employees."[10] The Applicants' own evidence does not support this contention. Saskatchewan has the highest pay

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[5] *AHS 2019*, *supra* at para 112 [**Tab 4**].
[6] Bill 46, Health Statutes Amendment Act, 2020 (No. 2) at s 105 [**Tab 7**].
[7] See, for example, *An application for certification as bargaining agent brought by The Alberta Union of Provincial Employees affecting Masterpiece Retirement*, 2020 CanLII 74263 (AB LRB) at para 12 [**Tab 8**].
[8] *Good Samaritan*, *supra* at para 67 [**Tab 5**].
[9] Application at para 22(c), citing a Global News article. See, to similar effect, paras 22(a), (b), and (e), and references cited therein. The cited quote at para 22(b) is from a registered nurse, i.e., someone who is presumably a member of a DNC unit.
[10] Application at para 25.

rate for LPNs[11] but, according to the Applicants, LPNs in Saskatchewan are in a bargaining unit with general support staff,[12] i.e., "lesser trained and nonprofessional employees." Moreover, the Alberta maximum wage rate for LPNs is higher than that in British Columbia, Ontario, Quebec, Nova Scotia, and New Brunswick. According to the Applicants, these are all jurisdictions where LPNs belong to the same bargaining unit as RNs.[13] There is thus no basis for the Applicants to suggest that placing LPNs in DNC units with RNs will somehow magically cause their wages to increase.

Conclusions

Given the foregoing, it is the Union's position that the Application is without merit, is doomed to fail and is a colossal waste of the resources of the Board and the parties involved. A hearing into the substantive issue would involve weeks of evidence about every LPN worksite in the province. The Union therefore seeks to have the Board dismiss the Application summarily, pursuant to the Board's power under s 16(4)(e) of the *Code*.

Yours truly,

NUGENT Law Office

Per: PATRICK NUGENT
(pat@nugentlawoffice.ca)
PN/ac

c.c. Client, via email
Applicants, via email
CUPE, Local 408, via email (to Aneen Albus)
United Steelworkers, Local 1-207, via email (to Lily Hassall, counsel)
Alberta Health Services, via email (to Leland McEwan, counsel)
Covenant Health, via email (to Elliot Watson, counsel)
Alberta Union of Nurse Practitioners, via email (to Ed Picard)
Health Sciences Association of Alberta, via email (to Mike Boyle)
UNA, via email (to David Harrigan)

[11] Nurse Contracts in Canada, November 2022 at 5, cited at para 25 of the Application [**Tab 9**].
[12] Application at para 26.
[13] Application at para 26.

LIST OF AUTHORITIES/MATERIALS

Tab 1

Good Samaritan Society (A Lutheran Social Service Organization) (Re)

Alberta Labour Relations Board Reports

Alberta Labour Relations Board

Panel: Mark L. Asbell, Q.C., Chair; Ray Drisdelle, Member; Ken Kreklewetz, Member

Decision: July 20, 2010.

Board File No. GE-05553

[2010] A.L.R.B.D. No. 64 | [2010] Alta. L.R.B.R. 185 | 182 C.L.R.B.R. (2d) 243

Between United Nurses of Alberta and Certain of its Locals, Applicant, and The Good Samaritan Society (A Lutheran Social Service Organization), Shepherd's Care Foundation, David Thompson Regional Health Authority, East Central Health, Bonnyville Health Centre, Alberta Long Term Care Association and the Alberta Union of Provincial Employees, Respondents

(48 paras.)

Case Summary

Board Summary:

Reconsideration -- s. 12(4) — Bargaining Unit — Exclusions — Challenges -- s. 12(3)(o) — The Board dismissed UNA's reconsideration application seeking to overturn an original Board decision which dismissed UNA's application to have LPNs included in the direct nursing bargaining unit.

The United Nurses of Alberta ("UNA") apply under section 12(4) of the Labour Relations Code for reconsideration of a Board decision which summarily dismissed applications brought by UNA seeking determinations that various licensed practical nurses (LPNs) should be included in UNA's direct nursing care bargaining unit. UNA alleged the decision contained two principle errors. First, it erred in applying the summary dismissal test to the facts of the case with the result the decision conflicts with earlier Board jurisprudence. In particular, it argued the Board failed to conduct a prime function analysis and therefore could not assess whether the application had a reasonable prospect of success. Second, UNA was denied a fair hearing as a result of the Board failing to assume the facts as alleged in its application to be true and by accepting facts not before it.

Held: Application dismissed. The Board correctly assessed the scope of the application and correctly concluded the application had no reasonable prospect of success. Contrary to UNA's submissions, the Board conducted a prime function analysis and concluded the evidence was insufficient to support the conclusions LPNs are engaged in direct nursing care. The Board also rejected UNA's argument that the original panel denied UNA a fair hearing. The Board accepted as true the basic factual assertions for each of UNA's original determination applications and did not rely on facts not before it.

Appearances

For the Applicant: Bruce Laughton (Counsel).

For the Respondents: The Good Samaritan Society (A Lutheran social Service Organization): Craig Neuman (Counsel).

Shepherd's Care Foundation: Albert Lavergne (Counsel).

David Thompson Regional Health Authority: Unrepresented.

East Central Health: Unrepresented.

Covenant Health operating as Bonnyville Health Centre: Hugh J.D. McPhail, Q.C., Vicki Giles and Dan Bokenfohr (Counsel).

Alberta Long Term Care Association: Hugh J.D. McPhail, Q.C., Vicki Giles and Dan Bokenfohr (Counsel).

The Alberta Union of Provincial Employees: Simon Renouf and Shasta Desbarats (Counsel).

REASONS FOR DECISION

MARK L. ASBELL, Q.C., CHAIR

1 The United Nurses of Alberta and certain of its Locals (UNA) apply under section 12(4) of the Alberta *Labour Relations Code* (the "Code") for reconsideration of the Board's January 6, 2009 decision, found at *[2010] A.L.R.B.D. No. 1*, which we refer to as the "Determination Decision" rendered by the "Original Panel". The Determination Decision summarily dismissed applications brought by UNA seeking determinations that various licensed practical nurses (LPNs) should be included in UNA's direct nursing care bargaining units.

2 The reconsideration application proceeded by way of oral hearing before a panel of the Board (Asbell, Drisdelle, and Kreklewetz).

3 UNA alleges the Determination Decision contains two principal errors. First, the Original Panel erred in applying the summary dismissal test to the facts with the result the Determination Decision conflicts with earlier decisions of the Board. Second, the Original Panel denied UNA a fair hearing by failing to assume the facts as alleged in its original application to be true and by accepting facts not before the Board.

4 The Alberta Union of Provincial Employees ("AUPE" - the current bargaining agent for the LPNs in question), various affected employers, and the Alberta Continuing Care Association (jointly the "Respondents") oppose the application. They submit UNA's application does not warrant overturning the Determination Decision.

I. Background

5 The LPNs in question are employed at five different facilities located throughout the province. Each location involves a separate employer. At each location the LPNs are currently included in the auxiliary nursing care bargaining unit. AUPE is the certified bargaining agent for the auxiliary nursing care bargaining unit at each of these facilities.

6 UNA advanced five separate applications (one for each location/employer) seeking to have the LPNs removed from the auxiliary nursing care bargaining unit represented by AUPE and included in the direct nursing care bargaining unit represented by UNA.

7 Each of the five applications was similar in form premised on the allegation the prime function of the LPNs was that of direct nursing. The Board sets this out at paragraph 49 of the Determination Decision:

> 49 It is no surprise that all five of the determination applications, leaving aside the identity of the employers and of the specific LPNs, are very similar in content. Each is premised on the allegation that the prime functions of LPNs is in providing direct nursing care and, therefore, they properly fall under UNA's certificates. Each application then sets out: (i) a brief reference to the operation of each employer at the particular location; (ii) the number of RNs at each location represented by UNA under a specific Board issued certificate; (iii) the number of LPNs at each location who are alleged to have expressed a desire to be represented by UNA and who are currently represented by AUPE under a specific Board issued certificate for the auxiliary nursing care bargaining unit; (iv) a typical staffing schedule at each location for

RNs and LPNs and any others involved in patient care; (v) a brief outline of the work assignments on each shift; and, (vi) finally, a list of what are described as essentially the same functions performed by each of the RNs and LPNs on particular patient assignments. UNA's applications carry on, in an identical manner, to refer to the *Health Professions Act,* the LPNs Professional Regulation, the RNs Professional Regulation, Information Bulletins #10 and #22, a number of prior Board decisions and at least one Court of Queen's Bench decision, all for the purpose of persuading the Board the LPNs properly belong in UNA's direct nursing care units.

8 The applications carry on in an identical manner to refer to the relevant legislation, regulations, Board Information Bulletins, and Board decisions all provided for the purpose of convincing the Board the LPNs in question properly belong in the direct nursing care bargaining unit. Each application is premised on UNA's contention the prime function of the LPNs in question is to provide direct nursing care and, as a result, the positions should be included in the direct nursing care bargaining unit.

9 The Respondents opposed the applications and, at the outset, sought summary dismissal of the applications pursuant to section 16(4)(e) of the Code. The Original Panel granted the summary dismissal application. UNA seeks reconsideration of that finding.

II. Findings of the Original Panel

10 At the outset, we find it useful to provide a brief outline of the Determination Decision. At its most basic, the Determination Decision contains:

* an assessment of the scope of the application;
* a review of the relevant legal principles;
* a prime function analysis based on the scope of practice for LPNs set out in the *Health Professions Act*; and;
* several conclusions including:
    - that the dividing line between auxiliary nursing care and direct nursing care as it applies to LPNs is becoming less distinct and harder to draw;
    - the evidence of overlapping duties is not sufficient to achieve the result sought by UNA in such a close case, and;
    - a determination application is not the appropriate application to advance what amounts to an attempt to overturn long standing Board policy relating to the content of the auxiliary nursing care unit.

We expand on each of these elements of the Determination Decision.

Scope of the Applications

11 Of fundamental importance to the Determination Decision is the Original Panel's assessment of the scope of UNA's determination applications. Were the determination applications limited to the specific positions in question as argued by UNA, or were they far reaching in scope, effectively seeking to reverse the Board's longstanding policy of normally including LPNs in the auxiliary nursing care unit?

12 In the Original Panel's opinion, the applications were broad in scope. They effectively sought to achieve the dramatic result of removing LPNs from the auxiliary nursing care unit and including them in UNA's direct nursing care unit. UNA's position that the applications were limited in scope was inconsistent both with its position all LPNs employed by five separate employers should be included in the direct nursing care unit and, even more importantly, with its argument the legislated scope of practice for LPNs amounts to direct nursing care. The effective result, if this latter argument was accepted, would be an acknowledgment the prime function of LPNs is direct nursing care and, in turn, that they be included in that unit. Rather than a narrow application limited to the specific positions

identified in the applications, it would effectively overturn the Board's long standing practice of normally including LPNs in the auxiliary nursing care unit.

Applicable Legal Principles

13 The Board also identified a number of legal principles relevant to the applications.

14 First, the Determination Decision expressly states for the purposes of deciding whether to summarily dismiss an application, the Board assumes the facts as advanced by the applicant to be true.

15 Second, the Determination Decision discusses the impact of the *Labour Relations (Regional Health Authorities Restructuring) Amendment Act, 2003* (commonly referred to as "Bill 27") which, among other things, established by regulation four health care bargaining units including the auxiliary nursing care bargaining unit and direct nursing care bargaining unit along with the general support services and the paramedical professional and paramedical technical bargaining units. As stated by the Original Panel at paragraph 56 of the Determination Decision, "[t]he effect of these functional bargaining units being established by regulation is to remove the Board's power to make changes to them ..." although the Board retains the power to determine whether a person is included or excluded from a unit.

16 Third, the Board reviews the provisions of the *Health Professions Act* and, in particular, the provisions defining the scope of practice of LPNs and registered nurses (RNs). It concludes this discussion with the following statement, "... since both have scopes of practice that include applying nursing knowledge, skills and judgment, the dividing line between the direct nursing care bargaining unit and the auxiliary nursing care unit, as it applies to LPNs, is becoming less distinct and harder to draw."

17 Fourth, although the Board relies heavily on job function performed by employees in making a determination as to which unit an employee is placed in, in close cases community of interest considerations may play a significant role in making this determination.

18 Fifth, factors relevant to community of interest considerations have a role to play in determining where to draw the boundary line between units. While it is a mistake to use a community of interest analysis as a substitute for an analysis of the stated boundaries of a bargaining unit as set out in the bargaining unit description, in close cases it is acceptable and, in some close cases necessary, to look at community of interest considerations to gain insight into the intended scope of the unit.

19 Finally, the words describing each unit and, in turn, the dividing line between them, must accommodate specialization and change to remain relevant. As stated by the Board, any definition of direct nursing care must encompass the functions and roles exclusively given to individuals with nursing training who maintain professional registration. Similarly, we would add, the definition of the auxiliary nursing unit must encompass the functions and roles given to LPNs.

The Board's Prime Function Analysis

20 The Determination Decision contains a two part prime function analysis. First, the Board reviews the statutory scope of practice of both LPNs and RNs as set out in the *Health Professions Act* and its related schedules and regulations. Commencing at paragraph 57 of the Determination Decision, the Board reviews both the similarities and differences between the scopes of practice of LPNs and RNs, effectively analyzing the prime functions for these two groups of employees.

21 Secondly, the Determination Decision identifies and considers the overlap in functions between the LPNs and RNs in question as identified by UNA. Again, referring to paragraph 49 of the Determination Decision, the Board expressly recognizes the applications are each premised on the allegation the prime function of LPNs is the

provision of direct nursing care. The Board goes on in that same paragraph to review the list of what it describes as essentially the same functions performed by each of the LPNs and RNs on particular patient assignments.

Conclusions Reached by the Original Panel

22 Having assessed the scope of the application, identified the relevant legal principles, and considered the prime function of the LPNs in question, the Original Panel reaches a number of conclusions.

23 First, "... since both have scopes of practice that include applying nursing knowledge, skills and judgment, the dividing line between the direct nursing care bargaining unit and the auxiliary nursing care unit, as it applies to LPNs, is becoming less distinct and harder to draw." (Paragraph 60).

24 Second, the Original Panel specifically considers the relevance of the overlap in functions identified by UNA. At paragraph 66, the Board states: "Although each of UNA's applications do outline certain functions performed by LPNs on patient assignments that are essentially the same as those performed by the RNs, the overlap of these particular functions is insufficient, in the Board's view, to support UNA's allegation that these LPNs are engaged in direct nursing care." Thus, the Original Panel concludes this overlap is insufficient to support UNA's allegation the LPNs in question are engaged in direct nursing care. In close cases such as this, community of interest considerations favour leaving the LPNs in the auxiliary nursing care unit. (Paragraph 68).

25 In addition, the situation described by UNA is one that existed long before 2003 when Bill 27 was proclaimed or the provisions of the *Health Professions Act* and, in particular, the provisions defining the scope of practice of LPNs and registered nurses (RNs) were proclaimed. Nothing was alleged to have occurred at the time the applications were brought justifying a change being made by the Board to its long standing practice of normally including LPNs in the auxiliary nursing care unit.

26 Finally, at paragraphs 69 and 70, the Original Panel concludes a determination application is not the appropriate method of seeking to overturn long standing Board policy affecting a large number of employees and employers.

III. The Board's Reconsideration Power

27 Section 12(4) provides the Board may, at any time, reconsider any decision. Information Bulletin #6 sets out, among other things, the circumstances that may prompt the Board to reconsider its own decision. In the context of this case, UNA contends the Determination Decision contains substantial errors of fact or errors of law warranting reconsideration.

28 We note the Board generally uses its reconsideration power cautiously. As the Board states in *U.S.W.A., Local 5220 v. GenAlta Recycling Inc.*, [*[2004] A.L.R.B.D. No. 4*](), [*[2004] Alta. L.R.B.R. LD-004*]():

> 17 The Board's power to grant reconsideration is a discretionary one ... In a typical case, the Board exercises its reconsideration power cautiously in light of the importance of the principle of finality to labour relations matters. The standard of review is not mere disagreement with the approach followed by the original panel. There must be substantial error that justifies intervention. ...

IV. Reconsideration Decision

29 UNA contends the Original Panel made substantial errors of fact or errors of law warranting reconsideration and that it denied it a fair hearing. We disagree. We look at each in turn.

Error of Law

30 UNA argues the Determination Decision errs in applying the summary dismissal test used by this Board with the result that it conflicts with earlier decisions of this Board. In particular, it argues previous Board jurisprudence addressing determination applications requires a prime function analysis be conducted. In failing to conduct this analysis to determine whether the work being done by the LPNs in question amounted to direct nursing care, the

Original Panel could not assess whether the application had a reasonable prospect of success. According to UNA, this failure amounts to a reviewable error justifying reconsideration of the Determination Decision. (See: Information Bulletin #10; *Calgary General Hospital United Nurses of Alberta v. Calgary General Hospital*, *[1987] Alta. L.R.B.R. 553*; *UNA v. Alberta Hospital Association*, [1996] Alta. L.R.B.R. 610 at 622, and; *Alberta Union of Provincial Employees v. Health Sciences Association of Alberta and Capital Health Authority and Alberta Labour Relations Board*, *[2008] Alta. L.R.B.R. 230* at paragraph 92).

31 With respect, we do not see any reviewable error in the way the Determination Decision characterizes UNA's applications or in the conclusion it reaches that the application should be summarily dismissed. In our view, the Determination Decision correctly identifies the scope of the application and the relevant legal principles, applies these principles to the facts as alleged by UNA and concludes the application should be summarily dismissed as having no reasonable prospect of success.

32 The Board correctly concludes the application had broader implications than potentially placing a relatively small number of LPNs in the direct nursing care bargaining unit. Rather, the application, if successful, would effectively eviscerate the auxiliary nursing care bargaining unit by removing the core group of employees that comprise that unit - LPNs. We agree with the Original Panel's assessment of the scope of the application and find no error in its assessment of this issue.

33 The conclusion the applications had no reasonable prospect of success and, as a result, should be summarily dismissed is also, in our view, correct.

34 First, and perhaps most importantly, granting the applications would effectively amend the auxiliary and direct nursing care units, a power the Board correctly concludes it no longer possesses since the passage of Bill 27. As discussed in the Determination Decision, this legislative scheme effectively removed the Board's power to make changes to these quasi-statutory units. Although the Board continues to have the power to decide whether an individual is included or excluded from a unit, it does not have the power to make material changes to these units such as effectively gutting the auxiliary nursing unit by removing LPNs from the unit.

35 Second, the result sought by UNA would overturn the longstanding policy and practice of normally including LPNs in the auxiliary nursing unit. In the Original Panel's view, this result was not warranted by the simple overlap of functions between individuals whose core functions as defined by the *Health Professions Act* somewhat overlap. In cases where the dividing line between units is by definition difficult to define, simply demonstrating an overlap in functions will not be sufficient to justify moving a group of employees that are the core of the unit from one unit to another. In these close cases, community of interest considerations support continuing to include employees in their current bargaining unit unless a material change can be identified justifying movement to a different unit. As stated in the Determination Decision, no such change has been identified in this case.

36 This is generally so even in cases where the activities and roles of the individuals in question may have evolved over time as is the case with both LPNs and RNs. As discussed in the Determination Decision at paragraph 60, the definition of units and, in turn, the dividing line between them, must accommodate specialization and change to remain relevant.

37 We specifically reject UNA's suggestion the Original Panel failed to conduct a prime function analysis. To start, the Board expressly acknowledged the necessity of performing a prime function analysis as part of a determination application. In this case, it carefully reviewed the statutory scope of practice of both LPNs and RNs. As has been discussed, the result of this analysis was the Original Panel's conclusion the dividing line between these units was becoming harder to determine. Simply put, the dividing line between these units in the context of the placement of LPNs is a close call that is not easily made.

38 The Original Panel went on to consider, as part of its prime function analysis, the evidence of overlap of functions as set out in UNA's applications. Also as previously discussed, the Original Panel concludes this evidence in this "close call" case was insufficient to support the allegation these LPNs, or LPNs in general, are engaged in

direct nursing. We find no error in this conclusion and, in fact, agree with it. However this analysis may be characterized, it cannot be described as a failure to consider the prime function of these employees or LPNs more generally.

39 We would add that if evidence of overlap in functions was sufficient grounds to reverse policy positions adopted by the Board such as the language describing the content of the health care functional bargaining units, greater uncertainty will be introduced into the area of bargaining unit determinations than already exists. The determination of the boundaries of the various standard health care bargaining units has been, and will likely continue to be, a source of ongoing dispute. The guidance and certainty these policy statements provide to the health care community will be virtually eliminated if applications such as the one advanced by UNA could effectively rewrite these policies.

40 Finally, the Original Panel concludes a party seeking to overturn long standing Board policy addressing the dividing line between functional bargaining units in health care should not do so by way of determination applications involving a small number of LPNs employed by a small number of employers. As stated at paragraph 70 of the Determination Decision, "[w]hen a party seeks to have the Board reconsider and, perhaps, overturn a practice of long standing, especially one that could have a potential impact upon numerous employers and unions, it is likely a determination application limited to only a small number of employers or groups of employees is not the route to follow." The Original Panel was of the view the preferable approach is a reference of a difference leaving the Board free to invite submissions from all affected healthcare stakeholders. We agree with these comments and see nothing in them or in the arguments presented to us on this point demonstrating an error on the part of the Original Panel. An application seeking a broad policy review should be framed in a manner allowing a broad based review to take place.

Fairness of the Board's Hearing

41 UNA also alleges the Original Panel denied it a fair hearing by failing to assume the facts as alleged in its application to be true and by accepting facts not before it. We fail to see merit in either of these allegations.

42 The basic factual assertions for each of UNA's original determination applications are the same. They include a brief description of the employer and its operations, the number of registered nurses and LPNs employed at the specific location, the work responsibilities for these two groups of employees, and specific examples of the overlap in their functions.

43 At paragraph 49 of the Determination Decision, the Original Panel reviews the factual basis for the five determination applications. It continues at paragraph 51 to confirm the Board's practice that on summary dismissal applications, the facts, as alleged by the applicant, are accepted as true. Having reviewed the factual foundation for the application and the legal obligation to assume these facts as true, the Determination Decision concludes at paragraph 66, that the overlap in functions is insufficient to support UNA's allegation the LPNs are engaged in direct nursing care. With respect, we fail to see how it can be successfully argued the Original Panel fails to accept as true the facts as alleged.

44 Nor are we of the view the Original Panel relies on facts not before it. In particular, UNA points to references in the Determination Decision to community of interest considerations suggesting the original panel unfairly relies on these as facts not before them.

45 These references are included as part of the Original Panel's discussion at paragraph 68 that, although the Board relies heavily on the job function an employee performs, other considerations may play a role in deciding which unit an employee is included in. We find this discussion and the resulting conclusion that "other considerations" may play a role sound. This is simply a statement of the law as developed by this Board.

46 We also find it inoffensive in the sense there is nothing unfair about the Original Panel making this statement or discussing these "other considerations". The "other considerations" mentioned in the Determination Decision are

directly relied on by UNA or one or more of the Respondents as part of the application heard by the original panel. As a result, it cannot be argued it is unfair for the original panel to consider them.

47 In addition, these policy considerations underlie the very health care bargaining units in question. We note while these units have acquired a statutory flavour in some contexts since the passage of Bill 27 and its related regulations, the Board is in fact the body that initially created the functional bargaining units in the health care sector. Given this fact, we find it hard to accept the Original Panel acts unfairly when it considers policy considerations raised by the parties and which the Board is intimately familiar with in its role as an expert tribunal in the labour relations area.

V. Conclusion

48 For the foregoing reasons, we dismiss UNA's reconsideration application.

End of Document

Tab 2

ALBERTA LABOUR RELATIONS BOARD

INFORMATION BULLETIN

#22 DETERMINATIONS

I. INTRODUCTION

The Board may determine a number of matters, including whether persons are employers and employees within the meaning of the *Labour Relations Code* and the *Public Service Employee Relations Act* and whether or not an employee falls within a bargaining unit. *See: Sections 12(3)(a), (b), (o); PSERA Sections 3(2)(b), (p)*.

Determinations are often made as part of another matter such as a certification application. They may also be made as the result of a determination application. Parties to a difference over any determination question should first meet and attempt to resolve the issue themselves. If the matter cannot be resolved, the parties should next consider using the arbitration procedures in their collective agreement. If necessary, the Board may hear the application.

This Bulletin deals with determination applications filed under Section 12(3) of the Code or Section 3(2) of the Act. It describes how a party files a determination application and how the Board processes those applications. Finally, as they are the most common applications of this type, the Bulletin specifically deals with employee and true employer determinations.

II. A DISCRETIONARY ROLE

When two parties differ over any determination question, they should first meet and attempt to resolve the issue themselves. In the event the matter cannot be resolved, the parties should next consider using their collective agreement's arbitration procedures. For example, if a collective agreement's scope clause is the same as the unit description, the question of a person's managerial status might be arbitrated. If necessary, the Board may hear the application. The Board may defer to arbitration under Section 16(4)(d) or find a decision is not necessary "for the purposes of the Act," and refuse the application.

III. WHO CAN APPLY?

Only an affected party may file a determination application. An affected party has a tangible and demonstrated direct legal interest in the outcome of an application. The Board has made several decisions about Section 12(3) applications. Some of the key ones include:

- An affected party or person includes the employer or the employee(s) concerned. It also includes the trade union holding the certificate or voluntary recognition for the unit.
- A trade union cannot, through a determination application, challenge or ask the Board to reconsider the certificate of another trade union.

- Some determinations involve multiple bargaining units, for example, a hospital or municipality. In such cases, a trade union cannot encroach upon the rights of other bargaining agents. For example, a trade union cannot ask the Board to include in its unit, and simultaneously remove from another certified unit, classifications specifically covered in the other certificate.
- Trade unions are entitled to notice and standing of applications that affect their units. The Board limits these affected unions in their representations to protecting the rights and interests of the employees they represent. They cannot attempt to expand their units in this way.
- A union can ask the Board to determine whether a person is included in a unit even though another trade union has over-bargained its certificate to capture the person in their collective agreement scope clause.
- An employee affected by a certificate, the trade union, and the employer have status to ask for a determination about whether that person is included in or excluded from the unit.
- A third-party employer may seek a determination about whether they are bound by a registration certificate or collective agreement.

See: Section 16(8); Bulletin 2; IBEW Local 1007 v. City of Edmonton [1985] Alta. L.R.B. 85-047; Pasek and Ennis v. AARNA, HSAA and Calgary General Hospital [1982] Alta. L.R.B. 82-001, upheld Alta. Q.B., April 23, 1982, Chrumka; J. Burnco Rock Products v. Teamsters 362 [1993] Alta.L.R.B.R. 89, upheld Alta. Q.B., August 12, 1993, Dixon J.

IV. FILING AND PROCESSING THE APPLICATION

Any affected party or individual can apply for a determination using a letter setting out the information required.

Before filing an application with the Board, the applicant must serve a copy of the application on any other affected persons (e.g., trade union, employer, etc.). The applicant must provide proof of the service in a form acceptable to the Board. The Board will direct how the employees will be notified-usually by posting of a notice at the worksite. *See: Rules of Procedure, Rules 5.1, 6; Bulletin 2*.

On applications affecting hospitals, nursing homes and community health employers, the applicant should serve all unions having a bargaining relationship with the employer as well as the HBA Services (Health Boards of Alberta). This complies with a long-standing decision of the Board to give these parties notice of all determination applications in hospitals, nursing homes and community health because of the potential impact on the standard bargaining unit structure.

Applications affecting the construction and related industries should also be served on the Construction Labour Relations - an Alberta Association and the Building Trades Council.

A party seeking a determination must include in the application all of the information set out in Rule of Procedure 6 plus:

- the specific subsection of the Code or Act covering the determination;
- details of the bargaining relationship;
- for employee determinations, the name of the person(s) in question and the date the duties were created or assigned;

- where available, documents supporting the application, such as job descriptions and organizational charts, or documents which identify the employer; and
- a description of the efforts made by the affected parties to resolve the dispute. Applicants should always consult with other affected parties and try to resolve the dispute before bringing the application. Parties are expected to exchange information about a new position or duties concerning the role of the person(s) in respect of the matters enumerated in the checklists below and other duties they consider relevant. Parties are also expected to exchange any documents relevant to those matters well in advance of any hearing and to contact the Board if they cannot agree on disclosure of documents.

See: Rules of Procedure, Rules 5.1, 6.

The Director of Settlement reviews all applications for completeness and may refuse to process any application lacking sufficient information or may ask the applicant to provide further particulars. All respondents must file a reply and serve it on the other parties. *See: Rules of Procedure, Rules 5.1, 8; Bulletin 2*.

Applications for employee determinations may be rejected by the Board as premature if the position is less than six months old unless there are compelling reasons to accept the application. *See: HSA v. Misericordia Hospital [1995] Alta.L.R.B.R. 533*.

The Board does not usually assign an officer to investigate the facts relating to determination, but officers or Board members may become involved in informal settlement efforts. *See: Section 11; Rules of Procedure, Rules 31-33; Bulletins 2, 4*.

In most instances, if the parties are unable to resolve the matters between themselves, the Director of Settlement schedules the application directly to hearing. Frequently a Chair or Vice-Chair alone will decide these matters and may hold the hearing at the worksite.

V. EMPLOYEE DETERMINATIONS

The Board sometimes determines who is an employee. This may occur when unions apply for certification. To order a vote, the Board must be satisfied on the basis of the Board Officer's investigation, that 40% of the employees in the bargaining unit applied for support the application. Who is an employee can affect if there is a vote and who is eligible to cast a ballot. The Board also decides employee status for some revocation and determination applications. *See: Sections 12(3), 33, 51(2)*.

The *Labour Relations Code* defines an employee as anyone employed to do work and who is in receipt of or entitled to receive wages. The Code also lists a number of exceptions. For example, managers are not employees. *See: Section 1(l)(i)*.

Changes in a workforce make it difficult to determine who is an employee. For example, are workers on parental leave employees? Sometimes it is also unclear if an employee is in a specific bargaining unit. The Board has developed rules about who is an employee for voting purposes. These rules also guide decisions about who is considered an employee for the purposes of voting in a certification application. Some employees may fall within a bargaining unit but may not be eligible to vote because of the Board's voting rules. These rules are not absolute. When

appropriate, the Board departs from them. *See: Voting Rules, Rules 16, 17; CJA 1325 v. Stuart Olson Contracting Inc [2000] Alta. L.R.B.R. 674*.

Types of Employees

Employers have different types of employees. Some may be full-time while others regular, part-time or casual. The Board distinguishes between three categories of employees. *See: CUPE 417 v. Westerner Exposition Association [1986] Alta. L.R.B.R. 273*.

Full-time employees are employed on a regular basis. For example, they may be employed Monday to Friday, 8:30 to 4:30. Shift workers scheduled for a full-shift for a full period are also considered full-time employees.

Regularly scheduled part-time employees are employed on a regular basis but do not work full-time. This could include a person who works only Saturdays and Sundays while the normal days of work are Monday to Friday.

Casual employees work irregularly or on a call-in basis. A casual employee includes someone who has the right to refuse work and is generally not directed to be at work on a specific day(s) and time(s).

The Code provides no direction about how casual and part-time employees are treated in certification applications. The Board uses its voting rules to determine whether there is the necessary support to order a vote and who is eligible to vote. Full-time and part-time workers are treated as employees assuming they worked on the date of the application, or:

- worked in the 30 days prior to the application (14 days in construction); and
- worked or are expected to work in the 30 days after the application (14 days in construction).

See: Voting Rules, Rules 16(1)(a), (b), 17.

This means most full-time and part-time workers are eligible to vote and support a union even if they were absent the day of the application because of casual illness, annual vacation or temporary layoff. Those absent on long-term disability, extended sick leave, long-term lay-off, major disciplinary suspension or lengthy education or vacation leaves are not eligible to vote (but may be in the bargaining unit). Full-time and part-time workers absent on parental leave are eligible to vote.

Casual employees are eligible to support a union if they worked on the date of the application. Casual employees not working on the application date are not subject to the 30/30 rule outlined above.

Exemptions

Certain workers are not "employees" for the purposes of the statute.

Managers are excluded to avoid a conflict of interest. Employers must manage their staff. They must also negotiate and enforce collective agreements. To do this, employers need staff not subject to union influence. Excluding managers also helps unions operate free of employer influence. *See: Section 1(l)(i)*.

The Board determines who performs managerial functions on a case-by-case basis. The nature of the industry, the size of the institution, and the particular employer organization can all affect a determination. The Code neither defines the term "managerial functions" nor does it list any specific criteria that the Board must consider. Over the years, the Board has developed a general approach to assist it in reaching a conclusion in a given case. Persons excluded because they exercise managerial functions generally fall into two categories: those who supervise and those who do not.

Supervising others does not automatically mean a person has managerial responsibilities. The person must exercise effective control over the employees they supervise. At the least, they must make effective recommendations that materially affect the economic lives of employees. Effective recommendations are serious recommendations that are consistently acted upon. Effective recommendations are not merely input into or consultation about the decision-making process or the implementation of pre-determined policies. The following checklist is a useful guide for determining whether managerial functions are being exercised.

- **Supervision**: Does the person exercise supervisory responsibility over other employees? How many employees? How significant is the supervision?
- **Hiring and Promotion**: Does the person make these decisions or at least make effective recommendations to others?
- **Discipline and Discharge**: What is the extent of the person's role in making these key decisions?
- **Directing Work**: Is the person responsible for the operation of an organizational unit? Who has ultimate authority for assigning work and ensuring that the quality of work meets expectations?
- **Independence**: Does the person exercise considerable managerial discretion?
- **Labour Relations Input**: Does the person represent management in responding to grievances and interpreting the collective agreement? Does the person have meaningful input into management bargaining proposals?
- **Supervising Subordinate Supervisors**: Does the person oversee a junior supervisor who is in the bargaining unit?
- **Evaluating Employee Performance**: Determine the person's role in assessing the performance of others. Can the person have an important impact on another's career through such evaluations? Are the evaluations acted upon?
- **Ordering Overtime/Granting Time Off**: What is the financial impact of these decisions? Does the person exercise independent discretion?
- **Policy Setting**: What role does the person have in establishing company policy or altering it?
- **Job vs. a Function**: The Board examines the person's functions in their entirety, rather than looking at any one function in isolation.
- **Job Titles**: The Board is not persuaded by job titles alone, but focuses instead on what duties the person actually performs in practice.
- **Professional/Technical Roles**: The Board will try to determine whether the additional responsibilities are true managerial functions or merely a natural reflection of the person's greater experience and skill or inherent in the exercise of the person's professional and technical skills.

See: UNA 176 v. Central Park Lodges [1996] Alta.L.R.B.R. 428; Capital Care Group v. UNA [1997] Alta.L.R.B.R. 316; UNA et al. v. AHA et al., [1986] Alta.L.R.B.R. 610; Okanagan Telephone Co. [1977] 2 Can. L.R.B.R. 428.

Even if a person does not directly impact the terms and conditions of other's employment through supervision, they may still exercise managerial functions. People who are involved in **matters of policy** or the running of the organization may be excluded. This decision is based upon

- whether or not they exercise independent decision making responsibilities
- that impact the employment relationship.

See: AHA et al v. UNA 151, 96, 64 and 74 et al. [1986] 15 C.L.R.B.R. (N.S.) 277 (Alta. L.R.B., HSAA v. Foothills Provincial General Hospital 1984 P.S.E.R.B.R. 581).

If both of these conditions are met, they are excluded. Provided the person has independent discretion, the exclusion operates across all aspects of typical managerial decision making. This includes budgeting, marketing, financial control and the like. The power to merely make effective recommendation in such areas, where there is no direct impact on the employment relationship, is not sufficient to justify excluding persons as managerial.

Employees performing confidential labour relations functions are also excluded. This exclusion is to avoid a conflict of interest. Some staff will be entrusted with confidential information. This exclusion ensures the employer can rely upon them to keep this information confidential. Similarly, a person's interest as a member of the bargaining unit might interfere with the performance of their job functions on behalf of the employer.

The Board's narrowly interprets this exclusion. A three-fold test is normally applied.

- the person's duties must involve labour relations activities, information handling or strategy;
- involvement with this information is on a regular basis; and
- disclosure of this information would adversely affect the employer.

See: ATU 569 v. City of Edmonton et al. [1990] Alta. L.R.B.R. 486; Christenson v. County of Parkland et al. [1989] Alta. L.R.B.R. 155; Labour Relations Board for B.C. et al. v. Canada Safeway Ltd. 53 C.L.L.C. 15,058 at pp. 174-175 (S.C.C.); Crown in right of Alberta v. Donna Hudj et al. [1996] Alta L.R.B.R. 125.

Members of the medical, dental, architectural, engineering and legal professions are excluded when they are employees working in their professional capacity. Other employees commonly considered professionals such as accountants are not excluded by the Code. *See: Section 1(l)(ii).*

Persons training in their profession may fall outside of the Code as "students" or within the Code as "employees" depending on the facts of the case. *See: University Hospitals Board and Professional Association of Interns and Residents of Alberta [1981] 3 Can. L.R.B.R. 477 (Alta. P.S.E.R.B.); St. Paul's Hospital and Professional Association of Residents and Interns [1976] 2 Can. L.R.B.R. 161 (B.C.L.R.B.).*

For professionals who are employees, the professional exclusion operates only if three conditions exist:

1. They are members of their profession. This means they must have membership in their professional governing body.
2. They must qualify to practice their profession under the laws of Alberta. This requirement goes beyond the requirement of membership in the profession. Some professions offer classes of membership to persons who do not fully qualify to practice.

3. Their employer must employ them in their professional capacity. For example, the Board will not exclude a fully qualified engineer who does not provide engineering services but rather works in a maintenance job.

Which Bargaining Unit?

The Board frequently decides if an employee is a member of a specific bargaining unit. The Board does not make determinations about a classification or a position. There must be a person in the position. The Board determines whether a person is a member of a bargaining unit using the prime function test. This test evaluates the functions performed by the employee during a reasonable period of time surrounding the date of the application. *See: RE: City of Edmonton Bargaining Units [1993] Alta.L.R.B.R. 362*.

When determining which bargaining unit an employee may fall into, the Board considers:

- the unit description(s);
- the nature and organization of the employer's business;
- the prime function of each employee: what functions does the employee perform? What skills does the employee use? What tools? What materials? Does the employee do the work or assist? What percentage of time this work involves out of the total duties?; and
- job qualifications to the extent they help the Board decide what a person is doing.

See: Brauns Construction Ltd. v. Labourers' Local 92 [1992] Alta.L.R.B.R. 10.

VI. EMPLOYER DETERMINATIONS

The Board occasionally determines the identity of an employee's true employer. The main test used by the Board is described in the Ontario Labour Relations Board decision *K-Mart Canada Ltd. v. Teamsters 419* (1983) 3 C.L.R.B.R. (NS) 224.

K-Mart sets out a seven-fold test for use in determining if an entity is a true employer:

- **Who has direction and control over how the work is done**? Who selects the employees to do the job? Who controls the way the work is completed? Who controls hours of work and attendance? Who controls operating expenses and purchases? Who provides the equipment, materials, business license and insurance (i.e., liability insurance, property insurance, workers compensation, etc.)?
- **Who has the burden of remuneration**? What is the wage flow? Who pays the workers whose status is at issue? Who bears the ultimate burden of remuneration? The means of remuneration both primarily and ultimately, are important factors in determining who is the employer. Who controls the payment of wages?
- **Who imposes discipline**? Who demotes, suspends or issue warnings to their employees? Do they need permission from a higher authority? If yes, who? Who conducts employee evaluations independently?
- **Who hires**?
- **Who fires**?
- **Who do the employees think is the employer**? Who do the employees think directs their daily work on the job site? Who do they think controls their livelihood?
- **Did an intention to create an employer/employee relationship exist**?

The Board looks at who has "overriding control" of these factors when determining if an entity is a true employer.
See: Plumbers 488 and OE 955 v. Midwest Pipeline Contractors Ltd. [1989] Alta. L.R.B.R. 166; OE 955 v. Peter Kiewit and Sons Co. Ltd., Kiewit Management Limited and Mead Construction Ltd. [1987] Alta. L.R.B.R. 79; Labourers 1111, Plumbers 488, OE 955 et al vs Sie-Mac Pipeline Contractors Ltd. and Spear Construction Inc. [1991] Alta. L.R.B.R. 847.

See also:

Section 12
Rules of Procedure
Information Bulletins 2 and 4

For further information or answers to any questions regarding this or any other Information Bulletin please contact:

Director of Settlement
Labour Relations Board
501, 10808 99 Avenue
Edmonton, Alberta T5K 0G5
Telephone: (780) 422-5926

Manager of Settlement
Labour Relations Board
308, 1212 31 Avenue NE
Calgary, Alberta T2E 7S8
Telephone: (403) 297-4334

Email: alrb.info@gov.ab.ca
Website: alrb.gov.ab.ca

Tab 3

United Nurses of Alberta Locals 151, 96, 64 and 74, and Alberta Hospital Association, Drumheller General and Auxiliary Hospital and Nursing Home District No. 3, Fairview General and Auxiliary Hospital and Nursing Home District No. 59, Manville Municipal Hospital District No. 1, and Fort McMurray General and Auxiliary Hospital and Nursing Home District No. 99, and Health Sciences Association of Alberta, and Alberta Association of Registered Nursing Assistants., [1986] Alta. L.R.B.R. 610

Alberta Labour Relations Board Reports

Alberta Labour Relations Board

A.C.L. Sims, Chairman, K. Kreklewetz, R. Eifert, L. Schell and R. Drisdelle, Members

November 17, 1986

Board Files: L.R. 434-F-3, 434-D-2, 434-F-2, 434-M-16

[1986] Alta. L.R.B.R. 610 | 15 C.L.R.B.R. (NS) 227 | 1986 CarswellAlta 1126

Case Summary

Bargaining Unit Descriptions - Hospital Industry

Bargaining Unit Descriptions - Nursing Profession based unit inappropriate.

Managerial Exclusions - Hospital Industry - Labour Relations Act, R.S.A. 1980, c. L-1.1, s. 1(1)(l) - ss. 8(2)(b) and (o).

As a result of increasing numbers of applications for Section 8 determinations in the hospital industry, the Board convened a hearing to examine the scope of the established five functional bargaining units and its criteria for making managerial determinations, as well as the specific determination cases before it. The only proposal advanced for a substantive change in the bargaining unit descriptions was for an amendment to the standard nurses unit description so as to expressly encompass all employees who are nurses by profession within its scope. Although the Board acknowledged that the current description should not be interpreted narrowly to include only employees dispensing medication and bed-side care, it found that the proposed change would not conform to the established functional approach in the industry and would lead to unnecessary uncertainty and confusion. Where a nurse performs other than direct hands-on bedside nursing or teaching, she will be placed in one of three units: direct nursing care; paramedical professional; or general support. An employee will be allocated to the direct nursing care unit where the position or functions require or involve a nursing background; to the paramedical professional unit where the position requires a health disciplines background and paramedical skills; and to the general support unit where the position requires a health discipline background and administrative skills. The Board noted that managerial exclusion determinations will be made on the basis of what the person does rather than on job titles or job descriptions. A different approach must be taken to managerial determinations depending upon whether or not the individuals have an impact on the employment relationship of others. Where the persons have little or not impact, the Board will look to whether or not they exercise independent decision-making responsibilities in matters of policy or running the organization. If they do have such impact, then the Board will assess whether or not they exercise effective control or authority over employees and whether or not their duties involve a labour relations conflict of interest. The Board cautioned against application of the managerial team concept and emphasized instead the need to examine the realities of an employer's management style. The Board proceeded to apply these considerations to the specific determinations before it.

(i) caring for physically or mentally ill persons, or

(ii) caring for and assessing the health of well persons,

and includes the administration of any drug or medicine, as defined in the Pharmaceutical Association Act, that is permitted by law to be prescribed and administered to a person;

It also contains a prohibition against unregistered people engaging in "exclusive nursing practice", subject to some exceptions, in section 3 and 4:

3(1) Subject to the provisions of this or any other Act entitling a person to practise a science, therapy or system of practice, a person is guilty of an offence who, not being a registered nurse or permit holder, engages in exclusive nursing practice.

(2) Nothing in this Act authorizes or allows the holder of a temporary or special permit to engage in exclusive nursing practice contrary to the limitations, conditions or restrictions applicable to the permit or to the permit holder.

(3) Nothing in this Act prevents

(a) a student enrolled in an approved school of nursing from engaging in exclusive nursing practice in the course of the student's education program, or

(b) a student enrolled in an approved school of nursing from engaging in exclusive nursing practice in the course of her employment if the student is directly supervised by a registered nurse.

(4) After the Minister has consulted with the Council of the Association, the Lieutenant Governor in Council may exempt a person or class of persons from the application of section 3(1) subject to any terms and conditions imposed by the Lieutenant Governor in Council.

Section 2 of the Act deals with the more general concept of the practice of nursing:

(2) A registered nurse and a certified graduate nurse are entitled to apply professional nursing knowledge for the purpose of

(a) promoting, maintaining or restoring health; (b) preventing illness, injury or disability; (c) caring for the injured, disabled or incapacitated; (d) assisting in childbirth; (e) teaching nursing theory or practice; (f) caring for the dying; (g) co-ordinating health care; (h) engaging in the administration, education, teaching or research required to implement or complement exclusive nursing practice or all or any of the matters referred to in clauses (a) to (g).

These more general activities obviously overlap with, but extend beyond, the exclusive nursing practice area. In order to maintain one's status as a registered nurse it is necessary to actively practice nursing for a set number of hours per year. However, those hours do not have to be logged in exclusive nursing practice, and can be entirely or partially occupied with activities that fall only within the broader concept of nursing practice set out in s. 2 as interpreted by the A.A.R.N. As a result many persons maintain their R.N. designations by engaging in work that is not "exclusive" practice. The most striking example of this is the R.N.s who are employed as business representatives of the U.N.A., however there are many other examples where work experience in other than hands on bedside nursing is accepted for continued registration. The concept of nursing the U.N.A. is asking us to incorporate into their bargaining unit description is this larger concept of nursing practice.

IV "Direct" Nursing Care

One argument advanced in support of this proposed change is that, in the U.N.A.'s submission, the words "direct nursing care" have been given too narrow an interpretation in some Board decisions, and have served to exclude

persons whose duties while not "direct" in the sense of involving hands on bedside care are nonetheless properly nursing work. "Direct", the U.N.A. says, was never meant as a limiting term, it was meant as a term designed to differentiate registered nurses from R.N.A.'s involved in auxiliary nursing care. Counsel for the A.H.A. did not really disagree with this analysis of the original intention in respect to the standard unit descriptions.

The evolution of the present five bargaining units was a gradual one, and it is difficult to pinpoint exactly how or why the word "direct" came to be used. In reading the earliest decisions it is clear that the Board, very early on, decided to rely not upon hospital job titles or occupational titles but instead tried to use generic terms to describe the type of functions that employees performed within the hospitals. In those days there was also much less governmental regulation of the various professions and occupations at work in the hospital industry. In particular there was no clear occupation of nursing assistant such as today falls within the R.N.A. designation. Instead there was a wide variety of nursing aides, nursing orderlies, porters and others, who performed some functions that clearly involved patient care, and others that were more closely linked to support work in the areas like dietary and laundry services, which were then sometimes likened to the "hotel" functions of the hospital.

Our impression is that the words "direct nursing care" and "direct auxiliary nursing care", and in particular the word "direct", were originally used to differentiate between those people who performed essentially support work in the hospital, and those whose primary responsibility was for the patient's immediate health care.

Informational Bulletin No. 4 issued in 1977 referred to the two nursing units in the following terms:

> Professional Nursing Care - a unit comprised of all employees of the employer providing direct professional nursing care or instruction therein as evidenced by membership in A.A.R.N., or as a graduate of a recognized school of nursing, and would encompass all such employees employed by the employer up to and including the level of head nurse or its equivalent.
>
> Auxiliary Nursing Care - a unit comprised of all employees of the employer providing direct auxiliary nursing care and could include employees classified as certified nursing aides, nursing aides, nursing assistants, registered orderlies, orderlies, ward aides and operating room technicians.

These two unit descriptions used the word "direct" while the other three units each used the word "support". By April 1st, 1978 the Board had modified the wording somewhat and the unit descriptions in Informational Bulletin 9 read:

> (a) 'All employees when employed in direct nursing care or instruction therein'. This unit comprises all those employees in the direct nursing care function or instructors in same and could encompass graduate and registered nurses, psychiatric nurses and nursing instructors when performing as such.
>
> (b) 'All employees when employed in auxiliary nursing care'. This unit comprises all those employees providing auxiliary nursing care which would involve nursing care but not to the level that is normally done by registered or graduate nurses. Persons employed as registered nursing assistants etc. are normally found to be within this unit."

The title of the first unit thus changed from Professional Nursing Care to Direct Nursing Care. The word "direct" was at the same time dropped from the description of the auxiliary nursing care unit. The new informational bulletin also dropped the word "support" from the titles to the Paramedical Technical and Paramedical Professional units. It appears that originally the word "direct" was used to differentiate the two nursing units from the remaining three "support" groups. However, the wording of Informational Bulletin uses the same word "direct" to contrast the first group of nurses with auxiliary nurses. There are a number of early decisions that refer to the concept of direct patient care, auxiliary direct patient care and so on; see for example:

> Canadian Union of Public Employees Local 169 v. The Medicine Hat General Hospital March 12th, 1976 c. Brian Williams, Acting Chairman
>
> Alberta Certified Nursing Aide Association v. Bethany Auxiliary Hospital July 2th, 1975 R.B. d'Esterre, Chairman.

However, what we have not been able to find is any case or document that answers the question - What amounts to indirect nursing care? In part this is perhaps because the whole concept of nursing care itself was far less defined than it is today, and what was meant by indirect nursing care was what we today call support services. In part it was because in the 1970's nursing as a profession (and here we speak largely of Registered Nurses) was far more confined to bedside care than is the case in the 1980's. Thus, from the point of view of at least the Registered Nurses, nursing care involved almost exclusively direct nursing care, and indirect nursing care by registered nurses was simply an empty concept that did not need definition. Today this is no longer true.

The use of the word "direct" in the direct nursing care unit has had an effect. It was carried forward in identical terms into Informational Bulletin 4-82 which is referred to above.

For example, the Board has said the following:

> Dealing with the second category [Central Placement Officers], it is the Board's decision that these three people are excluded from the unit. The work performed by them has no relationship to "direct nursing care or instruction therein". Although they may have a Registered Nurse background, their main function is to interview and assess patients to determine their placement into auxiliary hospital or nursing homes.
>
> United Nurses of Alberta Local 118 v. Edmonton Rural Auxiliary Hospital and Nursing Home District #24 L.R. 434-E-2-1, Oct. 7th, 1980, Dubensky, Chairman.
>
> With respect to Ms. Johnson, evidence adduced indicated that her function was that of In-service Education Co-ordinator responsible for planning, developing and directing education programs for all hospital personnel including the presentation of the orientation program and regular and special in-service training. She did not, as part of her regular duties, supervise any staff, her function being that of a teacher or teaching co-ordinator.
>
> In argument, Counsel for the employer submitted that the portion of the description of the bargaining unit stating "or instruction therein" was meant to cover teachers in teaching hospitals or schools of nursing. The representative of the Applicant took the position that this was not the intention of the description. Dealing with this question, we agree that those words would definitely cover teachers of direct nursing care in schools of nursing etc. Further, we also feel that it covers all persons whose prime function was that of instructing other persons in direct patient care. It would not make sense to include teachers employed in schools of nursing but not teachers in other hospitals. The unit clearly is made up of those employees whose prime function with the employer is providing direct nursing care or instruction in direct nursing care.
>
> Examining the duties and responsibilities of Ms. Johnson, it is clear that she does give instruction in direct nursing care. However, such instruction is not her prime function, it is a residual function. Her prime function is that of a teacher and planner for all operations of the employer and cannot be construed to be primarily in direct nursing care. Accordingly, it was the decision of the Board that Ms. Johnson is excluded from the bargaining unit.
>
> United Nurses of Alberta Local No. 17 v. High Prairie
>
> General Hospital and Nursing Home District No. 89 L.R.
>
> 434-H-1-3, Nov. 10th, 1980, Canning, Acting Chairman.
>
> From the evidence before the Board, the Board is satisfied that Alda Wilson, the In-service Co-ordinator for the Grande Prairie General Hospital, does not properly belong within the bargaining unit as described as 'All employees when employed in direct nursing care or instruction therein' since her duties and responsibilities are not direct nursing care nor are they primarily instruction relating thereto.
>
> In argument, the Applicant made reference to the Board decision on the In-service Co-ordinator at the High Prairie General Hospital & Nursing Home District No. 89.

The In-service Co-ordinator for the High Prairie Hospital was determined to be excluded from the bargaining unit since her prime function was identified as that of a teacher and planner for all operations of the employer and not primarily for direct nursing care although she did provide some instruction in direct nursing care. It does not necessarily follow that were she involved only in areas of direct nursing care an In-service Co-ordinator would fall in the unit. Each case must be determined on its own merits and as the Board has frequently stated the designation of a job by a specific job title cannot be the determining factor.

From the evidence at hearing in this instance Alda Wilson indicated that the great majority of her time was involved with the planning and programming, etc. of in-service requirements for the nursing staff with a relatively small amount of her time being spent on the general orientation involving all personnel. The primary function of Alda Wilson was not in instruction in direct nursing care. Accordingly, as indicated in the foregoing it was the determination of the Board that Alda Wilson did not belong within the unit of employees for whom the Applicant bargained.

United Nurses of Alberta Local 37 v. Grande Prairie General and Auxiliary Hospital and Nursing Home District No. 14 L.R. 434-G-1-2, Dec. 11th, 1980, Bloomer, Vice-Chairman.

In order for the Board to decide whether they are in the unit it must be determined whether they are employed in direct nursing care or instruction therein. Direct nursing care, in the opinion of the Board, encompasses only those whose prime function involves dealing with patients on a regular basis. These 3 employees do not deal with patients on a regular basis - they deal with hospital employees. While we recognize that, on occasion, the 3 employees have patient contact during training sessions, this contact is not of the nature to make a finding that they are employed in direct nursing care.

The question regarding "instruction therein" is not quite as simple. Firstly, those words have, without exception, only referred to instruction in direct nursing care. In addition, the Board has found that the instruction in direct nursing care must be a prime function - not a residual function. In Grande Prairie General and Auxiliary Hospital and Nursing Home District #14 United Nurses of Alberta Local #37 and Grande Prairie General and Auxiliary Hospital and Nursing Home District #14, a decision of this Board dated December 11, 1980 as well as in United Nurses of Alberta Local No. 17 and High Prairie General Hospital and Nursing Home District No. 89 a decision of this Board dated November 10, 1980, we dealt with the difference between a prime function of instruction in direct nursing care and a prime function of instruction and planning for all operations of the employer, part of which is direct nursing care.

Examination of the functions and duties of the 3 persons affected shows that primarily they evaluate the level of the skills of the nurses in their unit or units and set up educational and in-house training programs to meet the needs of the nurses. Clearly their total purpose is set out in the Position Objectives of their job descriptions. These read:

> 'Accepts the responsibility for co-ordination and/or initiating pre-service and in-service programs pertaining to orientation, continuing education and staff development for all levels of nursing personnel.
>
> Accepts the responsibility of assisting in the education of personnel to achieve personal and professional goals in accordance with the philosophy, objectives, methods and standards of the Nursing Service Department.'

All of their functions are directed toward nurses, not hospital staff generally. It appeared to the Board that the general orientation of staff rests with the Orientation Officer while specific orientation and training relative to nurses rests with Ms. Pederson and Ms. Watson-LeBlanc relative to the units they look after. Therefore, the Board finds that Ms. Pederson and Ms. Watson-LeBlanc were employed in instruction in direct nursing care.

United Nurses of Alberta Local 96 v. Fort McMurray General and Auxiliary Hospital #99 L.R. 434-F-3, August 13th, 1981, Canning, Vice-Chairman.

It appears from this review that the word "direct" has served to differentiate between what might be called direct and indirect nursing care. This is in our view a shift from its original twofold function. It was to differentiate firstly between

the general areas of nursing care and the support staff of the hospital, and secondly to differentiate nurses with primary responsibility from those performing the auxiliary nursing function. The increased regulation of the various health disciplines has meant that there has been very little difficulty distinguishing between the performance of primary as opposed to auxiliary nursing functions. The question that has never been clearly answered is in what unit do those involved in "indirect nursing care" properly fit.

We do not accept the notion of a primary nursing unit (to adopt a neutral term), the boundaries of which are determined by the professional qualifications of the incumbents of any position. This would create much unnecessary uncertainty and confusion. The Board has consistently chosen to base its bargaining unit descriptions on the function persons perform, not the titles or qualifications they hold. The Public Service Employee Relations Board has adopted the same philosophy. Should a Registered Nurse choose to work in a nursing assistant's position it should be under the collective agreement that covers auxiliary nursing care. It would be patently silly to have that one person covered by a separate agreement, but doing the same job as other auxiliary nurses. It would make collective bargaining difficult and job posting impossible. If a hospital, posting a job, could not know whether it was to be covered by the nurses agreement or some other agreement until it found out whether the successful candidate was a nurse, how could it determine the rate to be offered? To fashion a bargaining unit that consisted of all Registered Nurses (or some similar, profession based, unit description) regardless of job function, is simply too impractical and we reject the notion.

Having said that, however, we do recognize that the existence of professional qualifications and governance by the A.A.R.N. as a professional body, does create a very potent community of interest between all persons with that accreditation and training who are working at their profession whether directly or indirectly. The Board's five functional bargaining units are based primarily on the concept of community of interest and therefore this professional accreditation factor must be given some weight.

We accept the notion that nursing is a profession that has developed, and will increasingly develop, beyond the dispensing of medication and bed-side care. Like most health disciplines nursing is facing tremendous challenges. On the one side, from rapidly advancing technology and increased specialization, and on the other side from the economic necessity of streamlining and rationalizing the delivery of health care, by modifying the role the various professions and occupations play in the delivery process. Indirect nursing, i.e. other than direct patient contact nursing, is an increasing reality that, to the extent it is not managerial, must be accommodated within one or more of the five functional units on a community of interest basis.

We have already rejected the simple proposition that if the person who does the job is a nurse then it is nursing. Instead we prefer the distinction inherent in the Board's original unit description in Informational Bulletin 4; the distinction between that which is nursing and that which is support work. What we see developing is not only the increasing amount of specialization amongst nurses, but also an increasing use of a variety of health disciplines to perform specialized jobs within the hospital industry. Nurses have no monopoly on knowledge about health care; they are one of several health disciplines whose level of education and training has over the last 10-15 years been expanded to give them a more rounded and substantial understanding of health care issues generally. These disciplines include dieticians, medical social workers, psychologists, pharmacists and many more. Nurses, as well as others with this broader educational background, are being used increasingly to perform services that either were not performed before, or were performed in other ways or by other people.

In our view the community of interest of a nurse performing other than direct hands on bedside nursing or teaching therein logically falls with one of the three bargaining units: the direct nursing care unit, the paramedical professional unit or the general support unit. When the position requires a nursing background and accreditation, or in practice functions in a way that makes it clear, despite a job posting to the contrary, that it requires a nursing background then in our view the community of interest remains with the direct nursing care unit.

Where, however, the position in question requires a health discipline background of some type, of which nursing may be one of the eligible disciplines, then the community of interest falls with either the paramedical professional

unit or the general support unit. Which of the two will depend on whether the nurse's skills are being put primarily to a paramedical or to an administrative use. If a job like a community outreach person is such that it can be done by an appropriately skilled nurse or a dietician or a social worker, then the job is almost of necessity a support position rather than one involving primary nursing care. This is so even giving "primary nursing" a definition that recognizes the profession's increasing specialization and scope.

In such situations, nurses are usually called upon to exercise their professional skills for the purpose of advancing health care rather than for the purpose of more general hospital administration; as professional health care providers rather than as skilled administrators. In such cases we see their utilization being similar to, and their community of interest lying with, other paramedical professionals such as social workers, laboratory scientists and psychologists. In cases where the utilization of their skills is primarily administrative then the community of interest would lie in the general support unit, a group which contains a number of other highly trained persons with qualification like business administration degrees, R.I.A.'s, Diplomas in Hospital Administration and so on.

This decision is sufficient to indicate the Board's thinking for the purposes of these decisions. In light of this the question of whether any modifications are necessary to Informational Bulletin 4-82 is a matter that will be dealt with by the full Board in Caucus. We will now review the factors relevant to the managerial exclusions.

V The Managerial Exclusion

The managerial exclusion from the definition of employee reads:

> "[employee does not include] (i) a person who, in the opinion of the Board, exercises managerial functions or is employed in a confidential capacity in matters relating to labour relations..."

The determination is one to be made on the basis of the opinion of the Board. It is a decision to be made not solely on the basis of some judicial pronouncement or dictionary definition, but on the basis of the Board's accumulated expertise about what is truly an exercise of managerial functions within the meaning of the Act.

The section speaks of the person who exercises managerial functions. The word "exercises" is important because it focuses the Board's attention on what the person actually does rather than on job titles or job descriptions, both of which have the potential to obscure as well as to clarify a person's true function in an employer's organization.

The Board has frequently emphasized its unwillingness to rely upon job titles. The following caution remains appropriate:

> United Nurses of Alberta Local 96 v. Fort McMurray General
>
> Hospital and Auxiliary Hospital and Nursing Home District
>
> #99 L.R. 434-F-3 August 13th, 1981, Canning Vice-Chairman
>
> Therefore, the question is whether the persons for whom decisions are requested exercise managerial functions or are employed in a confidential capacity in matters relating to labour relations. The question before us is not whether Clinicians employed by the employer are employees or not. The distinction is very important. Conceivably this Board might decide that one or more Clinicians exercise managerial functions and therefore are not "employees." This does not automatically mean that all Clinicians are not "employees." Many employers and trade unions in the hospital and nursing home industry are having difficulty accepting this fact. Too often this Board is presented with cases wherein we may have ruled that the head nurses of XYZ employer are excluded from units because they do not fall within the definition of "employee." The party to whom that decision might be favourable then claims that because we are dealing

because the person or committees to whom she reports are the ultimate decision makers. She is on the staff of senior management which divides up its managerial duties by delegating responsibility to a small team rather than sprinkling it throughout the line hierarchy. Ms. Legate is an integral part of that senior managerial unit and must be excluded because she exercises managerial functions. She is not an employee within the meaning of the Act.

VIII Conclusion

The Board wishes to thank the parties who appeared at these hearings for their very professional submissions. In respect of the matters of policy addressed in the earlier portions of this decision the full Board will consider the matters further in caucus, and advise the parties of any resultant modifications to its policies through revisions to Informational Bulletin 4-82. With respect to individual disputes that arise in the future the Board would encourage the parties to continue their well established and commendable practice of attempting wherever possible to resolve these through discussion, resorting to the Board only when negotiation fails.

End of Document

Tab 4

Alberta Health Services (Re)

Alberta Labour Relations Board Reports

Alberta Labour Relations Board

Panel: Ian J. Smith, Vice-Chair; Reg Basken, Member; Jay Spark, Member

Decision: March 27, 2019.

Files Nos.: GE-06495, GE-06846

[2019] A.L.R.B.D. No. 32 | 34 C.L.R.B.R. (3d) 1

IN THE MATTER OF the Labour Relations Code, United Nurses of Alberta, Applicant, and Alberta Health Services, Respondent, and Health Sciences Association of Alberta, The Alberta Union of Provincial Employees, Intervenors

(256 paras.)

Appearances

For the Applicant: Ritu Khullar, Q.C., and Kristan McLeod (Counsel).

For the Respondent: Geoffrey M. Hope (Counsel) and Dana Christianson (Co-Counsel).

For the Intervenor Health Sciences Association of Alberta: Dan Scott (Counsel), Dennis Bennett (Advisor).

For the Intervenor The Alberta Union of Provincial Employees: Simon Renouf, Q.C. and Leah Anaka (Counsel).

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> are engaging in "direct nursing care". If UNA's suggestion had merit it would describe a situation that has prevailed long before 2003, when Schedule 10 was proclaimed, but presumably without giving rise to any concern on the part of UNA until 2008. Nothing is alleged to have occurred in 2008 that would serve to justify a change being made by the Board at this time to its long established practice of normally including the LPNs in the auxiliary nursing care unit. In the result, these applications are, in the opinion of the Board, without merit. Accordingly, the request for summary dismissal of the applications is allowed and those determination applications are dismissed.
>
> [70] When a party seeks to have the Board reconsider and, perhaps, overturn a practice of long standing, especially one that could have a potential impact upon numerous employers and unions, it is likely a determination application limited to only a small number of employees or groups of employees is not the route to follow. Instead, the reference of a difference would appear to be a preferable method of seeking to have the Board embark upon such an inquiry, leaving the Board free to determine if submissions should be invited from all affected health care stakeholders who may appear to have an interest in the proper bargaining unit placement of the affected employee or groups of employees. The potential movement of some or all of the LPNs from the auxiliary nursing care unit into the direct nursing care unit is an example of the sort of issue that affects a long standing Board practice with a potential impact upon numerous other parties that is simply not capable of resolution through UNA's dismissed determination applications.

94 To summarize the Board's reasons for dismissing UNA's application in *Good Sam*, it recognized the determination that UNA was seeking could not be addressed on the basis of prime function alone as there was insufficient overlap in core functions between the LPNs and RNs to support the allegation the LPNs were engaged in direct nursing care on a core function analysis alone. The case was, at best, a close call. As a result, community of interest factors could have a role to play in determining where the line existed between the direct nursing care and auxiliary nursing units (and the Board went so far as to mention some relevant factors). However, the issues and possible outcomes of the case (including impact on long-standing Board policy relating to the content of the auxiliary nursing care unit) could bear significant implications for the health care sector and Board policy. In the absence of a compelling labour relations purpose, the Board took the view such decisions should not be made in the context of a determination proceeding. Rather, a reference of a difference was a more appropriate form of inquiry for the health care community to participate in examining these questions.

Decision

95 At the outset, we reject the argument primarily advanced by AHS that UNA's applications pursuant to the Board's reconsideration and reference of a difference powers should not be countenanced by the Board.

96 The basis of UNA's request for reconsideration is the Employer has relied on a past line of determination cases that have since been overruled by the Board in later decisions. UNA considers the Board's approach in the later cases as setting a new course for how community of interest considerations in health care determinations are analyzed and as a result the Employer's reliance on these earlier cases is improper and undermines its actions with the MHTs in the Edmonton region.

97 We see little benefit in engaging in a protracted analysis of whether the Board's reconsideration and reference of a difference powers should be applied in the context of this case. It is apparent on the facts before us that refusing to hear UNA's application on that basis alone would leave, if not promote, uncertainty in the health care sector which may only generate further litigation. In these circumstances, ascertaining whether there are, or are not, persuasive contrary authorities to the earlier line of cases is a reasonable exercise of the Board's discretionary powers to assist in resolving not only the issues in dispute, but clarifying, to the extent it is required, the relevant jurisprudence and the consistency of the Board's approach in health care determination matters.

Is there inconsistency in the jurisprudence regarding community of interest considerations?

98 For the reasons that follow, we do not find inconsistency in the cases UNA has referred us to.

99 Our analysis of the later decisions focuses on *Good Sam*, as the *Good Sam Reconsideration* decision merely upheld the reasoning in *Good Sam* and the *ORTs/LPNs* decision involved summary dismissal of a UNA determination application the Board found sufficiently similar to those dismissed in *Good Sam*.

100 First and foremost, our review of *Good Sam* indicates the Board did not make any substantive statement or formulate any new principle regarding how community of interest considerations should be utilized in determination matters. Nor can the case be properly read to mean the Board is suggesting a different or greater weight should be accorded to community of interest considerations such as professional accreditation and governance. What *Good Sam* does indicate is that in close cases, ones that cannot be clearly determined on a prime function analysis alone, community of interest considerations will be called upon to assist in making the determination. In our view, the Board's tour through its own jurisprudence in *Good Sam* was to essentially recognize different types of cases will demand different forms of analysis and varying uses of community of interest considerations, and that one of these factors, relevant to the circumstances present in *Good Sam*, was that of professional accreditation.

101 The Board identified in *Good Sam* at paragraph 61 (quoting from *Alberta Hospital Association* at 622) that it has long recognized the professional accreditation factor creates "a very potent community of interest". We do not interpret this, as UNA does, to mean this factor should be given greater weight or more importance on a general, go-forward basis. Rather the quote is referenced simply as a reminder that the functional bargaining units are founded for the most part on the concept of community of interest and a factor like this (or collective bargaining history or any of a number of other factors) may come into play when trying to ascertain the intended scope of a bargaining unit.

102 To claim as UNA does that this quote's presence in *Good Sam* means more than this would require us to ignore the context of the discussion in which the *Alberta Hospital Association* quotation was made, one that: (a) categorically ruled out the notion of a primary nursing unit "the boundaries of which are determined by the professional qualifications of the incumbents" (page 622); and (b) described the very real challenges for the nursing profession in an ever changing health care environment that was actively "modifying the role the various professions and occupations play in the delivery process" (at 623).

103 Another reason for rejecting UNA's assertion there is inconsistency in the jurisprudence, or that the later cases have overruled the earlier cases, stems from the general nature of determination matters, which are fact-driven exercises. This was described by the Board as follows (from *HSAA v. AUPE and AHS, [2013] Alta. L.R.B.R. LD-055* at paragraph 12):

> ...determination applications before the Labour Relations Board are factually based with the focus on an employee's primary function as opposed to their job title. This requires a review of an employee's actual duties and responsibilities. The facts are then overlaid on the legal matrix to assess where that employee fits within the standard bargaining units set out in the Board's policies and the legislative regulations. Every determination application is different as the outcome of the application is dependent on the facts before the Board.

104 The legal matrix itself has built-in flexibility and this contributes to the case-specific nature of determinations. The Board in *Good Sam* was alive to this reality. It quoted *Calgary RHA* for the idea boundary disputes between health care bargaining units should be dealt with "on a case-by-case basis". It recognized a "flexible incremental approach" has contributed to the durability of these units "over twenty-five years of extreme technological, organizational and occupational change in the health care industry". And it cited *Laboratory Assistants* for the notion that "community of interest is a very flexible concept" and may be used to resolve difficult boundary disputes between units, although it is "not a substitute for analysis of what the stated boundaries of a bargaining unit mean".

105 The flexibility of the community of interest concept, often connected to the relevance of a factor to the situation at hand, was spoken to in *East Central* at paragraph 25 (see our paragraph 88 above) and in *Good Sam* at paragraph 68 (see paragraph 93 above). Even relevant factors may end up carrying little or no weight, while some may be very compelling. When the Board sees good sense in contemplating a particular factor, it is not necessarily

determinative. One factor may strongly point to placing the subject employee(s) in a particular unit, but when all the relevant factors are considered, the overall assessment may generate a different conclusion. The weighing of community of interest considerations is a balancing act highly dependent on the situation at hand. And while it may appear at times to be more of an art than science in how these factors are utilized, the exercise remains a highly useful tool in assisting the Board in finding the most sensible bargaining unit fit for an employee or group of employees. It would be a mistake however, one we believe UNA has made here, to interpret the Board's approach in *Good Sam* (with its attention, in that situation, on professional qualification and collective bargaining history factors) or in any other case as somehow casting the weight a particular community of interest factor should be assigned in all situations. Nor do we find the cases dictating any order of authority to community of interest factors; rather, they have tended to indicate the weight to be given to each factor based on the specific facts of each case.

106 That is not to say the Board's approach in determinations lacks rigor or operates without contemplation of underlying principles. An explanation for what might appear to be a different approach in *Good Sam* when compared to *Chinook* and *East Central*, but in reality is not, relates to a core principle, one first enunciated in the *Alberta Hospital Association* decision (quoted in paragraph 78 above) and frequently referred to in health care determination cases that followed, especially those affecting the nursing profession. For convenience, we set it out again below:

> In our view the community of interest of a nurse performing other than direct hands on bedside nursing or teaching therein logically falls with one of the three bargaining units: the direct nursing care unit, the paramedical professional unit or the general support unit. When the position requires a nursing background and accreditation, or in practice functions in a way that makes it clear, despite a job posting to the contrary, that it requires a nursing background then in our view the community of interest remains with the direct nursing care unit.
>
> Where, however, the position in question requires a health discipline background of some type, of which nursing may be one of the eligible disciplines, then the community of interest falls with either the paramedical professional unit or the general support unit. Which of the two will depend on whether the nurse's skills are being put primarily to a paramedical or to an administrative use.

107 We will refer to this core principle throughout as the "AHA Principle". It was front and center in the Board's decision-making in *Chinook* and *East Central*. As discussed, both cases involved MHTs. MHT is a job title or classification for a position that generally speaking draws upon skilled professionals from different disciplines to provide assessment, diagnosis and treatment of mental health conditions in patients attending at community mental health clinics or as part of an institution's mental health program. As described in *Chinook* at paragraph 8, "the model the Employer seeks to achieve is that of an interdisciplinary team in which any therapist may, with the support and input of his colleagues, treat the entire range of mental health conditions that presents to the clinic. To a large degree it has succeeded in realizing this model". The Board also found in *Chinook* that apart from one program in adult services, "it is impossible to discern any meaningful differences in functions or duties between mental health therapists who are nurses and those who are not". The situation in *East Central* was very similar. At paragraph 16 and 17, the Board found "[t]he mental health services provided by the Employer are delivered using a multi-disciplinary approach. ... This model includes allowing MHTs with different professional backgrounds to bring their own unique professional perspective to cases discussed at these multi-disciplinary conferences. ... The core functions of a MHT are the same irrespective of an incumbent's individual professional training. While they may approach the job from the specific perspective of their professional training, the core responsibilities are the same".

108 And in the earlier case of *Calgary RHA*, the primary function of one of the positions in question (titled 'Nurse Consultant -- Psychiatry', held by Labelle) was mental health assessment. The evidence indicated that assessment could be "carried out by a number of paramedical professions, especially nurses, social workers and psychologists", even when accepting that each profession may not assess the patient in the same way. Notably, the Board indicated in *Calgary RHA*, at paragraph 47:

> Despite the overlap among professions in the mental health assessment function, the evidence shows there is scope for employer discretion as to which profession, if any, has the required training for a particular position. Even among the members of a multi-disciplinary team, an employer may make the

> decision that certain of them may be psychologists, or social workers, or nurses. If an employer makes a decision that a certain position requires a nurse, and restricts its recruitment accordingly, or if a position evolves in such a way that its incumbent requires nursing training, the situation falls squarely within the words at the end of the 2nd paragraph on page 623 of [*Alberta Hospital Association*]:
>
> > When the position requires a nursing background and accreditation, or in practice functions in a way that makes it clear, despite a job posting to the contrary, that it requires a nursing background then in our view the community of interest remains with the direct nursing care unit.

109 While the Board in *Calgary RHA* went on to find Labelle belonged in UNA's direct nursing care unit (as the evidence disclosed the Employer decided "to adopt advanced nursing training and nursing training as a prerequisite to this job"), it noted at paragraph 48:

> ... in deciding whether a position "requires ... nursing background and accreditation," the Board will look beyond the employer's job posting. The stated requirements in a job posting are a factor to consider, but the Board will look for independent confirmation that in practice, their job is organized and carried out in a way that requires the professional training and licensure that is at the foundation of the community of interest recognized by the direct nursing care bargaining unit. The evidence of Labelle's actual duties provided such independent confirmation in this case.

110 Clearly then, there was a rational basis, connected to the AHA Principle, for the Board to act as it did in these earlier cases involving employees functioning within interdisciplinary teams. These cases demonstrate how the AHA Principle can provide a degree of clarity and certainty for health care stakeholders in how the Board might decide a determination case involving registered nurses working in an interdisciplinary team setting. The *Good Sam* and *ORTs/LPNs* cases presented a distinctly different scenario, one that was intra-disciplinary in nature and therefore did not attract the operation of the principle. *Good Sam* and *ORTs/LPNs* concerned disputes whether RNs and LPNs belonged together in the direct nursing care unit and how to ascertain the dividing line between the direct nursing care unit and the auxiliary nursing care unit. In the absence of the AHA Principle, which did not apply on the facts present in those cases, the Board understood and indicated in *Good Sam* that other relevant community of interest factors may be utilized to assist in drawing the boundary between the two units.

111 A further distinguishing feature between the earlier cases and the later ones relied on by UNA is the Board was satisfied the employees in question in *Chinook* and *East Central*, despite their varying professional backgrounds, were performing the same core functions. That was not the situation in *Good Sam*, wherein the Board found the RNs and LPNs did not have sufficiently overlapping functions to justify placing them in the same unit on the basis of job function alone.

112 To summarize, there are distinguishing features between the earlier and later cases that make them poor comparators on a community of interest basis. The earlier cases were decided by the AHA Principle, the later cases were not. We do not accept the notion that greater emphasis (on a general or principled basis) was placed on community of interest factors like collective bargaining history and professional affiliations in the later cases. The Board's reference to such factors in *Good Sam* was hypothetical, as no decision was made about or on those factors. Further, these factors were discussed in *Good Sam* to demonstrate the importance community of interest considerations may play in deciding that case and that these were best canvassed before a broader cross-section of the health care community. The Board referred to those factors in *Good Sam* because of their perceived relevance to that case. Indeed, the fact the Board may pay more mind to some factors than others in any given decision is not indicative of those factors taking on greater general importance or weight; rather it is reflective of the flexibility of their use within the community of interest concept.

Has the AHA Principle been misapplied?

113 Our initial discussion of the AHA Principle above leads us to the second aspect of UNA's argument. It is based on the Board's comments in *Chinook*. UNA sets out its argument in its pleadings as follows:

Tab 5

Good Samaritan Society (A Lutheran Social Service Organization) (Re)

Alberta Labour Relations Board Reports

Alberta Labour Relations Board

Gerald A. Lucas, Q.C., Vice-Chair

Decision: January 6, 2009.

Board File Nos.: GE-05464, GE-05465, GE-05468, GE-05471,

GE-05481

[2009] A.L.R.B.D. No. 1 | 163 C.L.R.B.R. (2d) 1 | [2009] Alta. L.R.B.R. 1

IN THE MATTER OF: the Labour Relations Code Between United Nurses of Alberta, Local 311, United Nurses of Alberta, Local 219, United Nurses of Alberta, Locals 2, 4, 5, 8, 28, 31, 34, 43, 58, 59, 68, 74, 83, 97, 106, 125, 134, 141, 201, 217, 218, 307, United Nurses of Alberta, Locals 35, 38, 42, 45, 78, 151, 190, 195, 216, 217, 218, 225 and United Nurses of Alberta, Local 86, Applicants, and The Good Samaritan Society (A Lutheran Social Service Organization), Shepherd's Care Foundation, David Thompson Regional Health Authority, East Central Health, Bonnyville Health Centre, Alberta Catholic Health Corporation, and the Alberta Union of Provincial Employees, Respondents

(70 paras.)

Appearances

For the Applicants: Bruce Laughton, Q.C. (Counsel), David Harrigan (Advisor).

For the Respondents: Good Samaritan Society (A Lutheran Social Service Organization); Alberta Catholic Health Corporation; David Thompson Regional Health Authority; and East Central Health - Craig Neuman, Q.C.

Shepherd's Care Foundation: Albert Lavergne (Counsel).

Bonnyville Health Centre: Vicki Giles.

Alberta Continuing Care Association: Hugh McPhail, Q.C.

The Alberta Union of Provincial Employees: Simon Renouf, Q.C., (Counsel), Ron Hodgins (Advisor).

REASONS FOR DECISION

Applications

1 Over the course of approximately one month the Board received five determination applications made by or on behalf of the United Nurses of Alberta ("UNA"), pursuant to section 12(3)(o), as follows:

(a) on August 22, 2008 UNA's Local 311 applied to have all six of the Licensed Practical Nurses ("LPNs") working for the Good Samaritan Society (A Lutheran Social Service Organization) ("Good Samaritan") at the Millwoods Assisted Living Facility included in UNA's direct nursing care bargaining unit;

(b) on August 22, 2008 UNA's Local 219 applied to have all 17 of the LPNs working for Shepherd's Care Foundation ("Shepherd's Care") at the Millwoods Shepherd's Care Centre included in UNA's direct nursing care bargaining unit;

(c) on September 3, 2008 UNA's Locals 2, 4, 5, 8, 28, 31, 34, 43, 58, 59, 68, 74, 83, 97, 106, 125, 134, 141, 201, 217, 218, and 307 applied to have all 19 of the LPNs working for the David Thompson Regional Health Authority ("David Thompson") at the Red Deer Nursing Home included in UNA's direct nursing care bargaining unit;

(d) on September 10, 2008 UNA's Locals 35, 38, 42, 45, 55, 69, 78, 151, 190, 195, 216, 217, 218, and 225 applied to have all 7 of the LPNs working for East Central Health ("East Central") at the Manville Care Centre included in UNA's direct nursing care bargaining unit; and

(e) on September 26, 2008 UNA's Local 86 applied to have all 19 of the LPNs working for the Bonnyville Health Centre ("Bonnyville") included in UNA's direct nursing care bargaining unit.

2 The Alberta Union of Provincial Employees ("AUPE") is certified as the bargaining agent for the auxiliary nursing care bargaining unit for each of Good Samaritan, Shepherd's Care, David Thompson, East Central and Bonnyville at all five of the employer locations described in UNA's determination applications and since that bargaining unit includes the LPNs it filed objections to all of the applications. As part of its opposition AUPE also seeks summary dismissal of the applications pursuant to section 16(4)(e).

3 Each of the five employers also opposes UNA's applications and they join in AUPE's request to have UNA's applications summarily dismissed.

Hearing

4 The summary dismissal applications were heard by Vice Chair Lucas, sitting alone pursuant to section 9(11)(b), on October 27, 2008.

5 At the outset of the hearing the Board announced the application of the Alberta Continuing Care Association seeking intervenor status for all five of the applications was granted.

Submissions on behalf of AUPE

6 LPNs are governed by the *Health Professions Act*, *R.S.A. 2000, c. H-7* ("HPA") and section 3 of Schedule 10 to the HPA describes their scope of practice as follows:

In their practice, licensed practical nurses do one or more of the following:

(a) apply nursing knowledge, skills and judgment to assess patients' needs,

(b) provide nursing care for patients and families, and

(c) provide restricted activities authorized by the regulations.

The restricted activities an LPN may provide are described in the Licensed Practical Nurses Profession Regulation, *Alta. Reg. 81/2003* (the "LPNs Regulation") and, in the main, require specialized practice education or training and approval of the Registrar of the College of Licensed Practical Nurses of Alberta or the written or verbal direction from an authorized practitioner who is on site and available to assist. As is evident from this, the LPNs are regulated by their own College ("CLPNA").

7 Registered Nurses ("RNs") are governed by Schedule 24 of the HPA and section 3 of that schedule describes their scope of practice as follows:

In their practice, registered nurses do one or more of the following:

(a) based on an ethic of caring and the goals and circumstances of those receiving nursing services, registered nurses apply nursing knowledge, skill and judgment to

(i) assist individuals, families, groups and communities to achieve their optimal physical, emotional, mental and spiritual health and well-being,

(ii) assess, diagnose and provide treatment and interventions and make referrals,

(iii) prevent or treat injury and illness,

(iv) teach, counsel and advocate to enhance health and well-being,

(v) co-ordinate, supervise, monitor and evaluate the provision of health services,

(vi) teach nursing theory and practice,

(vii) manage, administer and allocate resources related to health services, and

(viii) engage in research related to health and the practice of nursing, and

(b) provide restricted activities authorized by the regulations.

8 The regulations applicable to the RNs are the Registered Nurses Profession Regulation, *Alta. Reg. 232/2005* (the "RNs Regulation"). As well, the RNs are regulated by the College and Association of Registered Nurse of Alberta ("CARNA").

9 The Board maintains standard bargaining units for employees of hospitals and nursing homes as are described in the Board's Information Bulletin #10 which, since June 1, 2007, are:

* direct nursing care or nursing instruction,
* auxiliary nursing care,
* paramedical professional or technical services, and
* general support services.

I.B. #10 goes on to outline the standard unit descriptions used by the Board, along with a brief description of the categories of employees commonly found in the unit and, for purposes of this hearing, it is only the first two of these units that are relevant, as follows:

Direct Nursing Care or Nursing Instruction

"All employees when employed in direct nursing care or nursing instruction."

This unit includes all those employees for whom nursing training is a prerequisite. It applies to those employed in nursing care or instruction in nursing care. The unit could contain graduate and registered nurses, psychiatric nurses and nursing instructors when instructing.

Auxiliary Nursing Care

"All employees when employed in auxiliary nursing care."

This unit includes all those employees providing nursing care but not to the level of registered or graduate nurses. Persons employed as licensed practical nurses, registered nursing assistants, nursing assistants, and nursing aides are normally included within this unit. It also includes people working in such categories as nursing orderlies.

10 Against this background, AUPE seeks the summary dismissal of UNA's applications pursuant to section 16(4)(e). The test used by the Board in deciding whether to summarily dismiss a matter pursuant to this provision has always been, "is there a reasonable prospect of success". This test assumes the applicant's facts to be true and then asks whether there is a chance of success according to law (see: *Carpenters, Local 2103 v. Halicki* *[2007] Alta. L.R.B.R. LD-062*).

11 The power to decide whether a person is included in a bargaining unit under section 12(3)(o) is a discretionary one (see: *UNA, Local 196 v. Capital Health Authority and IUOE, Local 955* *[2003] Alta. L.R.B.R. LD-038*).

12 UNA errs in applying for determinations based upon section 12(3)(o) and this is clear from both that provision of the *Code* and the Board's Information Bulletin #22. Section 12(3)(o) states:

> 12(3) *The Board may decide for the purposes of this Act whether ...*
>
> (o) *a person is included or excluded from a unit*, ...

Simply because a person asks for a determination does not mean it should be considered to be "for purposes of this Act". It is made clear in Information Bulletin #22 that UNA cannot ask the Board to remove the LPNs from AUPE's bargaining units into UNA's bargaining units as it states, in para III, in part:

> * A trade union cannot, through a determination application, challenge or ask the Board to reconsider the certificate of another trade union.
>
> * Some determinations involve multiple bargaining units, for example, a hospital or municipality. In such cases, a trade union cannot encroach upon the rights of other bargaining agents. For example, a trade union cannot ask the Board to include in its unit and simultaneously remove from another certified unit, classifications specifically covered in the other certificate. ...

(See also: *CUPE, Local 38 v. Calgary (City)* [1984] Alta. L.R.B.R. 84-004 at pp. 9, 10, 12 and 17).

13 Information Bulletin #22 also states that parties to a difference over any determination question should first meet and attempt to resolve the issue themselves, then consider using the arbitration provisions in their collective agreement, before bringing an application to the Board. Also, in the application, the names of affected employees and the date their duties were created or assigned, along with a description of the efforts made by the affected parties to resolve the dispute, are to be included. UNA did not make any effort to meet with AUPE before filing its applications and the applications do not include the dates the duties of the LPNs were allegedly created or assigned, rather UNA asserts the current duties are the ones to be considered in order to determine the correct bargaining unit. In the absence of particulars of an alleged change in duties, UNA's applications amount to a collateral attack upon AUPE's certificates or are an improper request for a reconsideration of those certificates.

14 If the LPNs were to be removed from the auxiliary nursing care bargaining unit not only would that be contrary to the intent of applicable labour relations legislation and regulations, but would amount to a rewriting of the boundaries of that bargaining unit that has existed and evolved over the past 25 years. Now, the four functional bargaining unit descriptions in the health care industry are elevated to quasi-statutory provisions: see *Northern Lights Health Region v. CEP Local 707* [2005] Alta. L.R.B.R. 201, at paras. 40 and 45. LPNs have always been at the core of the auxiliary nursing care unit and have a long history of successful collective bargaining, all of this notwithstanding changes in their scope of practice brought about by legislation or by the practices of employers: see *HSAA v. CHA, Caritas Health Group, AUPE and CUPE* [2007] Alta. L.R.B.R. 60 at paras. 65 to 71 (the "*Edmonton LPN/OrthoTechs* decision).

15 If the Board was to remove the LPNs from the auxiliary nursing care bargaining unit that would be a drastic rewriting of the boundaries of that unit and would not be permitted in the absence of there being "valid labour relations purposes" and UNA has not alleged in its applications what valid labour relations purposes would be served by placing the LPNs in UNA's direct nursing care bargaining unit: see *AUPE v. HSAA, CHA and ALRB* [2008] Alta. L.R.B.R. 230 (QB) at paras. 127 to 137 (the "**Graesser, J. Decision"**).

16 Even if UNA had brought an application for reconsideration under section 12(4) it would be summarily dismissed because UNA has failed to provide particulars of significant changes in the workplaces causing the auxiliary nursing care units represented by AUPE to no longer be appropriate, or of fundamental changes in the workplaces that have occurred making AUPE's current certificates to be functionally inoperable: see Information Bulletin #9, Bargaining Unit Descriptions, at pp. 1 - 2; Information Bulletin #6, Applications for Reconsideration, Judicial Review and Stays, at pp. 1 - 2.

17 In a reconsideration matter affecting the continued appropriateness of the bargaining unit, the Board presumes

the unit remains appropriate unless evidence to the contrary is presented. To overcome that presumption, the applicant must establish "compelling labour relations reasons": see Information Buletin # 10 at p. 4; *General Teamsters, Local 362 v. Burnco Rock Products* [2002] Alta. L.R.B.R. 74 at para. 29; *CHCG v. Central Park Lodges Ltd. et al.* [1997] Alta. L.R.B.R. 153 at paras. 36-41 and *Finning Ltd. v. Int'l Assoc. of Machinists and Aerospace Workers, Local 99* [1998] Alta. L.R.B.R. at paras. 41 and 45-48. In UNA's applications it seeks to have the Board move an entire classification of LPNs into the direct nursing care bargaining unit based on the mere allegation that the scope of practice of LPNs is "nursing" as that term is used in the direct nursing care bargaining unit description.

18 If UNA had brought an application for certification, either seeking a new, stand alone unit of LPNs or adding the LPNs to the direct nursing care unit, and assuming it was timely, the application would be dismissed. The Board has a firm policy against "carving out" portions of an existing unit in a raid context: see the *Central Park Lodges* decision at paras. 7-13 and 36-41.

19 In any event, UNA's determination applications are without merit as there is no allegation the LPNs have ceased acting within the scope of their practice, nor is there any allegation of a change in law or facts that would support removing the LPNs out of the auxiliary nursing care unit and expanding the direct nursing care unit to include LPNs. The Board has previously recognized the auxiliary nursing care unit description encompasses the expanding scope of practice of LPNs and that their scope of practice described in the HPA constitute nursing functions falling within the scope of the auxiliary nursing care bargaining unit: see the *Edmonton LPN/Ortho Tech* decision, at paras. 65-70.

20 The Court of Queen's Bench has stated any definition of "direct nursing care" has to continue to encompass the functions and roles that *de facto* are exclusively given to employees who have [registered] nursing training and who maintain professional registration. The Court also stated it makes labour relations sense to have the RNs in a separate bargaining unit from LPNs and that it makes no labour relations sense to place auxiliary nursing care employees into the direct nursing care unit: see the **Graesser, J. Decision** at paras. 92 and 128-130.

21 The Board has held that the primary function of hands-on treatment and care of patients are considered to be primary functions found within the auxiliary nursing care unit: see *CHCG v. CUPE, Local 927 and Pincher Creek Hospital* [1993] Alta. L.R.B.R. 38 at p. 46. Simply because the LPNs perform some of the same functions of an RN does not transform them into direct nursing care; an overlap of duties does not put the LPNs into the direct nursing care unit: see the *Edmonton LPN/Ortho Techs* decision, at paras. 69-70; and the arbitration decision in *St. Michael's Health Centre v. UNA, Local 72* [2002] A.G.A.A. No. 23 (Moreau), at paras. 33, 36-37, upheld at [2003] A.J. No. 328 (QB). Also, the Board has recently held that the RNs and LPNs should be in separate bargaining units: see *UNA Local 219 and AUPE v. Shepherd's Care Foundation* [2006] Alta. L.R.B.R. 178, paras. 26-34.

22 The Board has held that parties should not be able to bring determination applications to include persons in a bargaining unit in the absence of substantially altered facts and UNA has not provided any particulars that would justify making a change in the bargaining unit assignment of the LPNs into the direct nursing care bargaining unit: see *UNA Local 150 v. St. Michael's Extended Care* [1998] Alta. L.R.B.R. 538, at pp. 542-543.

23 UNA has not provided any particulars that the law or facts have been substantially altered since AUPE's certificates were granted that would justify a change in the bargaining unit composition and, therefore, the Board should summarily dismiss UNA's applications.

Submissions on behalf of Shepherd's Care

24 Shepherd's Care adopts the submissions made on behalf of AUPE. In addition, it points out that at another of its facilities, the Kensington Village aging in place facility, the Board had previously granted certification applications by both UNA, for its direct nursing care or nursing instruction unit, and AUPE, for its auxiliary nursing care unit, even though it held that Information Bulletin #10 did not apply to that facility: see *UNA Local 219 and AUPE v. Shepherd's Care Foundation* [2006] Alta. L.R.B.R. 178. The employer preferred there to be an "all employee" unit and by a reconsideration application unsuccessfully sought to overturn the Board's initial decision: see *Shepherd's*

Care Foundation v. UNA Local 219 and AUPE [2008] Alta. L.R.B.R. LD-042. The Millwoods facility is an auxiliary hospital so Information Bulletin #10 applies but, that aside, nothing in UNA's application supports the existence of there being significant changes since the Board first certified each of UNA and AUPE at this facility that would warrant moving the LPNs into the direct nursing care unit.

25 In June 2003, the three professional regulatory bodies for RNs, registered psychiatric nurses and LPNs developed a paper, called Collaborative Nursing Practice in Alberta, to provide information to their members, employers and the public regarding the roles and responsibilities of each group. It recognized the foundational knowledge base of each group is different as a result of differences in basic nursing education. The paper goes on to state:

> RNs ... study for a longer period of time allowing for greater depth and breadth of foundational knowledge in the following areas: clinical practice; decision-making; critical thinking; leadership; research utilization; and resource management. The LPN program is shorter in length with a more focused foundational knowledge of clinical practice, decision-making and critical thinking.

A chart attached to the paper describes the client, nurse and environmental factors to consider when making decisions about RN and LPN staff utilization and points out the factors described under LPN practice specify when LPNs can practice autonomously while the factors described [as] RN ... practice describe situations where an RN ... should be involved and/or providing nursing care.

26 UNA, by its applications, seeks to have the Board make a significant policy change by permitting it to include LPNs in the direct nursing care unit, although nothing is alleged to have occurred that would support LPNs being moved into that unit. If the Board was inclined to grant UNA's applications it should only do so after first conducting a full policy review with all the stakeholders in the health care industry and it should not make policy changes on an ad hoc basis.

27 For over 30 years the Board has said the LPNs belong in the auxiliary nursing care unit and in the absence of there being any justification for changing that practice the Board should exercise its discretion under section 16(4)(e) and dismiss UNA's applications as being without merit. The strict legal test for deciding whether a law suit should be struck for want of a reasonable claim is set forth in *Hunt v. Carey Canada Inc. [1990] 2 S.C.R. 959* but section 16(4)(e) does not require the Board to adhere to that strict test advanced by the courts: see *Gallagher and Lougheed v. Hotel Employees Local 47 et al.* [1992] Alta. L.R.B.R. 459 at p. 475, and *Carpenters, Local 1325 v. Kiewit Industrial Canada Limited et al.* [2001] Alta. L.R.B.R. LD-052, at para. 3-4.

28 In the **Graesser, J. Decision** it is stated, at para. 139:

> Where there is a clear change in policy, that change should, in my view, result from an identified need to change the policy. As with legislation which is deemed to be remedial in nature, one would expect a change in policy to be explained by articulating the need for the change. What injustice is being remedied? What wrong is righted? What has become out of date and why? What community values have changed?

Here, UNA is asking the Board to change its long standing policy without explaining the need for the change. In the past, UNA has relied upon the Board's well known policy when it has been in the interest of UNA to do so and now it seeks to have the Board adopt a different policy without alleging a cogent reason for that to occur. Accordingly, the Board should summarily dismiss UNA's applications.

Submissions on behalf of Good Samaritan, David Thompson and East Central

29 These three respondents rely upon the submissions presented on behalf of AUPE, and point out that Information Bulletin #10 applies to them because, in the case of David Thompson and East Central they are regional health authorities and, in the case of Good Samaritan, the policy of the Board makes it applicable. In Information Bulletin #10 the boundaries between the direct nursing care unit and the auxiliary nursing care unit are spelled out and the differences are plain and straightforward. This is not one of the grey areas so there ought not to be any dispute as to which of the bargaining units a RN falls into or a LPN falls into. Although there is some overlap

of the nursing duties performed by each of a RN and a LPN, not all the duties are identical. As well, the RNs have their own regulatory body, CARNA, and the LPNs have theirs, CLPNA; they each have their own Schedule of the HPA; and their own Regulation; so both groups clearly have their own identity.

30 Although UNA says they are not, by means of their applications, trying to affect Board policy relating to bargaining unit descriptions and are not seeking to move the entire classification of LPNs into the direct nursing care unit, the applications do seek to move all of the LPNs employed at the specific operations of the three respondents into UNA's bargaining units. This is sought to be accomplished without UNA alleging any facts that would take the LPNs out of the auxiliary nursing care units, without alleging these LPNs are really RNs in disguise, and without alleging the LPNs are operating outside their recognized scope of practice. Just as occurred in the *St. Michael's Health Centre* arbitration decision, UNA has not alleged the LPNs of the three respondents are doing the work of RNs. Nor is there any allegation of a change in events to justify that a move of the LPNs should be made.

31 The Board stated in its *St. Michael's Extended Care Centre* decision that subsequent developments in the law, if any, are not sufficient to justify making a change in a long standing practice or policy of the Board. UNA seems to be saying in its applications that the scope of practice of the LPNs has evolved over the years but that is not a reason to make a change now. In the *Edmonton LPN/Ortho Techs* decision the Board recognized that despite the evolving scope of practice of LPNs, giving rise to some of them being able to carry out restricted activities that others cannot, they are all still to be treated as LPNs. The same evolution in the scope of practice of RNs is occurring but the Board still treats all those RNs engaged in direct nursing care in the same manner.

32 Section 16(4)(e) is intended to assist the Board in handling its case load by providing a means of dismissing in a summary manner those applications in respect of which there is no reasonable prospect of success. The applications brought by UNA against these three respondents are a clear example of a situation where the Board should rely upon its statutory authority to summarily dismiss them.

Submissions on behalf of Bonnyville

33 Bonnyville supports all of the comments made on behalf of AUPE and the other respondent employers. The LPNs employed by Bonnyville work in the acute care area of the facility where Information Bulletin #10 applies with the result they formed part of the auxiliary nursing care unit for which AUPE was certified on February 10, 2000.

34 Although UNA is correct in stating the RNs and LPNs work co-operatively and perform some similar duties, the fact is the RNs perform duties of greater complexity and responsibility than do the LPNs. At Bonnyville the LPNs are subordinate to the RNs and are under the constant supervision and direction of the RNs.

35 The UNA application is a reconsideration application in disguise and represents an attempt by UNA to relitigate an inclusion/exclusion determination made by the Board more than 8 years ago without there being any allegation of substantially altered facts or of a change in the duties being performed by the LPNs. They are still performing duties within their recognized scope of practice. What UNA alleges is that the LPN scope of practice represents direct nursing care within the meaning attributed to the bargaining unit description for which it, or its locals, are certified: see *St. Michael's Extended Care Centre* at para. 7. If that was found by the Board to be true it would represent a fundamental alteration to Board policy of long standing and is the sort of alteration to the bargaining unit policy description that should only be made after a consultation with all of the stakeholders in the health care industry.

36 The application as it relates to Bonnyville has no reasonable chance of success and should be summarily dismissed.

Submissions on behalf of the intevenor, Alberta Continuing Care Association

37 The task facing the Board is that of explaining what is meant by that portion of Information Bulletin #10 that sets out the demarcation between the direct nursing care and the auxiliary nursing care bargaining units, especially now

that those unit descriptions are described as being quasi-statutory. As well, the legislative descriptions of the scope of practice of each of the RNs and the LPNs have to be borne in mind and they can only be changed by legislation and not based on the practices adopted by individual employers from time to time.

Submissions on behalf of UNA

38 The applications filed by UNA are not intended to be a reconsideration of the appropriateness of the bargaining units previously established by the Board and are not seeking a rewriting of those standard bargaining units. Nor are the applications to be construed as applications for certification resulting in a balkanization of the bargaining units. Rather, what is being sought is to have the Board exercise its discretion to decide if the individuals affected by the fives applications are included in the direct nursing care bargaining units.

39 For the purpose of deciding the summary dismissal applications now brought by AUPE and the respondent employers the facts alleged in UNAs applications must be assumed to be true and the burden of proof rests on those parties. So the Board cannot rely upon suggestions the duties of the LPNs have not changed and cannot rely upon the suggestion that an entire classification is attempted to be moved. The case turns on the job functions of the employees involved and not upon their qualifications or occupational titles. What is required of the Board under section 16(4)(e) is that it must assess all the evidence in light of the allegations and balance all the factors and circumstances in light of good labour relations sense: see *Gallagher and Lougheed* (cited in the submissions on behalf of Shepherd's Care), at p. 475; *Steelworkers Local 7226 v. Handelman Company of Canada* [*[1989] Alta. L.R.B.R. 38*] at p. 40; *Kiewit Industrial Canada* (cited by Shepherd's Care), at paras. 3-4; and, *Jan Noster v. Carpenters, Local 1325 et al.* [*[2006] Alta. L.R.B.R. 51*], at para. 6. In this case, the Board ought not to rely upon its discretion to grant a summary dismissal and should conduct a hearing into the merits of the applications.

40 The suggestion by AUPE that section 12(3)(o) is not applicable cannot be sustained. The *Code* does not state that discussions between the parties is a pre-condition to a determination application and such a requirement cannot be imposed by a comment to that effect in Information Bulletin #22. Since UNA could not, through discussions with each of the respondent employers, resolve the matter, as AUPE would not be affected, such discussions would be meaningless. Also, it is beyond dispute that an arbitration board established pursuant to the terms of one collective agreement has no jurisdiction to make an order dealing with the rights of a different trade union pursuant to a separate collective agreement, even if the same employer is party to both collective agreements. Accordingly, suggestions made in Information Bulletin #22 that parties should consider using the arbitration procedures in their collective agreement have no relevance and a determination application to the Board is the only recourse available.

41 The Board has often accepted jurisdiction to deal with inter-union rivalry and so recognizes that such conflicts can arise: see the *Northern Lights Health Region* decision (cited by AUPE), at para. 39. But it is equally clear that jurisdictional disputes between unions are not arbitrable as such disputes do not fall within the traditional meaning of "grievance" and any arbitration award between the employer and one of the quarreling unions would be struck down as it would purport to dispose of the rights of non-parties: see *Machinists, Local No. 3 v. Victoria Machinery Depot Co. Ltd.* [*[1960] B.C.J. No. 90*] (BCCA), at para. 29; and *P.C.L. Braun-Simons Ltd. v. Labourers, Local 92* [*[1985] A.J. No. 1088*] (Alta. C.A.) at paras. 13 and 25.

42 On the other hand, when there is no dispute between unions, the Board will entertain a determination application by a union to have an individual declared to be an employee, included in its bargaining unit and bound by its collective agreement, but if the union has already grieved the same issue and the rights of third parties are not involved the Board may choose to defer dealing with the matter in favour of arbitration: see *UNA, Local 75 v. Westview Regional Health Authority* [*[2000] Alta. L.R.B.R. LD-031*], at paras. 10-11 and 15.

43 The suggestion made on behalf of Shepherd's Care that history should govern, that is, an LPN is forever stuck in the auxiliary nursing care unit, is not correct. In deciding upon which bargaining unit an employee is to be assigned, it is the actual function an employee performs, not occupational titles or professional designations that govern: see Information Bulletin #10. The Board has recognized the evolving roles of health professionals, that

there are no hard and fast boundaries in deciding which bargaining unit an employee is in, and the application of principles to determine which unit an employee falls into occurs on a case by case basis and not on a professional designation basis.

44 In determining whether student nurses were in the direct nursing care bargaining unit the Board decided the students applied the same professional nursing knowledge akin to that of an RN in the performance of assigned job duties even though they did not perform all of the tasks of an RN but were not in a subordinate role to RNs as were the LPNs (then called registered nursing assistants) who were included in the auxiliary nursing care unit: see *UNA, Local 001 v. Calgary General Hospital* [*[1987] Alta. L.R.B.R. 553*].

45 In *HSAA v. Calgary Regional Health Authority and AUPE* [*[2002] Alta. L.R.B.R. 365*] (the "*Calgary Orthotech* decision"), at paras. 22 and 28, although the Board recognized the role of an LPN to be an evolving one it accepted the employer's preference not to use LPNs to perform the job function in question and accepted the employer's determination the orthotechs in question belonged in the paramedical technical unit. However, in the *Edmonton LPN/OrthoTechs* decision, at paras. 65-69, 77-78 and 80, the Board recognized that legislative changes can be made to the scope of work performed by LPNs, overriding the outcome of the *Calgary Orthotech* decision and overriding practices of employers, so that LPNs may no longer be subservient to RNs. This could support the conclusion, which the Board is being urged to make in this case, that RNs and LPNs can be combined in the direct nursing care unit.

46 In the **Graesser, J. Decision** the court recognizes, at para. 87, that the bargaining unit descriptions are living descriptions which could accommodate the allocation of new or changed positions in a multi-union environment. At para. 92, the court opines that the definition of "direct nursing care" has to continue to encompass the functions and roles that, *de facto*, are exclusively given to employees who have nursing training and who maintain professional registration. This statement is broad enough to include LPNs, or those of them who have specialized training, in the direct nursing care unit. Finally, the court in overturning the Board's decision noted that the Board had limited the auxiliary nursing care unit to "support nurses" without explaining why or how it had reached that conclusion. It may be that the Board had intended to recognize that some of the LPNs in the auxiliary nursing care unit were evolving to a degree where they were on a comparable basis to the RNs engaged in direct nursing care.

47 In looking at the factual assertions contained in UNAs applications and accepting the premise those assertions must be considered to be true, a prima facie case is established and the Board cannot conclude that UNAs applications do not have a reasonable chance of success. Accordingly the summary dismissal applications must be dismissed.

Decision

48 UNA has applied to the Board, pursuant to section 12(3)(o), for determinations as to whether certain LPNs working at five specified locations operated by five separate employers fall under its bargaining units, being "all employees when employed in direct nursing care". (The fact this particular standard bargaining unit also includes reference to "nursing instruction" is not relevant to these proceedings so no account is taken of it). Even though some submissions were made that these applications were nothing more than reconsideration requests in disguise or even certification applications; albeit untimely ones, the Board does not consider that they fall into either category. On their face they purport to be determination applications, which are all that UNA intended them to be, so they must stand or fall based on the way in which the Board treats any determination application. However, this does not suggest the Board in dealing with a determination application will not look to its previous reconsideration or certification application decisions for some guidance in applying appropriate principles.

49 It is no surprise that all five of the determination applications, leaving aside the identity of the employers and of the specific LPNs, are very similar in content. Each is premised on the allegation that the prime functions of LPNs is in providing direct nursing care and, therefore, they properly fall under UNA's certificates. Each application then sets out: (i) a brief reference to the operation of each employer at the particular location; (ii) the number of RNs at each location represented by UNA under a specific Board issued certificate; (iii) the number of LPNs at each

location who are alleged to have expressed a desire to be represented by UNA and who are currently represented by AUPE under a specific Board issued certificate for the auxiliary nursing care bargaining unit; (iv) a typical staffing schedule at each location for RNs and LPNs and any others involved in patient care; (v) a brief outline of the work assignments on each shift; and, (vi) finally, a list of what are described as essentially the same functions performed by each of the RNs and LPNs on particular patient assignments. UNA's applications carry on, in an identical manner, to refer to the *Health Professions Act,* the LPNs Professional Regulation, the RNs Professional Regulation, Information Bulletins #10 and #22, a number of prior Board decisions and at least one Court of Queen's Bench decision, all for the purpose of persuading the Board the LPNs properly belong in UNA's direct nursing care units.

50 AUPE and the five named employers oppose the applications and also seek to have the Board exercise its discretion under section 16(4)(e) to summarily dismiss them. This provision states:

> 16(4) *When a complaint is made under subsection (1), a reference is made under subsection (3) or any other application to the Board is made under the Act, the Board may do one or more of the following ...*
>
> (e) *where the Board is of the opinion that the matter is without merit, or is frivolous, trivial or vexatious, reject the matter summarily.*

In *Carpenters, Local 2103 v. Garry Halicki* the Board stated, in part, at para. 5:

> ... The test used by the Board in deciding whether to summarily dismiss a matter pursuant to section 16(4)(e) has always been "is there a reasonable prospect of success" ... This test assumes the [applicant's] facts to be true and then asks whether there is a chance of success according to law.

51 Although the Board, in deciding whether to summarily dismiss an application, assumes the applicant's facts to be true, it should be made clear that what is being assumed as true are the factual assertions contained in the application. This does not extend to accepting as true those assertions made at a hearing by the applicant or its counsel which purport to represent what is contained in the application or, of course, assertions of factual matters not contained in the application. Nor does the assumption of truth extend to those matters, even though contained in the application, that amount to nothing more than the applicant's interpretation of legislation, Board documents or decisions, or court decisions.

52 When a party wishes to submit a determination application to the Board some guidance can be obtained from Information Bulletin #22. This Bulletin, like the other Information Bulletins, is intended to describe applicable policies and procedures of the Board that relate to the particular subject matter. The Bulletins cannot override specific provisions of the *Code* or of the Board's Rules and, generally, they cannot impose obligations on parties that are not supported by the *Code* or Rules. In this case much was made of the fact that Information Bulletin #22 states that parties to a difference over a determination question should first meet and attempt to resolve the issue themselves. No such meeting between UNA and AUPE took place prior to the determination applications being filed and AUPE suggested this somehow had a negative impact upon the validity of those applications. UNA's response was that the *Code* did not mandate such a meeting prior to the filing of an application under section 12(3)(o) and it was highly unlikely a meeting between UNA and the employer would be meaningful since AUPE would not be a party.

53 Although the Board's general approach to any situation is that of encouraging parties to share information, explore options and find agreeable processes and resolutions wherever possible, the comment in Information Bulletin #22 about parties meeting and attempting to resolve the issue themselves may have had in mind a situation that involved just one union and an employer. This seems apparent since the next comment made in the Bulletin is that if the matter cannot be resolved the parties should next consider using their collective agreement's arbitration procedures. The fact these comments in Information Bulletin #22 may not have had in mind a question over a determination matter involving two unions, is further underlined by the following specific comments about who can or cannot apply for a determination:

* A trade union cannot, through a determination application, challenge or ask the Board to reconsider the certificate of another trade union.

* Some determinations involve multiple bargaining units, for example, a hospital or a municipality. In such cases a trade union cannot encroach upon the rights of other bargaining agents. For example, a trade union cannot ask the Board to include in its unit, and simultaneously remove from another certified unit, classifications specifically covered in the other certificate.

54 In the *Northern Lights Health Region* decision, the Board had occasion to deal with the effects of the *Labour Relations (Regional Health Authorities Restructuring) Amendment Act, 2003* (commonly referred to as "Bill 27") [now found in section 162.1 of the *Code*] and section 2 of the Regional Health Authority Collective Bargaining Regulation which reads:

> Bargaining units for employees of a regional health authority shall consist of all employees in the health region who are represented by a bargaining agent and are employed in one of the following functional groups:
>
> (a) direct nursing care or nursing instruction;
>
> (b) auxiliary nursing care;
>
> (c) paramedical professional or technical services;
>
> (d) general support services.

55 At paragraph [40] of that decision the Board said, in part:

> ... Bill 27 also makes a significant change to what had previously been the Board's standard bargaining unit policy by (a) reducing the number of standard units from 5 to 4, consolidating the paramedical professional and technical units into one and (b) elevating those standard unit descriptions from board policy to quasi-statutory provisions.

56 The effect of these functional bargaining units being established by regulation is to remove the Board's power to make changes to them and to leave that power in the hands of the Lieutenant Governor in Council. Of course, this does not impair the Board's power to still make determinations as to whether a person is included or excluded from a unit, provided the person in question possesses any qualifications that may be necessary in order to be included as part of the unit.

57 The other significant legislative change relevant to the matters at hand is the enactment of the *Health Professions Act* and the subsequent proclamations of various parts of it, including Schedule 10 that applies to LPNs which was proclaimed on April 12, 2003, and Schedule 24 that applies to RNs which was proclaimed on November 30, 2005. In the *Edmonton LPN/OrthoTechs* decision the Board commented at length upon some aspects of this legislation as follows:

> [63] The proclamation of the *Health Professions Act* has brought about a number of significant changes in the healthcare field and in the 28 different health care professions to which that Act applies. ...
>
> [65] Section 3 of Schedule 10 to the *Health Professions Act* describes the practice of a LPN in these words:
>
> 3. In their practice, licensed practical nurses do one or more of the following:
>
> (a) apply nursing knowledge, skills and judgment to assess patients' need,
>
> (b) provide nursing care for patients and families, and
>
> (c) provide restricted activities authorized by the regulations.
>
> The HSAA argued the omission of the word "nursing" in section 3(c) is some indication that the provision of restricted activities has nothing to do with nursing. It is not an argument we can accept simply because identical wording appears as one of the items forming part of the description of the practice of each of the other 27 health care professions in each of the other schedules to the *Health Professions Act*. What follows from this, in our view, is the scope and extent of "restricted activities" has to be ascertained from what is authorized by the regulations, meaning, in this case, the contents of the LPN Profession Regulation. But in providing restricted activities authorized by the LPN Profession Regulation, a LPN is still applying nursing

knowledge, skills and judgment to assess patients' needs and is providing nursing care for patients and families.

[66] The LPN Profession Regulation covers a variety of topics and includes a provision that the regulated members register established by the CLPNA is to have a number of categories, one being the general register and another being the specialized practice register. In order to be registered on the general register an applicant must, among other things, have a diploma or certificate in practical nursing from a program approved by the CLPNA and successfully complete a registration examination. To be registered on the specialized practice register an applicant must first be registered on the general register, have successfully completed a specialized practice education or training program approved by the CLPNA, and demonstrate competence in the provision of specialized practice activities.

[67] The subject of restricted activities is dealt with in a number of provisions of the Regulation. There are six different topics in respect of which the CLPNA has approved post basic education programs and only those regulated members who have successfully completed these education programs can perform the specific restricted activity ...

In addition to those six topics, other provisions of the Regulation provide that all regulated members may, in the provision of nursing services, provide certain specified restricted activities and still other provisions allow regulated members to perform specified restricted activities if done under the supervision of an authorized practitioner or if done while a person who is authorized to perform that activity is available to provide assistance.

[68] The reference to "authorized practitioner" is defined in the LPN Profession Regulation to mean a person who performs a restricted activity while providing health services pursuant to the *Health Professions Act* or another enactment but does not include a regulated member of the CLPNA. While this would undoubtedly include a physician we have no evidence as to who else comes within that definition. We also note that this Regulation, unlike its predecessor, no longer states that direction to a LPN to provide clinical nursing services may only be given by a registered nurse, a psychiatric nurse or a physician. This change may be an indication of an evolving increase in the status of a LPN in the hierarchy of the health care disciplines.

[69] What we take from these legislative changes to the LPN profession is that the scope of practice has undergone some expansion and now includes a greater variety of restricted activities that may be performed by qualified LPNs as part of or as an adjunct to the regular LPN nursing duties ... The performance of "restricted activities" is now part and parcel of the practice of licensed practical nurses and so long as the individual member of the CLPNA meets the prescribed requirements to carry out those additional activities, in our opinion, she is for purposes of ascertaining the appropriate bargaining unit assignment, to be treated in the same manner as other LPNs.

58 The RNs Regulation provides for the following categories for the regulated members register (a) registered nurse register; (b) nurse practitioner register; (c) certified graduate nurse register; (d) temporary register; and (e) courtesy register. An applicant to be registered on the registered nurse register must possess either a diploma or a baccalaureate degree in nursing from an approved nursing program undertaken in Alberta (but after January 1, 2010 only a baccalaureate degree will be accepted) and pass a registration exam. It appears the certified graduate nurse register is no longer available for anyone except those who are registered as such as of November 30, 2005 and those who were previously registered as such if they completed a preset number of hours of certified graduate nursing practice within the previous 5 years or if they complete an approved nursing refresher program. The provisions of this Regulation do not appear to contemplate a LPN becoming registered as a regulated member of CARNA.

59 Pursuant to the Regulation, a RN may, within the practice of registered nursing, perform more than 20 specific restricted activities provided they are competent and act in accordance with the standards of practice adopted by CARNA. Also, a registered nurse may supervise the performance of certain of these restricted activities by a person not otherwise permitted to perform them if that person has the consent of and is supervised by the registered nurse and that other person is engaged in providing health services to another person.

60 We accept that a RN undergoes a longer period of study and training to become entitled to engage in the practice of registered nursing than a LPN undergoes in order to become entitled to engage in practical nursing, and we recognize they each have their own professional college and their own Schedule to the *Health Professions Act*. However, since both have scopes of practice that include applying nursing knowledge, skills and judgment, the dividing line between the direct nursing care bargaining unit and the auxiliary nursing care unit, as it applies to LPNs, is becoming less distinct and harder to draw. In the *Edmonton LPN/OrthoTechs* decision the Board, at para. 77, quoted from its earlier decision in *UNA v. Calgary Regional Health Authority and HSAA* [1999] Alta. L.R.B.R. 458, at 472, as follows:

> For the Board's standard bargaining units to maintain continuing relevance, they must accommodate specialization and change. Any definition of "direct nursing care" has to continue to encompass the functions and roles that, *de facto*, are exclusively given to employees that have nursing training and that maintain professional registration - whatever those functions and roles are from time to time.
>
> Also at page 473 of that decision are the following comments: decision:
>
> If an employer makes a decision that a certain position requires a nurse, and restricts its recruitment accordingly, or if a position evolves in such a way that its incumbent requires nursing training, the situation falls squarely within the words at the end of the 2nd paragraph on page 623 of *UNA v. AHA supra [UNA v. Alberta Hospital Association et al.* [1986] Alta. L.R.B.R. 610]:
>
> > When the position requires a nursing background and accreditation, or in practice functions in a way that makes it clear, despite a job posting to the contrary, that it requires a nursing background then in our view the community of interest remains with the direct nursing care unit.

61 In that 1999 *Calgary Regional Health Authority* decision the Board was dealing with a determination as to whether three employees who were registered nurses by training but who were engaged in work outside of the traditional role of bedside nursing belonged in UNA's direct nursing care unit or in HSAA's paramedical professional unit. The fact this was a contest between UNA and HSAA explains that the references to "nursing" and "professional registration" were being made in respect of the then current *Nursing Profession Act.* Also, in that decision the Board quoted at length from its earlier 1986 decision involving *UNA v. Alberta Hospital Association* in which the historical development of the direct nursing care unit was outlined. One of the comments made in the 1986 decision, that was not quoted in the 1999 decision is the following at 622:

> ... we do recognize that the existence of professional qualifications and governance by the A.A.R.N. [the predecessor to CARNA] as a professional body, does create a very potent community of interest between all persons with that accreditation and training who are working at their profession whether directly or indirectly. The Board's five functional bargaining units are based primarily on the concept of community of interest and therefore this professional accreditation factor must be given some weight.

62 Although the dividing line between the direct nursing care and the auxiliary nursing care units is becoming more difficult to draw that does not mean the dividing line has become impossible to ascertain. In determining how to discover the dividing line some assistance can be obtained from statements of general principle extracted from earlier Board decisions. In *HSAA v. AMHB, AUPE, CUPE, CHA and David Thompson Health Authority* [2004] Alta. L.R.B.R. 437 (the *"Therapy Assistants"* decision) the Board, at para. 69, stated in part:

> ... in these cases the Board has resisted trying to make comprehensive statements about the composition and boundaries of its standard bargaining units. As the Board stated in *HSAA v. Calgary Regional Health Authority* [1999] Alta. L.R.B.R. 458 at 466:
>
> > This Board has never attempted to exhaustively define the terms "paramedical professional" and "direct nursing care", nor has it tried to draw a hard-and-fast boundary between these two units. Instead it has enunciated the central idea behind these groupings in its decisions and Information Bulletins, while dealing with the inevitable boundary disputes on a case-by-case basis. The wisdom of this flexible incremental approach is apparent; these bargaining units (indeed all the standard bargaining units) have been durable over twenty-five years of extreme technological, organizational and occupational

> change in the health care industry. I propose to follow that approach in this case and to say little more than is required to resolve the bargaining unit status of these three employees.

63 Also, in the *Therapy Assistants* decision the Board stated in part, at paras. 71 and 72:

> [71] The meanings of the key terms in these bargaining unit descriptions ... are not self-evident. They are capable of interpretation, which the Board does in light of the facts of the case, its jurisprudence, the policy behind and the history of the Board's standard bargaining unit descriptions, and concepts like community of interest. Many of the issues argued in this case were recently commented upon by another panel of the Board in *HSAA v. Capital Health Authority and AUPE* [2004] Alta. L.R.B.R. 264 (hereafter the "*Laboratory Assistants Case*"), in terms that reflect our own thinking ...
>
> [72] On the interpretive issue of what, if any, weight is to be given to community of interest considerations in determinations of this kind, that panel said (at 294):
>
> > [81] (...) there was some discussion ... about "community of interest" considerations in determinations like this one. There was some debate about whether community of interest is a misplaced concept in determinations of which bargaining unit employees fall into. We are not troubled by the determination case law that speaks of community of interest considerations (...). It is true that community of interest is a very flexible concept that is of most use in fashioning units of employees that are appropriate for collective bargaining. It would, we agree, be a mistake to engage in community of interest analysis as a substitute for analysis of what the stated boundaries of a bargaining unit mean. But bargaining unit boundaries are not always perfectly certain of interpretation. Particularly in health care, where bargaining units rely on terms like "auxiliary" nursing care, paramedical "technical" services and "general support" services, there are rarely bright lines between the bargaining units. In close cases, where employees perform a mixture of duties that could fairly place them in one or another bargaining unit, or where the result depends on interpretation of an elastic term like "technical", we think that it is an acceptable practice to look at community of interest considerations to gain insight into what the intended scope of the bargaining unit is, and where it makes most sense to draw the precise boundary line between units.

64 In the *Laboratory Assistants Case* the Board also made these comments about community of interest considerations:

> [87] A history of successful collective bargaining tends to reinforce the community of interest that exists within a bargaining unit ...
>
> [88] Common membership in an occupational organization is a relevant consideration in the assessment of community of interest ...

65 Each of AUPE, Shepherd's Care and UNA referred to and found some comfort in the **Graesser, J. Decision**. This is not surprising since much of that decision is taken up with a summary of many previous decisions of the Board relevant to the issue raised in *AUPE v. Capital Health Authority and HSAA* [2006] Alta. L.R.B.R. 70 (the "*Dental Assistants*" decision) and the unsuccessful reconsideration application, reported at [2006] Alta. L.R.B.R. LD-051. But none of the Board's previous decisions directly dealt with a contest between the direct nursing care and the auxiliary nursing care units giving the parties much latitude in drawing analogies as to what the Board and the Court might have done in respect of a contest between those two units. In that respect, AUPE sought to place some weight on the comment by Mr. Justice Graesser at para. 128 of his decision stating, "An analogy would be to place some ANC employees into the direct nursing care unit. In my view, that does not make labour relations sense. There are good reasons to have supervisors separated from those that they supervise." Since this comment is merely a passing remark and was not necessary for the Court's decision it would not be considered to be a binding precedent. The aspect of the *Dental Assistants* decision criticized by the Court and which led to that decision being quashed was the Board narrowed the scope of the auxiliary nursing care unit and expanded the scope of the paramedical professional and technical unit without providing any explanation for making these broad changes to existing Board policy.

66 Instead of attempting to draw a dividing line between the direct nursing care and the auxiliary nursing care units,

AUPE and the respondent employers argue that UNA is endeavouring to obscure or wipe out any such line, at least insofar as concerns the LPNs being part of the auxiliary nursing care unit. In rebuttal UNA states it is not trying to move the entire LPN classification into its bargaining units and, therefore, the Board should not perceive its applications to be an attempt to remove the LPN classification from AUPE's certificates, but only a desire by UNA to include in its certificates the specifically named LPNs. However, since UNA seeks to have all of the LPNs employed by each of the five employers at the specific locations included in the direct nursing care units the Board fails to see much validity in the distinction UNA is attempting to draw. Also UNA says, in effect, that the prime function of the LPNs is the provision of direct nursing care and carries on to assert that the activities outlined in the scope of practice of LPNs, in section 3 of Schedule 10 of the HPA, in fact describe direct nursing care. Although each of UNA's applications do outline certain functions performed by LPNs on patient assignments that are essentially the same as those performed by the RNs, the overlap of these particular functions is insufficient, in the Board's view, to support UNA's allegation that these LPNs are engaged in direct nursing care.

67 Information Bulletin #10 outlines both direct nursing care and auxiliary nursing care units and comments upon the types of employees normally included in each of the units. For many years the Board has included the LPNs (and the predecessor occupations) in the auxiliary nursing care unit without objections or comments being raised over that placement. We appreciate the Bulletin does not mandate that LPNs be placed in this unit since it speaks of them being one of the groups "normally included" in the unit. But the Board's historical practice is not one that ought to be easily disturbed at least in the absence of there being valid labour relations purposes for making what has the appearance of a significant change. If UNA's applications were to succeed then without question a decision by the Board to include LPNs in these direct nursing care units would be looked upon as having established a precedent that could be relied upon by others who desired to achieve a similar result.

68 Of course it is true the Board heavily relies upon the job function an employee performs in making a determination as to which unit the employee is placed, and tends not to rely upon job titles or the qualifications the employee may possess. However, other considerations do play a role in deciding on the bargaining unit into which an employee is included. As mentioned in a number of the other decisions of the Board, community of interest considerations can come into play and, relevant to this case, these can include matters such as qualifications required by statute, governance by a statutorily mandated College, a history of successful collective bargaining, an ability or lack thereof for promotion to higher classifications within the unit, and statutory or constitutional impediments to being included in a particular bargaining unit.

69 What all of this means is the determination applications submitted by UNA raise significant matters of concern to others than just AUPE and the five respondent employers. Since these applications, as presently framed, have a potential impact upon the auxiliary nursing care and direct nursing care units, in light of the applicable statutes and regulations, they ought not to be decided in the context of the present proceedings. Also, UNA's suggestion that the scope of practice of the LPNs outlined in Schedule 10 of the HPA is tantamount to "direct nursing care" is merely a suggestion but, in asserting that to be the case, UNA is effectively stating that all LPNs, not just those possessed of specialized practice education or training, are engaging in "direct nursing care". If UNA's suggestion had merit it would describe a situation that has prevailed long before 2003, when Schedule 10 was proclaimed, but presumably without giving rise to any concern on the part of UNA until 2008. Nothing is alleged to have occurred in 2008 that would serve to justify a change being made by the Board at this time to its long established practice of normally including the LPNs in the auxiliary nursing care unit. In the result, these applications are, in the opinion of the Board, without merit. Accordingly, the request for summary dismissal of the applications is allowed and those determination applications are dismissed.

70 When a party seeks to have the Board reconsider and, perhaps, overturn a practice of long standing, especially one that could have a potential impact upon numerous employers and unions, it is likely a determination application limited to only a small number of employees or groups of employees is not the route to follow. Instead, the reference of a difference would appear to be a preferable method of seeking to have the Board embark upon such an inquiry, leaving the Board free to determine if submissions should be invited from all affected health care stakeholders who may appear to have an interest in the proper bargaining unit placement of the affected employee or groups of employees. The potential movement of some or all of the LPNs from the auxiliary nursing care unit into

the direct nursing care unit is an example of the sort of issue that affects a long standing Board practice with a potential impact upon numerous other parties that is simply not capable of resolution through UNA's dismissed determination applications.

ISSUED and DATED at the City of Edmonton in the province of Alberta this 6th day of January, 2009 by the Labour Relations Board and signed by its Vice-Chair.

Gerald A. Lucas, Q.C., Vice-Chair

End of Document

Tab 6

Alberta Health Services (Re)

Alberta Labour Relations Board Reports

Alberta Labour Relations Board

Panel: Mark L. Asbell, Q.C., Chair

Decision: July 12, 2012.

Board File No. GE-05633

[2012] Alta. L.R.B.R. LD-050 | [2012] A.L.R.B.D. No. 51 | 216 C.L.R.B.R. (2d) 246

RE: An application for determination brought by the United Nurses of Alberta affecting Alberta Health Services and The Alberta Union of Provincial Employees

(31 paras.)

Appearances

No appearances mentioned.

LETTER DECISION

1 United Nurses of Alberta ("UNA") brings this application pursuant to section 12(3)(o) of the *Alberta Labour Relations Code* (the "*Code*") for a determination that the Operating Room Technicians/Licensed Practical Nurses ("ORT/LPNs") working at the Royal Alexandra Hospital in the surgical program in the Women's Operating Room (WCOR), the Ear, Eye, Nose and Throat Operating Room (ATCOR) and the Diagnostic Treatment Centre Operating Room (DTCOR) fall within the "direct nursing care or nursing instruction" bargaining unit (the "Direct Nursing Care Bargaining Unit").

2 The ORT/LPNs at the Royal Alexandra Hospital are currently represented by the Alberta Union of Provincial Employees ("AUPE") under the certificate for employees when employed in auxiliary nursing care (the "Auxiliary Nursing Care Bargaining Unit"). AUPE opposes UNA's application and maintains the ORT/LPNs are properly included in the Auxiliary Nursing Care Bargaining Unit represented by AUPE.

3 Alberta Health Services ("AHS") is the employer of the ORT/LPNs. It also opposes UNA's application and maintains the ORT/LPNs are properly included in the Auxiliary Nursing Care Bargaining Unit represented by AUPE.

4 AUPE and AHS submit that UNA's application has no prospect of success and should be summarily dismissed pursuant to section 16(4) of the *Code*. Their applications for summary dismissal were heard before a Board panel (Asbell, Fraleigh, and Wiliams with Board Member Moffatt participating for training purposes only - he did not participate in the actual decision) and after carefully considering the helpful submissions of the parties, the Board has decided to grant the applications of AUPE and AHS and summarily dismiss UNA's application. Our reasons follow.

Background

5 Between 2007 and 2009 UNA filed 11 determination applications seeking to have LPNs moved out of AUPE's Auxiliary Nursing Care Bargaining Units and into UNA's Direct Nursing Care Bargaining Units on the basis that

those LPNs were performing "direct nursing care" and should therefore be included in the Direct Nursing Care Bargaining Unit.

6 After a hearing, the Board summarily dismissed five of UNA's determination applications on January 6, 2009 (*UNA (Various Locals) v. Good Samaritan Society and AUPE et al.*, *[2009] A.L.R.B.D. No. 1*, *[2009] Alta. L.R.B.R. 1* ("*Good Samaritan*"), reconsideration dismissed July 20, 2010 at *[2010] A.L.R.B.D. No. 64*, *[2010] Alta. L.R.B.R. 185* ("*Good Samaritan Reconsideration*")). UNA did not seek judicial review of the reconsideration and subsequently withdrew all of its remaining determination applications except this application for the ORT/LPNs at the Royal Alexandra Hospital.

7 In *Good Samaritan*, the Board notes the similarity of the five determination applications before it:

> [49] It is no surprise that all five of the determination applications, leaving aside the identity of the employers and of the specific LPNs, are very similar in content. Each is premised on the allegation that the prime functions of LPNs is in providing direct nursing care and, therefore, they properly fall under UNA's certificates. Each application then sets out: (i) a brief reference to the operation of each employer at the particular location; (ii) the number of RNs at each location represented by UNA under a specific Board issued certificate; (iii) the number of LPNs at each location who are alleged to have expressed a desire to be represented by UNA and who are currently represented by AUPE under a specific Board issued certificate for the auxiliary nursing care bargaining unit; (iv) a typical staffing schedule at each location for RNs and LPNs and any others involved in patient care; (v) a brief outline of the work assignments on each shift; and, (vi) finally, a list of what are described as essentially the same functions performed by each of the RNs and LPNs on particular patient assignments. UNA's applications carry on, in an identical manner, to refer to the *Health Professions Act,* the LPNs Professional Regulation, the RNs Professional Regulation, Information Bulletins #10 and #22, a number of prior Board decisions and at least one Court of Queen's Bench decision, all for the purpose of persuading the Board the LPNs properly belong in UNA's direct nursing care units.

8 This application filed May 5, 2009 follows a similar format as those described above. The application was supplemented with further particulars on November 19, 2010 and April 7, 2011. At the hearing of the summary dismissal applications, the Board accepted as exhibits two letters from physicians "in support" of UNA's application. After the conclusion of the hearing, UNA filed a certificate for Age Care Investments (Beverly) Ltd. in support of its position it holds a certificate that includes LPNs in its Direct Nursing Care Bargaining Unit. All parties responded to this submission. The factual allegations contained in these particulars and documents filed by UNA represent all of the facts considered by the Board for the purposes of the summary dismissal application.

9 In the application, UNA pleads the following facts:

* Approximately 32 ORT/LPNs work in WCOR, ATCOR and DTCOR, compared to approximately 115 RNs;
* in WCOR, surgical procedures are typically performed using two circulating nurses and one scrub nurse. Usually two RNs and one ORT/LPN fill these positions on a rotating basis, with each nurse taking turns in the three positions;
* in ATCOR, surgical procedures are performed using one scrub nurse and one to two circulating nurses. These positions are filled by one ORT/LPN and one RN and an "RN float." The positions filled by these nurses generally rotate every third or fourth procedure;
* in DTCOR, surgical procedures are performed using two RNs and one ORT/LPN. These nurses rotate between first and second circulating nurses, and scrub nurse;
* the nursing duties associated with circulating nurses and scrub nurses are not assigned to RNs and ORT/LPNs on the basis of their professional designation or the difficulty of the procedure. Rather, nursing duties are assigned on a rotating basis, and on the basis of experience or familiarity with the surgical procedure being performed; and

* the duties completed by ORT/LPNs and RNs as scrub nurses and circulating nurses are essentially the same.

10 In addition to the similarities in nursing duties in WCOR, ATCOR and DTCOR, UNA notes the ORT/LPNs and RNs are also similar in the following ways:

* both are governed by professional regulatory bodies in accordance with the *Health Professions Act, R.S.A. 2000, c. H-7* (the *"HPA"*), the *Registered Nurses Profession Regulation, Alta Reg 232/2005*, and the *Licensed Practical Nurses Profession Regulation, Alta Reg 81/2003*; and
* both apply nursing knowledge, skill, and judgment.

11 However, UNA also note the roles of ORT/LPNs and RNs are not completely identical, as an RN must be present when an ORT/LPN checks a patient's medication or does a final count following a surgical procedure.

12 Overall, UNA concludes that RNs and the ORT/LPNs in these operating theatres perform essentially the same duties, and the prime function of ORT/LPNs is to work collaboratively and interchangeably with RNs during surgical procedures. On this basis, UNA submits the ORT/LPNs provide direct nursing care and should be included in the Direct Nursing Care Bargaining Unit.

13 Via letter dated November 19, 2010, UNA provided further particulars regarding the ORT/LPN determination application. UNA confirms the duties of RNs and the ORT/LPNs are essentially the same with three exceptions - only RNs can be assigned the team leader position, at least one RN must be involved when counting medications and instruments following a surgical procedure, and the ORT/LPNs cannot hang blood, whereas RNs can hang blood.

14 Via letter dated April 7, 2011, UNA provided further particulars. UNA confirms that scrub and circulating nurse positions are assigned on the basis of experience in relation to the particular surgical procedure being performed. UNA notes further similarities between the ORT/LPNs and RNs including:

* the same Basic Practice Guideline Manuals describing the roles of scrub and circulating nurses apply to them;
* they receive the same orientation for working in WCOR, ATCOR and DTCOR, with the exception of separate instructions that are given in regard to professional standards;
* both use a senior ORT/LPN who works in DTCOR as a resource person;
* both have the same manager; and
* both attend the same orientation.

15 Via a letter filed after the conclusion of the hearing dated June 10, 2011, UNA provided the Board with a certificate covering a unit of employees of Age Care Investments (Beverly) Ltd. described as "all employees when employed in direct nursing care or nursing instruction at Beverly Centre Lake Midnapore". It notes this bargaining unit includes LPNs as noted in the Board's decision rendered for that matter (*Age Care Investments (Beverly) Ltd. [2005] Alta. L.R.B.R. LD-072*).

16 UNA submits there is a strong community of interest between the ORT/LPNs and RNs - they work side by side, interchangeably; they attend the same orientation; they report to the same managers; they share the same locker room and lounge; and they socialize together in the work environment.

Legal Framework

17 Paragraph Section 16(4)(e) of the *Labour Relations Code* provides:

> *16(4) When a complaint is made under subsection (1), a reference is made under subsection (3) or any other application to the Board is made under this Act, the Board may do one or more of the following:*

> ...
>
> *(e) where the Board is of the opinion that the matter is without merit, or is frivolous, trivial or vexatious, reject the matter summarily.*

18 In deciding whether to summarily dismiss a matter pursuant to Section 16(4)(e), the Board asks: "Is there a reasonable prospect of success?" For the purposes of a summary dismissal application, the Board assumes the applicant's allegations of fact are true. (*United Brotherhood of Carpenters and Joiners of America, Local Union No. 2103 v. Garry Halicki* [2007] Alta. L.R.B.R. LD-062 at paragraph 5). In *Good Samaritan,* at paragraph 51, the Board distinguished between assertions of fact and assertions of law:

> Although the Board, in deciding whether to summarily dismiss an application, assumes the applicant's facts to be true, it should be made clear that what is being assumed is true are the factual assertions contained in the application. This does not extend to accepting as true those assertions made at a hearing by the applicant or its counsel which purport to represent what is contained in the application or, of course, assertions of factual matters not contained in the application. Nor does the assumption of truth extend to those matters, even though contained in the application, that amount to nothing more than the applicant's interpretation of legislation, Board documents or decisions, or court decisions.

19 The Board has authority to dismiss applications in cases where the Board finds the applicant is abusing the process (*United Steelworkers of America, Local Union 7226 v. Handleman Company of Canada and Certain Employees of Handleman Company of Canada Ltd.* [1988] Alta. L.R.B.R. 431). In *Teamsters Local No. 987* and *Brandt Tractor Ltd. and Pardee Equipment Employees Association*, [2010] A.L.R.B.D. No. 10, [2010] Alta. L.R.B.R. 56 the Board said at paragraph 21:

> [21] The Board always maintains the authority to protect its process from abuse. If the circumstances surrounding the filing of a duplicitous application reveal an abuse of the Board's process, the Board may refuse the application as an exercise of that authority.

The *Good Samaritan* Decisions

20 In *Good Samaritan Reconsideration,* the reconsideration panel summarized the conclusions reached by the original panel as follows:

> **Conclusions Reached by the Original Panel**
>
> [22] Having assessed the scope of the application, identified the relevant legal principles, and considered the prime function of the LPNs in question, the Original Panel reaches a number of conclusions.
>
> [23] First, "... since both have scopes of practice that include applying nursing knowledge, skills and judgment, the dividing line between the direct nursing care bargaining unit and the auxiliary nursing care unit, as it applies to LPNs, is becoming less distinct and harder to draw." (Paragraph 60).
>
> [24] Second, the Original Panel specifically considers the relevance of the overlap in functions identified by UNA. At paragraph 66, the Board states: "Although each of UNA's applications do outline certain functions performed by LPNs on patient assignments that are essentially the same as those performed by the RNs, the overlap of these particular functions is insufficient, in the Board's view, to support UNA's allegation that these LPNs are engaged in direct nursing care." Thus, the Original Panel concludes this overlap is insufficient to support UNA's allegation the LPNs in question are engaged in direct nursing care. In close cases such as this, community of interest considerations favour leaving the LPNs in the auxiliary nursing care unit. (Paragraph 68).
>
> [25] In addition, the situation described by UNA is one that existed long before 2003 when Bill 27 was proclaimed or the provisions of the *Health Professions Act* and, in particular, the provisions defining the scope of practice of LPNs and registered nurses (RNs) were proclaimed. Nothing was alleged to have occurred at the time the applications were brought justifying a change being made by the Board to its long standing practice of normally including LPNs in the auxiliary nursing care unit.

> [26] Finally, at paragraphs 69 and 70, the Original Panel concludes a determination application is not the appropriate method of seeking to overturn long standing Board policy affecting a large number of employees and employers.

21 Given the importance of *Good Samaritan* to our conclusions, we repeat here the final 3 paragraphs of that decision:

> [68] Of course it is true the Board heavily relies upon the job function an employee performs in making a determination as to which unit the employee is placed, and tends not to rely upon job titles or the qualifications the employee may possess. However, other considerations do play a role in deciding on the bargaining unit into which an employee is included. As mentioned in a number of the other decisions of the Board, community of interest considerations can come into play and, relevant to this case, these can include matters such as qualifications required by statute, governance by a statutorily mandated College, a history of successful collective bargaining, an ability or lack thereof for promotion to higher classifications within the unit, and statutory or constitutional impediments to being included in a particular bargaining unit.
>
> [69] What all of this means is the determination applications submitted by UNA raise significant matters of concern to others than just AUPE and the five respondent employers. Since these applications, as presently framed, have a potential impact upon the auxiliary nursing care and direct nursing care units, in light of the applicable statutes and regulations, they ought not to be decided in the context of the present proceedings. Also, UNA's suggestion that the scope of practice of the LPNs outlined in Schedule 10 of the HPA is tantamount to "direct nursing care" is merely a suggestion but, in asserting that to be the case, UNA is effectively stating that all LPNs, not just those possessed of specialized practice education or training, are engaging in "direct nursing care". If UNA's suggestion had merit it would describe a situation that has prevailed long before 2003, when Schedule 10 was proclaimed, but presumably without giving rise to any concern on the part of UNA until 2008. Nothing is alleged to have occurred in 2008 that would serve to justify a change being made by the Board at this time to its long established practice of normally including the LPNs in the auxiliary nursing care unit. In the result, these applications are, in the opinion of the Board, without merit. Accordingly, the request for summary dismissal of the applications is allowed and those determination applications are dismissed.
>
> [70] When a party seeks to have the Board reconsider and, perhaps, overturn a practice of long standing, especially one that could have a potential impact upon numerous employers and unions, it is likely a determination application limited to only a small number of employees or groups of employees is not the route to follow. Instead, the reference of a difference would appear to be a preferable method of seeking to have the Board embark upon such an inquiry, leaving the Board free to determine if submissions should be invited from all affected health care stakeholders who may appear to have an interest in the proper bargaining unit placement of the affected employee or groups of employees. The potential movement of some or all of the LPNs from the auxiliary nursing care unit into the direct nursing care unit is an example of the sort of issue that affects a long standing Board practice with a potential impact upon numerous other parties that is simply not capable of resolution through UNA's dismissed determination applications.

Decision

22 The thrust of the Respondents' submissions in support of their summary dismissal applications is that the issues raised by UNA in this application are the same issues it raised in the five determination applications in *Good Samaritan*. In *Good Samaritan* the Board summarily dismissed the applications and directed UNA, if it wanted to raise these issues in the future, it should do so by way of a reference of a difference. Yet, UNA persists in bringing this determination application. The Respondents argue UNA's insistence on bringing another determination application, identical for all intents and purposes as the five applications in *Good Samaritan* is an abuse of process and warrants the application being summarily dismissed with costs.

23 In reply to the submissions of the Respondents, UNA submits this determination application is distinguishable from the determination applications dismissed in *Good Samaritan* on the following basis:

a) The ORT/LPN determination application will apply to different LPNs than the applications in *Good Samaritan*:

b) The ORT/LPN determination application is limited to one specialty of LPNs being those who work as ORTs in WCOR, ATCOR and DTCOR at the Royal Alexandra Hospital, and would not affect the entire LPN classification;

c) The overall functions performed by ORT LPN's as compared to their RN co-workers are more similar than the functions performed by the LPN's affected by *Good Samaritan*;

d) The community of interest of ORT/LPNs is distinct from the community of interest for LPNs generally that the Board considered in the *Good Samaritan* decision.

24 The Board rejects UNA's submissions in this regard and finds there are no material or relevant distinctions between this application and the determination applications before the Board in the *Good Samaritan*. The Board is confident that if this ORT/LPN determination application had been one of the five applications before the Board in *Good Samaritan*, the Board would have come to the same conclusion. Of course, this application affects different LPNs than those affected by the five applications in *Good Samaritan*. Similarly, each of the five applications before the Board in *Good Samaritan* affected different LPNs. Nonetheless, the Board was able to deal with all five together and made no distinction in its decision among them. The concerns raised and principles articulated by the Board in *Good Samaritan* applied generally to each of the five applications and we conclude apply equally to this application.

25 We specifically reject UNA's submission that this application is distinguishable because the overall functions performed by ORT/LPN's as compared to their RN co-workers are "more similar than the functions performed by the LPN's affected by *Good Samaritan.*" In each of the five applications before the Board in *Good Samaritan*, UNA plead that the LPNs and RNs were performing "essentially the same functions." In each application, UNA plead that "their assignments can be interchangeable." By way of illustration, in Board file GE-05471, UNA's application read in part:

7. On any particular assignment the LPNs and the RNs perform <u>essentially the same</u> functions on the patient assignments. That is they each:

    * Are responsible for providing all nursing care to their patients;
    * Administer medication, including RPN medications, medications prescribed on an "as needed" basis. LPNs exercise their own nursing judgment in deciding whether to give such medication;
    * Take vital signs;
    * Provide wound care;
    * Conduct assessments;
    * Complete charting;
    * Implement care plans;
    * Deal with families;
    * Take Doctor's orders;
    * Make Doctor rounds.

8. As well one LPN, Becky Gutch, works Home Care out of the Mannville Health Centre. Ms. Gutch's position is operated as a satellite position with the home office being located in Vermilion. Ms. Gutch works a fulltime position and one other LPN, Patricia Smart, works casual shifts for home care out of the Mannville Health Care Centre. UNA takes the position that the LPNs in home care are conducting direct care nursing. In home care the LPNs see the same clients that the RNs see and perform the same direct nursing care including:

    * Wound care;

* foot care;
* injections;
* wellness checks;
* palliative care;
* Hypodermacylis;
* case coordination;
* charting
* trachea care;
* completion of admissions and application for placement;
* central venous catheters.

26 For the purposes of the summary dismissal application before it, the Board in *Good Samaritan* assumed that the LPNs and RNs were performing essentially the same functions. Similarly, in this application, UNA plead:

> The role of scrub nurse and circulating nurse are essentially the same regardless of who is assigned during the procedure. That is ORT/LPN and RNs will perform essentially the same duties as their counterpart would be working in the same role during another procedure.

27 Later, in its further particulars of November 19, 2010, UNA plead:

> The duties are essentially the same for RNs and LPNs as set out in paragraph 9 of the UNA application with the following 3 exceptions:
>
> * An RN would be a team leader (in charge) for a particular theatre; an LPN would not.
> * The counting of medications and instruments are done by both an RN and an LPN, however there is a requirement that there be at least one RN involved in the count (i.e. 2 LPNs could not do the count).
> * An LPN cannot hang blood (he or she can check it, but not hang it).

28 Similarly, in each of the five applications before the Board in *Good Samaritan* UNA argued that community of interest of the LPNs was with others in the Direct Nursing Care Bargaining Unit because the "LPNs work side by side as professional colleagues with the RNs in providing direct nursing care for patients and families. Their assignments can be interchangeable. Their Employer addresses their professional roles under one policy." (GE-05468). While more details to support these factual assertions have been provided in this application, the Board in *Good Samaritan* accepted these general factual assertions for the purpose of the summary dismissal applications before it.

29 We agree with the Respondents that the issues and arguments raised in this application are not materially different than those addressed in *Good Samaritan*. The Board is aware from the determination applications filed by UNA and other applications that have been filed with it from others involved in the health care sector that there are many circumstances across the province in which RNs and LPNs work together on integrated teams providing nursing duties that often overlap, all within the scope of their professional practices. Given the overlap in the scope of their practices defined under the *Health Professions Act*, considerable overlap in their duties is inevitable. With the exception of *Age Care*, the Board has consistently ruled that in those circumstances, LPNs will be placed in the auxiliary nursing care bargaining unit and RNs in the direct nursing care bargaining unit. The only exception to this general rule involved a scenario where the only objection dealt with by the Board was whether the unit managers should be excluded from the bargaining unit. There was no objection to the inclusion of LPNs in the Direct Nursing Care Bargaining Unit; no involvement of other interested parties such as AUPE; it was a certification application as opposed to a reconsideration application, and; there was no analysis of whether the LPNs should be included in the Direct Nursing Care Bargaining Unit. We also note the employer was not subject to Bill 27 as a Regional Health

Authority. Thus, the case carries no weight as a precedent for the Board. The preferred view and the perspective consistently applied after analysis by the Board is that enunciated in *Shepherd's Care Foundation (Re)* [2008] Alta. L.R.B.R. LD-042 at paragraph 10, where the Board commented on the value to the health care sector of the stability and predictability of the standard bargaining units. For those reasons and others, the Board indicated in *Good Samaritan* that this long-standing practice will not be altered in the absence of proceedings that seek and permit input from all affected stakeholders. This continues to be the Board's view.

30 Accordingly, for the reasons outlined in *Good Samaritan* and confirmed in *Good Samaritan Reconsideration*, this application has no prospect of success. The application is summarily dismissed pursuant to section 16(4) of the *Code*.

31 We understand the frustration expressed by the Respondents with being faced with another determination application similar to those summarily dismissed in *Good Samaritan*. Following the issuance of the *Good Samaritan Reconsideration* decision, UNA withdrew five other similar determination applications and chose to proceed only with this ORT/LPN application. UNA has argued that this application was different and hence it chose to proceed with it. Although we have rejected that argument, we are satisfied it was made in good faith and accordingly we are not prepared to grant the request made by the Respondents that costs be awarded against UNA.

Mark L. Asbell, Q.C., Chair

End of Document

Tab 7

2020 Bill 46

Second Session, 30th Legislature, 69 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 46

HEALTH STATUTES AMENDMENT ACT, 2020 (NO. 2)

THE MINISTER OF HEALTH

First Reading . . . . . .

Second Reading . . . . . .

Committee of the Whole . . . . . .

Third Reading . . . . . .

Royal Assent . . . . . .

BILL 46

2020

HEALTH STATUTES AMENDMENT ACT, 2020 (NO. 2)

(Assented to , 2020)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Part 1
ABC Benefits Corporation Act

Amends RSA 2000 cA-1

1 The *ABC Benefits Corporation Act* is amended by this Part.

2 The title and chapter number of the Act are repealed and the following is substituted:

ALBERTA BLUE CROSS ACT

Chapter A-14.15

Consequential Amendments

Amends RSA 2000 cA-15

3 The *Alberta Corporate Tax Act* is amended in section 86(1)(d)(iv) by striking out "*ABC Benefits Corporation Act*" **and substituting** "*Alberta Blue Cross Act*".

100 Schedule 4 is amended in section 2

(a) by striking out "as authorized by the regulations" **and substituting** "in accordance with standards of practice";

(b) by repealing clause (c.1).

101 Schedules 5 and 6 are amended in section 2 by striking out "as authorized by the regulations" **and substituting** "in accordance with standards of practice".

102 Schedule 7 is amended

(a) in section 2 by striking out "as authorized by the regulations" **and substituting** "in accordance with standards of practice".

(b) in section 18(2) by striking out "Lieutenant Governor in Council" **and substituting** "Minister".

103 Schedule 8 is amended in section 2

(a) by striking out "as authorized by the regulations" **and substituting** "in accordance with standards of practice".

(b) by repealing clause (a.1).

104 Schedule 9 is amended in section 2 by striking out "as authorized by the regulations" **and substituting** "in accordance with standards of practice".

105 Schedule 10 is amended

(a) in the heading by adding "**and Health Care Aides**" **after** "**Nurses**";

100 Schedule 4 presently reads in part:

2 A regulated member of the College of Alberta Dental Assistants may, as authorized by the regulations, use any of the following titles, abbreviations and initials:

(c.1) provisional dental assistant;

101 Schedules 5 and 6 presently read in part:

2 A regulated member of the College of Registered Dental Hygienists of Alberta may, as authorized by the regulations, use the following titles, abbreviations and initials:

2 A regulated member of the College of Dental Technologists of Alberta may, as authorized by the regulations, use any of the following titles, abbreviations and initials:

102 Schedule 7 presently reads in part:

2 A regulated member of the Alberta Dental Association and College may, as authorized by the regulations, use any of the following titles:

18(2) A regulation under subsection (1) does not come into force unless it is approved by the Lieutenant Governor in Council.

103 Schedule 8 presently reads in part:

2 A regulated member of the College of Alberta Denturists may, as authorized by the regulations, use any of the following titles:

(a.1) provisional denturist.

104 Schedule 9 presently reads in part:

2 A regulated member of the College of Hearing Aid Practitioners of Alberta may, as authorized by the regulations, use any of the following titles:

105 Schedule 10 presently reads in part:

1(1) On the coming into force of this Schedule, the corporation known as the College of Licensed Practical Nurses of Alberta is continued as a corporation under the same name.

(b) in section 1

(i) by repealing subsection (1) and substituting the following:

(1) On the coming into force of this Schedule, the corporation known as the College of Licensed Practical Nurses of Alberta is continued as a corporation under the name of the College of Licensed Practical Nurses and Health Care Aides of Alberta.

(ii) in subsection (2) by adding "and Health Care Aides" **after** "Nurses";

(iii) in subsection (3) by adding "and Health Care Aides" **after** "Nurses" **wherever it occurs;**

(iv) in subsection (4) by adding "and Health Care Aides" **after** "Nurses";

(c) in section 2

(i) in the portion preceding clause (a)

(A) by adding "and Health Care Aides" **after** "Nurses";

(B) by striking out "as authorized by the regulations" **and substituting** "in accordance with standards of practice";

(ii) by repealing clauses (c) and (e);

(iii) by adding the following before the end of the section:

(g) Health Care Aide;

(h) H.C.A.

(d) by renumbering section 3 as section 3(1) and by adding the following after subsection (1):

(2) In their practice, health care aides do one or more of the following:

(2) On the coming into force of this Schedule, the College of Licensed Practical Nurses of Alberta has the ownership, custody and control of records of the Health Disciplines Board respecting the following:

(a) current and former complaints and allegations of professional misconduct or incompetence made against registered members of the designated health discipline of Licensed Practical Nurses under the Health Disciplines Act and proceedings taken under the Health Disciplines Act in respect of those complaints and allegations,

(b) current and former applications for registration as registered members in the designated health discipline of Licensed Practical Nurses under the Health Disciplines Act and the educational qualifications of applicants for registration in the designated health discipline of Licensed Practical Nurses,

(c) registered members and former registered members in the designated health discipline of Licensed Practical Nurses under the Health Disciplines Act and any registers or other material relating to registration and conditions, restrictions or limitations on registration,

(d) decisions and orders made with respect to registered members or former registered members in the designated health discipline of Licensed Practical Nurses under the Health Disciplines Act, and

(e) records and information referred to in section 61 of the Health Disciplines Act relating to the designated health discipline of Licensed Practical Nurses under the Health Disciplines Act.

(3) Despite section 35(b) of the Freedom of Information and Protection of Privacy Act, on the coming into force of this Schedule the College of Licensed Practical Nurses of Alberta has the ownership, custody and control of records described in subsection (2), and the records must be given to the College of Licensed Practical Nurses of Alberta.

(4) The Minister may request and collect information and records described in subsection (2) from the College of Licensed Practical Nurses of Alberta for purposes directly related to or necessary for any proceeding, including an appeal described in section 8(5) of this Schedule, and preparation for a proceeding, with respect to an

(a) assist and support activities of daily living to provide basic personal care and health services,

(b) participate in client education and promotion of client wellness across the lifespan,

(c) assist in teaching a Health Care Aide certificate program approved by the council,

(d) teach health care aide techniques and practices to practitioners in the workplace, and

(e) provide restricted activities provided by the regulations.

(e) in section 4 by adding "and Health Care Aides" **after** "Nurses";

(f) by adding the following after section 8:

Transitional re Health Care Aides

9 On the coming into force of this section, a member who, immediately before the coming into force of this section, is enrolled in the Health Care Aide Directory, is deemed to be registered as a regulated member on a Health Care Aide register of, and deemed to have been issued a practice permit by the registrar of, the College of Licensed Practical Nurses and Health Care Aides of Alberta.

Tab 8

ALBERTA LABOUR RELATIONS BOARD

October 9, 2020

Directed to: The Alberta Union of Provincial Employees - Bill Rigutto / Jaime Urbina / Jim Petrie / Larry Dawson / Carol Drennan / Rocio Granados, DLA Piper (Canada) LLP - Michael D.A. Ford, Q.C., Masterpiece Retirement - Tim Garforth-Bles / Ariel Kitching

RE: An application for certification as bargaining agent brought by The Alberta Union of Provincial Employees affecting Masterpiece Retirement - Board File No. CR-05690

[1] The Alberta Union of Provincial Employees (the "Union") has applied to become the certified bargaining agent for a unit described as: "*All employees at Masterpiece Southland Meadows when employed in auxiliary nursing care*." Masterpiece Southland Meadows is a long term care facility in Medicine Hat.

[2] In its application, the Union used the name Masterpiece Retirement as the employer of the employees in the proposed unit. Masterpiece Retirement was also used as the name of the employer on the petition that was filed in support of the application.

[3] The Board Officer assigned to the file investigated the application and issued a report on July 16, 2020 (the "Report"). The Board Officer found the correct legal name of the employer was Masterpiece Southland Meadows Ltd. (the "Employer"). He recommended the application be dismissed as the wrong employer had been named. The Union objected to this recommendation.

[4] The Union's evidence of support for its application is an electronic petition. The Board Officer indicated in his Report that he was leaving it to the Board to determine if the electronic petition evidence was acceptable. The Employer filed a letter asserting the Board has not issued any decision on electronic petition evidence and the Union should substantiate and verify the process it has used for this application.

[5] The Union also objected to four individuals that the Board Officer included on the Voters List. This objection was withdrawn by the time the matter came to hearing.

[6] The hearing took place via video-conference before a panel of the Board (Smith, Bokenfohr, Kolba), on September 16 and 17, 2020. 46 exhibits were entered into evidence. The Board heard from one witness for the Union, Jaime Urbina, and one witness for the Employer, Tim Garforth-Bles. By the end of the hearing, the Employer withdrew its challenge of the electronic petition evidence. The Board reserved its decision on the issue of the Employer's name.

[7] For the reasons that follow, the Board finds it appropriate in this situation to substitute the correct name of the Employer on the application. The Board is also satisfied, given the facts of this case, that the use of the wrong name for the Employer on the petition does not undermine the support evidence

2020 CanLII 74263 (AB LRB)

OUR VISION…

The fair and equitable application of Alberta's collective bargaining laws.

OUR MISSION…

To administer, interpret and enforce Alberta's collective bargaining laws in an impartial, knowledgeable, efficient, timely and consistent way.

501, 10808 - 99 Avenue
Edmonton, Alberta
T5K 0G5

Tel: 780-422-5926
Fax: 780-422-0970

308, 1212 - 31 Avenue NE
Calgary, Alberta
T2E 7S8

Tel: 403-297-4334
Fax: 403-297-5884

E-mail:
alrb.info@gov.ab.ca

Website:
www.alrb.gov.ab.ca

Employer Name - Background

[8] In his Report, the Board Officer stated the following about his inquiries into the employer:

> The Alberta Corporate Registry shows that there is no registered entity in Alberta named Masterpiece Retirement. There are however several entities registered in Alberta that reference the name "Masterpiece". According to Ms Kitching and confirmed by the Alberta Corporate Registry, the legal name of the employer of employees working at Masterpiece Southland Meadows is: **Masterpiece Southland Meadows Ltd.** (the "Employer" or "Masterpiece"). On its application, the Union has listed Masterpiece Southland Meadows as the common name of the employer; the results of my investigation show that this is not a common name of the employer, rather it is the name of the facility. If the Alberta Corporate Registry only reflected one legal entity with the name "Masterpiece" an amendment might be appropriate. Given that there are several Masterpiece entities in Alberta however an amendment would not be appropriate in this case, as it would be an amendment of substance not form.
>
> Masterpiece Retirement is the named employer on the certification application. It does not exist and therefore it does not have any employees. If it does exist, it has been confirmed above that it is not the employer of the employees who work at Masterpiece Southland Meadows. As a result, the Union does not have the support for the application. **I recommend the Board dismiss the application**.
>
> **Should the Board determine the application names the correct employer, the following would apply**:
> …

[9] The Officer then completed his investigation on the alternatively assumed basis the employer was Masterpiece Southland Meadows Ltd., indicating in his Report the Employer was registered in June 2015 and located at 4401 Southlands Drive SE, Medicine Hat, Alberta. In describing the facility at this location, he detailed the nature of the care provided, the amenities offered, the number of suites and their varying uses, and the types of employees working at the facility. He further noted the Employer is party to a bargaining relationship with the United Nurses of Alberta under Board Certificate 16-2019.

[10] The Officer went on to find the application timely. On the appropriateness of the bargaining unit applied for, the Officer commented:

> As mentioned above, Masterpiece Southland Meadows Ltd. operates Masterpiece Southlands Meadows. The Employer does not operate any other facilities in Alberta. As a result, naming the facility in the bargaining unit description is not necessary. Furthermore, as indicated in the table above, this Employer already has a bargaining relationship with United Nurses of Alberta. To be consistent with the existing certificate, I recommend the following amendment:
>
> "All employees when employed in auxiliary nursing care."

[11] The Officer concluded that the amended unit was reasonably similar to the unit applied for and appropriate for collective bargaining.

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[12] Based on the Employer's records, the Officer was able to prepare a list of Included and Excluded Employees. The Officer found that on or around the date of the application, the Employer employed 68 employees (all are either Health Care Aides or Licensed Practical Nurses) who appeared to perform work within the scope of the proposed bargaining unit.

[13] Following issuance of the Report, the Union filed an objection to the Officer's findings and conclusion on the Employer's name, asserting the recommendation to dismiss the application was done on narrow legalistic principles which thwarts the workers' associational freedoms under the *Charter*. Despite the error, said the Union, the actual reality of the Employer and the composition of the bargaining unit are accurately described in the application.

[14] The Employer's position is the wrong employer was named and the application ought to be dismissed.

[15] The Board ordered a representation vote of those employees named in the Officer's report as being employees of Masterpiece Southland Meadows Ltd. The vote proceeded by mail-in ballot with the ballots sealed pending a hearing into the objection and consideration of any request by the Union to amend the name of the employer in the application.

Evidence

[16] Jaime Urbina was the Union's organizer for this certification application. He has been a staff organizer for the Union for six years and is familiar with the Board's certification process.

[17] Mr Urbina testified that much of the organizing activities for this certification drive occurred during the early months of the province's response to the COVID-19 pandemic. As a result, there were no site visits and his interactions with the employees took place remotely from Edmonton. He said he obtained the name Masterpiece Retirement from the Employer's website and from paystub information he requested and received from an employee. Mr Urbina said when he made this request he indicated he only wanted a screenshot of the employer's name on the paystub, as he did not want to receive any information relating to the employee's pay. He testified the screenshot he received said Masterpiece Retirement.

[18] Mr Urbina acknowledged the pay sheet entered into evidence by the Employer does not reference Masterpiece Retirement, rather it has the facility name and address at the top and bottom of the document. He admitted he did not request any other information from the employees about who their employer was, such as an offer of employment letter. He acknowledged that if he had checked the Active Certificate Table on the Board's website, which is a spreadsheet identifying certified bargaining relationships in Alberta, he would have likely seen the Employer has a bargaining relationship with UNA. He further agreed if he had done a corporate registry search he would have seen the Employer's legal name, but he stated he does not always do such searches.

[19] Mr Urbina stated he instructed the Union's IT department to enter Masterpiece Retirement in the employer field on the electronic petition. He said none of the employees he spoke with commented on the use of Masterpiece Retirement for the employer's name on the petition, nor did they comment on the facility name and address that also appear on the petition. Mr Urbina stated the Board Officer did not contact him about the use of Masterpiece Retirement for the employer name. He said if the Officer had indicated the wrong legal name had been

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membership evidence submitted via other software programs in *UFCW Canada v. Frulact Canada Inc.*, 2020 CanLII 57557 (ON LRB), wherein it stated at paragraph 10:

> In *Toronto and York Region Labour Council*, the applicant union filed a step-by-step description of all the steps it took to verify the membership (supra) evidence including but not limited to the audit trail of the electronic exchanges of the cards filed. In the decisions of *Laurentian University Faculty Association v Laurentian University*, 2020 CanLII 35431 (ON LRB) (May 14, 2020); *Canadian Union of Public Employees v Township of Otonabee – South Monaghan*, 2020 CanLII 35188 (ON LRB) (May 11, 2020); *Ontario Public Service Employees Union v Lifelabs LP*, 2020 CanLII 35179 (ON LRB) (May 11, 2020); *Canadian Union of Public Employees v Action Canada for Sexual Health and Rights*, 2020 CanLII 32668 (ON LRB) (May 1, 2020); … the Board accepted electronic membership evidence where the pertinent steps in the process for collecting the membership evidence were found to have mirrored those approved in *Toronto and York Region Labour Council*. I find the same is true here. I note that in this case the applicant utilizes software that has not been previously considered by the Board, however, in this case the software tracks when the card was signed, when the signatory's identity was verified and when the card was submitted and received by the union organizer. It also contains security features designed to protect the integrity of the cards and to ensure that the cards are not tampered with or otherwise altered. …

[56] In this case, while the Employer withdrew its objection to the petition evidence, the Board Officer left it to the Board to determine if the electronic petition evidence utilized here is acceptable for a certification application. Based on the evidence put to us, we find it is. It meets the requirements of the *Code,* its form is satisfactory, and we heard no evidence to suggest it should not be relied on.

[57] In general, we expect the use of electronic membership or petition evidence will become more frequent in Alberta. The Board acknowledges the likelihood that different software programs will be used to collect such evidence. An applicant seeking to use such technology should be prepared to provide the Board with a detailed explanation of the security and verification measures that have been taken to ensure the authenticity and integrity of electronic evidence.

Conclusion

[58] In light of the foregoing, and given there are no other objections to the application, we are satisfied the section 34(2) conditions to proceed with the certification process have been met. We therefore order the ballots be counted. The Board Officer will contact the parties to make those arrangements.

Ian J. Smith, Vice-Chair

2020 CanLII 74263 (AB LRB)

Tab 9

November 2022

CONTENTS

NURSE CONTRACTS IN CANADA

CFNU Canadian Federation of Nurses Unions

CANADIAN FEDERATION OF NURSES UNIONS
LA FÉDÉRATION CANADIENNE DES SYNDICATS D'INFIRMIÈRES ET INFIRMIERS

WE ARE CANADA'S NURSES

We represent close to 200,000 frontline care providers and nursing students working in hospitals, long-term care facilities, community health care and our homes. We speak to all levels of government, other health care stakeholders and the public about evidence-based policy options to improve patient care, working conditions and our public health care system.

Member organizations

CNSA | AEIC
Manitoba Nurses Union
New Brunswick Nurses Union
NBNU SIINB
Syndicat des infirmières et infirmiers du Nouveau-Brunswick
Nova Scotia Nurses Union
ONA
pei nurses
Registered Nurses' Union Newfoundland & Labrador
Saskatchewan Union of Nurses
UNA United Nurses of Alberta

Acknowledgement

From coast to coast to coast, we acknowledge the ancestral and unceded territory of all the Inuit, Métis and First Nations people that call this land home. The Canadian Federation of Nurses Unions is located on the traditional unceded territory of the Algonquin Anishnaabeg People. As settlers and visitors, we feel it's important to acknowledge the importance of these lands, which we each call home. We do this to reaffirm our commitment and responsibility in improving relationships between nations, to work towards healing the wounds of colonialism and to improving our own understanding of local Indigenous peoples and their cultures.

Canadian Federation of Nurses Unions
2841 Riverside Drive, Ottawa, ON K1V 8X7
613-526-4661 | info@nursesunions.ca

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COMPARISON OF KEY NURSING CONTRACT PROVISIONS ACROSS CANADA

Introduction

Salary is often taken as the sole measure of the worth of an agreement. However, this can be greatly misleading, as many other elements in a collective agreement can dramatically impact the quality of nursing work. Typically, nurses unions in Canada have one agreement that represents the majority of nurses in the province (the provincial standard for the membership). The values for the comparisons come from these agreements. Efforts have been made to ensure that similar provisions are compared. However, some items do not have comparable provisions.

Unless otherwise noted, all information is based on a seven-and-three-quarter-hour shift (shift lengths vary across the country), i.e. not a twelve-hour shift. It is understood that nurses across the country work shifts of varying length. For the purpose of this document, to give a relative overview of contract clauses and salaries, it is easiest to limit information to the one shift. Also, information has been gathered from collective agreements that best represents agreements.

Please be advised that this document is only intended as a guide. Copies of collective agreements are available on the websites of most unions.

RATES EFFECTIVE AS OF NOVEMBER 1, 2022

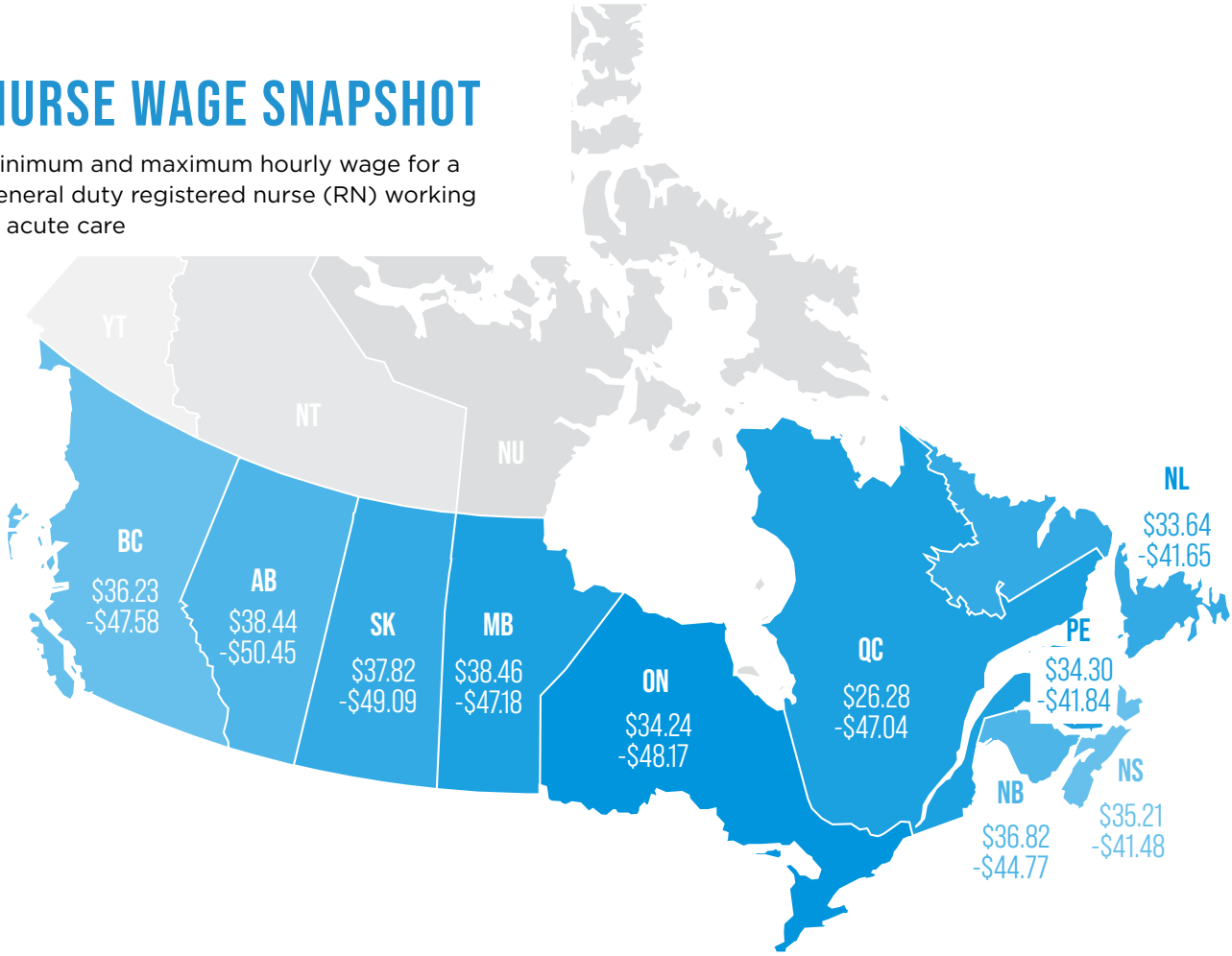
A number of nurses' unions contracts have expired and are currently in negotiations.

SALARY: REGISTERED NURSE (GENERAL DUTY, ACUTE CARE)

UNION/PROVINCE	HOURLY RATE		ANNUAL INCOME		STEPS	CONTRACT EXPIRY	ANNUAL HRS	LONG SERVICE AWARD
	Min	Max	Min	Max				
BCNU (B.C.)	36.23	47.58	70,656.00	92.784.00	9	03/31/2022	1950.00	-
UNA (Alb.)	38.44	50.45	73,833.63	96,901.84	9	03/31/2024	1920.75	20 years - 2%
SUN (Sask.)	37.82	49.09	73,703.62	95,666.59	6	03/31/2024	1948.80	20 years - 2%
MNU (Man.)	38.46	47.18	77,504.96	95,077.77	7	03/31/2024	2015.00	20 years – 2%
ONA (Ont.)	34.24	48.17	66,768.00	93,931.50	8	03/31/2023	1950.00	25 years - 2%
FIQ (Que.) CEGEP	25.81	41.39	50,329.50	80,710.50	18	03/31/2023	1950.00	-
FIQ (Que.) BScN	26.28	47.04	51,246.00	91,786.50	18	03/31/2023	1950.00	-
NBNU (N.B.)	36.82	44.77	72,075.15	87,637.28	6	12/31/2023	1957.50	15 years - 1% 25 years - 5%
NSNU (N.S.)	35.21	41.48	68,661.00	80,895.00	6	10/31/2020	1950.00	25 years - 3%
PEINU (P.E.I.)	34.30	41.84	66,885.00	81,588.00	6	03/31/2021	1950.00	25 years - 3%
RNUNL (N.L.)	33.64	41.65	65,598.00	81,217.50	6	06/30/2022	1950.00	-

NURSE WAGE SNAPSHOT

Minimum and maximum hourly wage for a general duty registered nurse (RN) working in acute care



SALARY: LICENCED PRACTICAL NURSE

UNION/PROVINCE	HOURLY RATE		ANNUAL INCOME		STEPS	CONTRACT EXPIRY	ANNUAL HRS
	Min	Max	Min	Max			
BCNU (B.C.)	28.43	32.98	55,440.00	64,320.00	9	03/31/2022	1950.00
AUPE - AHS (Alb.)	26.45	34.63	53,501.74	70,047.83	8	03/31/2024	2022.75
CUPE (Sask.)	34.75	37.22	67,720.80	72,534.34	3	03/31/2022	1948.80
MNU (Man.)	29.44	37.07	59,329.66	74,706.13	7	03/31/2024	2015.00
ONA (Ont.)[1]	26.81	30.10	52,279.50	58,695.00	6	03/31/2023	1950.00
FIQ (Que.)	24.21	32.32	47,209.50	63,024.00	12	03/31/2023	1950.00
NSNU (N.S.)	28.33	30.42	55,237.00	59,324.00	4	10/31/2020	1950.00
NBNU (N.B.)	29.33	31.50	56,062.50	60,216.00	3	12/31/2023	1957.50
PEIUPSE (P.E.I.)	24.52	26.69	47,814.00	52,045.50	3	03/31/2020	1950.00
NAPE (N.L.)	25.01	27.78	48,770.28	54,160.60	3	03/31/2022	1950.00

1 Rates vary – rates shown from Strathroy Middlesex General Hospital

SALARY: ASSISTANT HEAD NURSE/SUPERVISOR

UNION/PROVINCE	HOURLY RATE		ANNUAL INCOME		STEPS	CONTRACT EXPIRY	ANNUAL HRS
	Min	Max	Min	Max			
BCNU (B.C.)	43.09	52.82	84,024.00	102,996.00	9	03/31/2022	1950.00
UNA (Alb.)	39.73	52.85	76,311.40	101,511.64	9	03/31/2024	1920.75
SUN (Sask.)	41.22	51.44	80,329.54	100,187.81	6	03/31/2024	1948.80
MNU (Man.)	39.93	49.11	80,452.90	98.954.63	7	03/31/2024	2015.00
ONA (Ont.)[1]	35.34	50.51	68,913.00	98,494.50	9	03/31/2023	1950.00
FIQ (Que.)	26.66	45.70	51,987.00	89,115.00	18	03/31/2023	1950.00
NBNU (N.B.)	41.54	50.55	81,314.55	98,951.63	6	12/31/2023	1957.50
NSNU (N.S.)	36.13	42.44	70,453.00	82,750.00	6	10/31/2020	1950.00
PEINU (P.E.I.)	34.84	43.52	67,938.00	84,864.00	6	03/31/2021	1950.00
RNUNL (N.L.)	-	-	-	-	-	-	-

1 Rates vary – rates shown from Timmins and District Hospital

SALARY: HEAD NURSE

UNION/PROVINCE	HOURLY RATE		ANNUAL INCOME		STEPS	CONTRACT EXPIRY	ANNUAL HRS
	Min	Max	Min	Max			
BCNU (B.C.)	45.90	55.32	89,496.00	107,880.00	9	03/31/2022	1950.00
UNA (Alb.)	42.07	56.44	80,805.95	108,407.13	9	03/31/2024	1920.75
SUN (Sask.)	44.93	55.04	87,559.58	107,261.95	5	03/31/2024	1948.80
MNU (Man.)	41.30	53.93	83,215.47	108,664.92	7	03/31/2024	2015.00
ONA (Ont.)[1]	36.65	51.07	71,467.50	99,586.50	9	03/31/2023	1950.00
FIQ (Que.)	-	-	-	-	-	-	-
NBNU (N.B.)	42.52	51.74	83,232.90	101,281.05	6	12/31/2023	1957.50
NSNU (N.S.)	37.05	43.39	72,246.00	84,606.00	6	10/31/2020	1950.00
PEINU (P.E.I.)	39.07	48.89	76,186.50	95,335.50	6	03/31/2021	1950.00
RNUNL (N.L.)	38.67	47.85	75,406.50	93,307.50	6	6/30/2022	1950.00

1 Rates vary – rates shown from Haliburton Highland Health Services

SALARY: CLINICAL NURSE SPECIALIST

UNION/PROVINCE	HOURLY RATE		ANNUAL INCOME		STEPS	CONTRACT EXPIRY	ANNUAL HRS
	Min	Max	Min	Max			
BCNU (B.C.)	47.77	57.38	93,156.00	111,888.00	9	03/31/2022	1950.00
UNA (Alb.)	44.16	59.25	84,820.32	113,804.44	9	03/31/2024	1920.75
SUN (Sask.)	44.05	53.96	85,844.64	105,157.25	5	03/31/2024	1948.80
MNU (Man.)	49.68	60.07	100,107.21	121,049.11	4	03/31/2024	2015.00
ONA (Ont.)[1]	48.81	56.14	95,179.50	109,473.00	7	03/31/2023	1950.00
FIQ (Que.)	28.33	52.88	55,243.50	103,116.00	18	03/31/2023	1950.00
NBNU (N.B.)	38.66	47.03	75,676.95	92,061.23	6	12/31/2023	1957.50
NSNU (N.S.)	41.39	47.44	80,717.00	92,516.00	5	10/31/2020	1950.00
PEINU (P.E.I.)	37.70	46.37	73,515.00	90,421.50	6	03/31/2021	1950.00
RNUNL (N.L.)	39.98	49.76	77,961.00	97.032.00	6	06/30/2022	1950.00

1 Rates vary – rates shown from St. Joseph's Healthcare, Hamilton

SALARY: NURSE PRACTITIONER

UNION/PROVINCE	HOURLY RATE		ANNUAL INCOME		STEPS	CONTRACT EXPIRY	ANNUAL HRS
	Min	Max	Min	Max			
BCNU (BC)	-	-	-	-	-	-	-
UNA (Alb.)	-	-	-	-	-	-	-
SUN (Sask.)	51.56	61.68	100,480.13	120,201.98	5	03/31/2024	1948.80
MNU (Man.)	49.68	60.07	100,107.21	121,049.11	4	03/31/2024	2015.00
ONA (Ont.)[1]	53.86	62.92	105,027.00	122,694.00	7	03/31/2023	1950.00
FIQ (Que.)	30.39	63.80	63,211.20	132,704.00	18	03/31/2023	2080.00
NBNU (N.B.)	50.41	61.35	98,677.58	120,090.63	6	12/31/2023	1957.50
NSNU (N.S.)	49.14	57.46	95,833.00	112,038.00	6	10/31/2020	1950.00
PEINU (P.E.I.)	51.08	57.82	99,606.00	112,749.00	6	03/31/2021	1950.00
RNUNL (N.L.)	43.57	54.02	84,961.50	105,339.00	6	06/30/2022	1950.00

1 Rates vary – rates shown from St. Joseph's Healthcare, Hamilton

SALARY: GRADUATE NURSE

UNION/PROVINCE	HOURLY RATE		ANNUAL INCOME		STEPS	CONTRACT EXPIRY	ANNUAL HRS
	Min	Max	Min	Max			
BCNU (B.C.)	36.23	47.58	70,656.00	92,784.00	9	03/31/2022	1950.00
UNA (Alb.)	35.17	42.96	67,552.78	82,515.42	9	03/31/2024	1920.75
SUN (Sask.)	32.65	32.65	63,628.32	63,628.32	1	03/31/2024	1948.80
MNU (Man.)	35.39	35.39	71,304.60	71,304.60	1	03/31/2024	2015.00
ONA (Ont.)[1]	32.26	44.82	62,907.00	87,399.00	9	03/31/2023	1950.00
FIQ (Que.)	22.80	22.80	44,460.00	44,460.00	1	03/31/2023	1950.00
NBNU (N.B.)	35.34	35.34	69,178.05	69,178.05	1	12/31/2023	1957.50
NSNU (N.S.)	31.29	31.29	61,012.00,	61,012.00	1	10/31/2020	1950.00
PEINU (P.E.I.)	-	-	-	-	-	-	-
RNUNL (N.L.)	33.11	33.11	64,564.50	64,564.50	1	06/30/2022	1950.00

1 Rates vary – rates shown from St. Joseph's Healthcare, Hamilton; no graduate rate grid anymore

STATUTORY AND PAID HOLIDAYS

UNION/PROVINCE	NAMED HOLIDAYS	RATE OF PAY FOR STATUTORY HOLIDAYS	SUPER STATS
BCNU (B.C.)	12	2 x basic rate Alternate day off	3 super stats per year 2.5 x basic rate Alternate day off
UNA (Alb.)	13	1.5 x basic rate for stat 2 x basic rate for super stat Alternate day off Can opt for pay instead	2 x basic rate At least 1 of 2 days off Alternate day off Can opt for pay instead
SUN (Sask.)	12 + Truth and Reconciliation	1.5 x basic rate Alternate day off Provision to bank pay	1.5 x basic rate Alternate day off Equitable distribution of time off
MNU (Man.)	13	1.5 x basic rate Alternate day off Can opt for pay instead	1.5 x basic rate At least 1 of 2 days off Alternate day off Can opt for pay instead
ONA (Ont.)	12	1.5 x basic rate Can opt for pay instead	Treated the same as other paid holidays
FIQ (Que.)	13	Basic rate Alternate day off	1.5 x basic rate Alternate day off
NBNU (N.B.)	12	1.5 x basic rate Alternate day off Can opt for pay instead	2 x basic rate At least 1 of 2 days off Alternate day off Can opt for pay instead
NSNU (N.S.)	12.5	1.5 x basic rate Alternate day off 2.33 x for overtime (2.5 x if called in with less than 72 hrs. notice)	1.5 x basic rate At least 1 of 2 days off Alternate day off
PEINU (P.E.I.)	12 + Truth and Reconciliation	1.5 x basic rate for stat 2 x basic rate for super stat Alternate day off	2 x basic rate Alternate day off
RNUNL (N.L.)	14	1.5 x basic rate 2.5 x basic rate on day of rest Alternate day off Can opt for pay instead	2 x basic rate Alternate day off

OVERTIME RATES

UNION/PROVINCE	ONE AND HALF TIMES	DOUBLE TIME	STATUTORY HOLIDAYS
BCNU (B.C.)	1, 2, 3, 5, 14, 15	6, 8, 12, 13, 16	1.5 x the rate of pay of the stat. 2 x on regular stats (1.5 x 2) or 2.5 x on super stats (1.5 x 2.5, max 3.75 base rate)
UNA (Alb.)	-	1, 2, 3, 6, 7, 8, 9	2.5 x basic rate for stat 3.00 x basic rate for super stats Alternate day off Can opt for pay
SUN (Sask.)	-	1, 2, 4, 6, 8, 9	2 x basic rate for stat Alternate day off Can bank stat pay
MNU (Man.)	-	1, 2, 3. 4, 8, 9, 13 for full-time 1, 2 for part-time 3, 4, 8, 9, 13 for part-time when equivalent of full-time hours in 2 consecutive by-weekly pay periods	2.5 x basic rate for stat 1 day is banked
ONA (Ont.)	1 (meal only), 2, 3 and 4 (averaged over the nursing schedule determined in local bargaining), 5, 6, 7, 8, 9	2 x basic rate beyond regular hours on paid holidays and on any shift that is paid at 1.5 x	2 x basic rate for stat
FIQ (Que.)	1, 2, 3, 8, 9	-	2 x basic rate for stat
NBNU (N.B.)	1, 2, 3, 6, 7, 9	8, 16	1.5 x basic rate for stat Alternate day off Can opt for pay
NSNU (N.S.)	1, 2, 4, 5, 6	Double if > than 4 hours	2.33 x basic rate for stat Alternate day off 2.5 x basic rate if called in with less than 72 hrs. notice
PEINU (P.E.I.)	1, 2, 4, 5, 6, 8, 11	-	1.5 x basic rate for stat Alternate day off On Christmas eve 17:00 to 24:00
RNUNL (N.L.)	1, 2, 3, 4, 6, 10	6, 7, 8, 9, 10	1.5 x basic rate for stat Alternate day off Can opt for pay 2.5 x basic rate if stat falls on day of rest

1 Missed meal/rest period
2 In excess of regular daily hours
3 In excess of regular weekly hours
4 In excess of regular biweekly hours
5 Shift overlap extends beyond 15 mins.; the entire period is considered overtime
6 Shift change without sufficient notice
7 After 7 consecutive shifts
8 On scheduled day off
9 On scheduled weekend off
10 For 12-hour shift, every consecutive shift after 7th consecutive paid at 1.5 x. For 8-hour shift, every consecutive shift after 4th paid at 1.5 x
11 Double shift > 7.5/11.5 hours at 1.5 x, >15 hours at 2 x
12 After 2 hours worked beyond regular shift
13 After the first normal shift in excess of weekly hours
14 RPT nurses who work more than 225 hours in a 6-week consecutive period; all hours over 225 are paid at 2 x OT rate
15 After 6 consecutive shifts of 7.5–8 hours in length, or after 4 shifts greater than 8 hours in length
16 In excess of 37.5 hours/week averaged over a 4-week period (150 hours)

WAGE PREMIUMS

UNION/ PROVINCE	NIGHTS (HOURLY)	EVENINGS (HOURLY)	WEEKENDS (HOURLY)	ON CALL (HOURLY)	CALL BACK	TRAVEL
BCNU (B.C.)	$3.50 + $1/hr. for Fri. and Sat. nights from 23:00 to 7:00	$0.70	$2.30	$5.75 (up to 72 hrs./ mth.) $6.25 (>72 hrs./mth.)	2 x basic rate, min. 2 hrs. Telephone call back 1.5 x 30 min.	Mileage allowance at rates set by the Canada Revenue Agency
UNA (Alb.)	$5.00	$2.75	$3.25	$3.30 $4.50 (stat. holidays) $4.50 (rest days)	2 x basic rate, min. 3 hrs.	0.505 per km; $130/ mth. car allowance (part-time prorated)
SUN (Sask.)	$3.75	$3.75	$3.10	$3.15 $4.25 (stat. holidays, minimum 8 hrs.)	Overtime rate, min. 2 hrs.	0.5485 per km (rate variable based on quarterly reviews); Min. $4.50 $185.00/mth car
MNU (Man.)	$3.50	$2.00	$2.00	Basic pay, min. 2 hrs. Tel./email consults min. 15 minutes at overtime rate	Overtime rate, min. 3 hrs.	Min. $4.00 Max. $30.00
ONA (Ont.)	$2.88	$2.25	$3.04	$3.45 $5.05 (stat. holidays)	1.5 x basic rate, min. 4 hrs.	Greater of $0.22 per km or hospital policy
FIQ (Que.)	Varies[1] (1.5x salary if on a regular work day; 2X salary if a stat. holiday) Additional 2% basic salary F/T position, or 2.5% if 70% F/T positions are reached in the establishment's 24/7 centers	4% of basic salary Additional 3% salary F/T position, or 4% if 70% F/T positions are reached in the establishment's 24/7 centers	4% of basic salary 8% basic salary full-time position	1 hr. straight time/ 8-hour shift	2 hours at 1.5 x basic rate; 1 hour travel allowance at regular rate	$0.49 per km for the first 8,000 km, then $0.44 (plus $0.123 for gravel road)
NBNU (N.B.)	$2.60	$2.10	$2.85	$3.50; with less than 72-hour notice $5.00 Stand-by on a holiday = shift at holiday rate	Min. 3 hrs.	$13 max. for taxi
NSNU (N.S.)	$2.35	$2.35	$2.35	$20.00, min. 8 hrs. $40.00, min. 8 hrs. (stat. holidays)	Greater of O/T rate or min. 4 hrs. at basic rate	$ 0.4415 per km
PEINU (P.E.I.)	$3.00/hr. (if majority of shift)	$3.00/hr. (if majority of shift)	$3.00/hr. (if majority of shift)	$3.35/hr. 7.5 hr. min. on stat. holidays	O/T rate, min. 3 hrs.; 2 x basic rate after 7.5 hrs.	Call backs paid min. $6, max. $20 or per km
RNUNL (N.L.)	$2.30	$2.30	$2.55	$30.60 per shift, min. 12 hrs. $33.90 per shift, min. 12 hrs. (stat. holidays)	Overtime rate, min. 3 hrs.	$0.315 per km $85 per mth. ($1,200 min./yr. if car required)

1 0-5 years 11% of basic rate, 5-10 years 12% of basic rate, 10 years 14% of basic rate

POSITION PREMIUMS

UNION/PROVINCE	IN-CHARGE (HOURLY)	TEAM LEADER PAY (HOURLY)	RESPONSIBILITY PAY (HOURLY)	PRECEPTOR (HOURLY)	MENTOR (HOURLY)	GENERAL PREMIUM (ALL MEMBERS)
BCNU (B.C.)	$1.25	-	$9.38 for 7.5-hour shift	-	-	-
UNA (Alb.)	$2.00	-	$2.00	$0.65	-	-
SUN (Sask.)	$2.00	-	Hourly rate plus min. 5.5%	$0.65	-	-
MNU (Man.)	-	-	$1.00	-	$0.70	-
ONA (Ont.)	$2.00	$2.00	$1.50	$0.60	$0.60	-
FIQ (Que.)	$15.02/shift	-	-	-	-	3.5% basic salary
NBNU (N.B.)	$1.25	-	-	-	-	-
NSNU (N.S.)	$0.70 in absence of manager, 8% with on-duty manager	RN3 rate	$0.93 if designated	-	-	-
PEINU (P.E.I.)	Between RN1 and RN2: $1.00 above hourly rate	RN2 rate	-	-	$550 education credit	-
RNUNL (N.L.)	$0.85	$0.85	$0.65	-	-	-

ACADEMIC ALLOWANCES

UNION/ PROVINCE	ADDITIONAL DIPLOMA	POST-GRAD 3-6 MONTHS	POST-GRAD 6 MONTHS+	1-YEAR COURSE	BSCN	MASTER'S DEGREE	PHD	CONTRACT EXPIRY	ANNUAL HOURS
BCNU (B.C.)	$50/mth.[1]	-	-	$25/mth[2]	$100/mth[3]	$125/mth	-	03/31/2022	1950.00
UNA (Alb.)[4]	$0.50/hr.	$0.50/hr.	$0.50/hr.	$0.50/hr.	$1.25/hr.	$1.50/hr.	$1.75/hr.	03/31/2024	1920.75
SUN (Sask.)	-	$0.17/hr.	$0.17/hr.	$0.17/hr.	$0.21 (A/B)/hr. $0.45(C)/hr.	$0.64/hr.	-	03/31/2024	1948.80
MNU (Man.)	$0.298/hr.	$0.298/hr.	$0.298/hr.	$0.298/hr.	$0.596/hr.	$0.893/hr. NPs $1.50/hr.	-	03/31/2024	2015.00
ONA (Ont.)[5]	-	$15/mth	$15.00/ mth	$40.00/ mth	$80.00/mth	$120.00/mth	-	03/31/2023	1950.00
FIQ (Que.)[6]	Varies	Varies	Varies	Varies	Varies	Varies	-	03/31/2023	-
NBNU (N.B.)	-	-	-	-	-	-	-	-	-
NSNU (N.S.)	-	$333/yr.	$667/yr.	-	$1,445/yr.	$1,961/yr.	-	10/31/2020	1950.00
PEINU (P.E.I.)		-	-	-	-	-	-	-	-
RNUNL (N.L.)	-	$300/yr.	$500/yr.	$500/yr.	$82/mth.	$110/mth.	-	06/30/2022	1950.00

1 Special clinical preparation courses greater than 4 months in duration; employees with a Diploma in Advanced Psychiatric Nursing, and employees who maintain both an RN and RPN registration
2 Regular employees who complete a Nursing Unit Administration/Hospital Department Management course or Health Care Management program
3 If employed before April 1, 2016
4 If required by employer, can have 2 or more allowances
5 Provision exists only as a superior condition in certain hospitals
6 Varies – allowances are based on pay grade rather than flat figures (1.5% to 6% of salary)

SICK LEAVE

UNION/PROVINCE	SICK DAYS (PER MONTH)	MAXIMUM (DAYS)	WORKERS' COMPENSATION TOP-UP	PART-TIME	CASUAL
BCNU (B.C.)	1.5	156	Paid regular net pay	Prorated as % of all paid hours	Only accrue in temporary positions
UNA (Alb.)	1.5	120; STD plan	Top up to regular rate of pay; 1/10th of day deducted from sick time	WCB and LTD for 24 months Prorated as % of all paid hours	-
SUN (Sask.)	1.5	190; 18 per year; LTD plan after 119 days	Top up to regular rate of pay for one year; not deducted from sick time	As per full-time, based on equivalent hours worked	As per full-time, based on equivalent hours worked
MNU (Man.)	1.25	1.25 days per mth., accrual, rolled over	Top up 10%; must request in advance; deducted from sick leave (income protection credits)	As per full-time, based on equivalent hours worked	No sick bank
ONA (Ont.)	Covered by HOODIP (short-term sick leave plan)	STD plan covers first 75 days at various percentages of salary based on service; EI after 15 weeks; then LTD	Available if had sick leave bank provision under a collective agreement prior to 1981	Within % in lieu	Within % in lieu
FIQ (Que.)	0.8	The first 104 weeks employer pays 80% of salary; then insurance plan pays the benefits (100% of the 80% paid by employer)	To 90% of net income; no deduction from sick leave	Between 4-6% in lieu	Between 4-6% in lieu
NBNU (N.B.)	1.5	240.00 18/year	-	13% in lieu	13% in lieu
NSNU (N.S.)	1.5	150	Top up to net salary deducted from sick leave credits	11.25 hours per 162.5 hours paid	Within % in lieu
PEINU (P.E.I.)	1.5	215	To 80% of net income for 37 weeks, 85% after that; no deduction from sick leave	Within % in lieu	Within % in lieu
RNUNL (N.L.)	7.5 hrs./162.5 hrs. of service; pre-Dec. 2006 15 hrs./per 162.5 hrs.	1,800 hrs./20 yrs.	-	Prorated to full-time	Within % in lieu

STD = short-term disability LTD = long-term disability

VACATION

UNION/PROVINCE	VACATION DAYS		MAX. YRS SERVICE	SUPPLEMENTARY	PART-TIME	CASUAL
	Min	Max				
BCNU (BC)	20	45	29	5 days at 25, 30, 35	Prorated as % of FTE[1]	12.6% of straight time pay in lieu of vacation plus stat holidays
UNA (Alb.)	15	30	20	5 days at 25, 30, 35, 40, 45 yrs.	Prorated as a % of all paid hours: 6% (yr. 1); 8% (yr. 2-9); 10% (yr. 10-19); 12% (yr. 20+); WCB and LTD for 24 months	Pay in lieu of vacation: 6% (yr. 1); 8% (yr. 2-9); 10% (yr. 10-19); 12% (yr. 20-24); 12.4% (yr.25+)
SUN (Sask.)	15	30	25	-	Movement up vacation ladder based on yrs. of service; paid vacation days based on FTE plus additional shifts	As per PT
MNU (Man.)	15	30	21	5 additional days at 25, 30, 35, 40, 45 yrs.	Same as FT. Vacation pay is based on percentage of FT hours worked.	6% of all hours paid at basic salary, incl. hours worked on recognized holidays in a bi-weekly pay period
ONA (Ont.)	15	35	25	-	Equivalent to FTE but based on a percentage of gross salary	As per PT
FIQ (Que.)	20	25	25	1 day in each of 18, 20, 22, 24 yrs.	8% in lieu	8% in lieu
NBNU (N.B.)	15	25	20	Extra 5 days unpaid at 25 yrs.	Prorated	13% in lieu
NSNU (N.S.)	15	30	25	-	Prorated	11% in lieu of benefits
PEINU (P.E.I.)	15	31	25	1 day in each of 25, 30, 35, 40, 45 yrs	In accordance with hours worked	12% in lieu
RNUNL (N.L.)	20	30	25	-	Movement up vacation ladder based on yrs. of service; paid vacation days based on FTE only; prorated	20% in lieu

1 Part-time nurses receive 4.6 % vacation pay for all hours worked above their FTE

PENSION BENEFITS

UNION/PROVINCE	FULL-TIME	PART-TIME	CASUAL
BCNU (B.C.)	Regular employees enrolled after completion of 3-month probation ER pays 1.18% of EE contributions % of EE salary 8.35%	As per full-time, can opt out; only able to opt out on initial date of hire	Offered the ability to join plan following 2 years of continuous employment and 35% salary of YMPE; can opt out
UNA (Alb.)	ER pays 1% more than EE % of EE salary: up to YMPE 8.39% EE, >YMPE 12.84% EE	As per full-time	-
SUN (Sask.)	ER pays 112% of EE contributions % of EE salary: up to YMPE 8.1%, >YMPE 10.7%	As per full-time	9.00% ER; 8.10% EE With a minimum number of hours, can enroll in the plan
MNU (Man.)	ER contribution = EE contribution % of EE salary: up to YMPE 7.9%, >YMPE 9.5%	As per full-time	As per full-time
ONA (Ont.)	ER pays 126% of EE contributions % of EE salary: up to YMPE 6.9% EE, >YMPE 9.2% EE	Enrollment is not mandatory and would result in reduction in % in lieu if member chooses to enroll.	Enrollment is not mandatory and would result in reduction in % in lieu if member chooses to enroll.
FIQ (Que.)	ER contribution = EE contribution % of EE salary 10.33%	As per full-time	As per full-time
NBNU (N.B.)	ER contribution = EE contribution % of EE salary 7.8%	As per full-time	Entitled as per pension plan
NSNU (N.S.)	ER pays 140% of EE contributions % of EE salary: up to YMPE 7.82%, >YMPE 10.18%	As per full-time	24 months of continuous employment; minimum number of hours specified, can enroll in the plan
PEINU (P.E.I.)	ER contribution = EE contribution % of EE salary: up to YMPE 8.9%, >YMPE 9.75%	As per full-time	-
RNUNL (N.L.)	ER contribution = EE contribution % of EE salary: up to YBE 10.75%, between YBE and YMPE 8.95%, >YMPE 11.85%	5% ER 5% EE Not defined benefit	5% ER 5+% EE Not defined benefit

EE = employee ER = employer

HEALTH PLAN BENEFITS

UNION/PROVINCE	PLAN COST SHARING EXTENDED PLAN	VISION	DRUG COVERAGE	PART-TIME	CASUAL
BCNU (B.C.)	80% for first $1,000 then 100%	$350/person/24 months	80% for first $1,000, then 100%; full pharmacare tie-in	As per full-time	Option to enroll and self-pay after min. hrs worked per year; costs are refunded
UNA (Alb.)	75% ER; 25% EE	$600/person/24 mths; 100% for eye exam/12 mths; under 21: $600 for eye exam/24 mths	80%, no max; no deductible; no co-payment; use of formulary; all prescriptions	As per full-time	-
SUN (Sask.)	100% ER	$300/person/24 mths; 100% for eye exam/24 mths; under 21: 100% eye exam/12 mths; must work 40% of FT hours to qualify	100%, no max.; use of formulary; fee of $9/prescription if billed directly; $10/prescription if paid by drug card	Must work 40% of FTE in previous year to be eligible; % covered increases with percentage of FTE worked	Must work 40% of FTE in previous year to be eligible; % covered increases with percentage of FTE worked
MNU (Man.)	50% ER; 50% EE	100% up to $150/24 mths. per adult	80% covered on all amounts up to $650 max; use of formulary; no co-payment, no fee per RX; no deductible	As per full-time	-
ONA (Ont.)	25% EE/75% ER; deductibles: $22.50 (single); $35.00 (family)	$450/24 mths (can be used for laser); eye exam/24 mths	100%; no max; use of formulary; no co-payment; benefits cease after age 70	Optional if in place within a specific hospital; EE pays or receives % in lieu	Within % in lieu
FIQ (Que.)	ER: job title for storage 1 to 11: $39.72 /14-day pay period; job title for storage 12 to 28 (all FIQ members): $17.91 /14-day pay period; rest of the plan assumed by EE	-	80%; all prescriptions (except medication that is not allowed by government list)	As per full-time	As per full-time
NBNU (N.B.)	75% ER; 25% EE	$180/person/12 mths	80%, no max.; use of formulary; max. co-payment $50/ prescription after which 100% covered	As per full-time	-
NSNU (N.S.)	65% ER; 35% EE	100%/48 mths; under 21: 100%/24 mths	100%, no max.; use of formulary; co-payment; $3 deductible	As per full-time if FTE >0.4	-
PEINU (P.E.I.)	50% ER; 50% EE	80% for eye exam/24 mths; under 18 /12 mths; glasses: 80%/24 mths to a max of $150; under 18 /12 mths	80%/first $150 of eligible expenses per prescription; 100% any excess	-	-
RNUNL (N.L.)	50% ER; 50% EE	80% eye exam/24mths, max $70; <18 /12 mths. Glasses/lenses: 100%, max. reimbursement of $150/$200/$250 depending on lenses /36 mths; under 18 /12 mths if change in RX	-	As per full-time if >0.5	-

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