



October 7, 2013

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**RE: An application brought by the United Nurses of Alberta affecting Alberta Health Services – Board File No. GE-06495**

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[1] This matter involves a preliminary application by the Alberta Union of Provincial Employees ("AUPE") where AUPE seeks affected party or intervenor status (the "Intervenor Application") on an application brought by the United Nurses of Alberta ("UNA") affecting Alberta Health Services ("AHS") and the Health Sciences Association of Alberta ("HSAA"). For the purposes of the Intervenor Application we refer to the main application between the UNA, AHS, and HSAA as the "MHT Application".

[2] The MHT Application relates to a decision of AHS to introduce the classification of Mental Health Therapist ("MHT") under the HSAA collective agreement and to transfer all MHT positions to HSAA through attrition as positions become vacant and new positions created. UNA alleges interference with UNA's ability to represent its members and asks the Board to order AHS to cease and desist from implementing this decision. It argues AHS improperly relied upon determination decisions of the Board, namely *Chinook Health Region and UNA and HSAA*, [2005] A.L.B.R. LD-052 ("*Chinook HR*") and *East Central Health v. UNA*, [2006] A.L.B.R. LD-075 ("*East Central Health*"), to justify the transfer of MHTs to HSAA. UNA also seeks a declaration that if an AHS job positing requires a Registered Nurse ("RN") or Registered Psychiatric Nurse ("RPN") to either be registered or eligible to register with his or her professional association, then that RN/RPN falls within the direct nursing care bargaining unit. Lastly, UNA seeks a reconsideration of the two Board determination decisions above, and/or a reference related to a difference, in light of what it argues are inconsistent lines of cases due to more recent decisions of the Board addressing the importance of community of interest in determination applications.

[3] AUPE argues it has a tangible and direct legal interest in the outcome of the MHT Application and should be permitted affected party, or alternatively, intervenor status.

### Argument

[4] This matter came before a panel of the Board (Asbell, Eichel, Kozielec). AUPE states any application affecting the status of the standard bargaining units in health care may impact its interests as the bargaining agent for LPNs in the auxiliary nursing unit. It notes UNA's application for reconsideration of *Chinook HR* and *East Central Health* asserts the Board has moved away from the prime function test and now considers other factors, such as professional

qualifications and qualifications required by statute, and the Board has thereby specifically overruled its previous case law. AUPE further argues UNA's application for a reference of a difference is an attempt to initiate a broad policy review of the Board's standard bargaining units in health care.

[5] According to AUPE, the applications for reconsideration and/or the reference of a difference will require the Board to undertake a general review and policy determination of the factors to consider in determining when nurses fall within the direct nursing care bargaining unit. It argues a decision relating to the factors to be considered by the Board in determining the appropriate bargaining unit for nurses must necessarily have a direct impact on AUPE. AUPE submits it has satisfied the test for affected party or intervenor status.

[6] UNA submits the MHT Application addresses the role of RNs and RPNs who work on a multidisciplinary team providing mental health care. The central question is whether they fall within the direct nursing care bargaining unit represented by UNA or the paramedical/technical bargaining unit represented by HSAA. The decisions requested to be reconsidered also specifically dealt with MHTs. UNA argues the MHT Application does not, and cannot, engage AUPE's bargaining unit; specifically, it does not, and cannot, impact the role of the LPN within the auxiliary nursing care bargaining unit represented by AUPE. It further argues the MHT Application cannot impact upon the standard bargaining units in health care because the Board no longer has jurisdiction to change those bargaining units. As a result, UNA argues AUPE is not an affected party, has no interest in the MHT Application, and AUPE can offer no assistance to the Board. UNA submits AUPE's Intervenor Application should be dismissed.

### **Decision**

[7] Firstly, our apologies for the delay in issuing this Decision. This should have been out quickly and for that the Chair specifically apologizes.

[8] AUPE seeks affected party or intervenor status under section 16(6) of the *Code*:

16(6) The Board shall give notice to any party that, in the opinion of the Board, may be affected by a complaint, reference or application filed with the Board.

[9] The leading case from the Board in this area is *Dynacare Kasper Medical Laboratories v. HSAA et al.*, [1997] Alta. L.R.B.R. LD-024 ("*Dynacare*").

[10] An "affected party" is defined in *Dynacare* at paragraph 3 as "one who has a tangible and demonstrated direct legal interest in the outcome of the application." The Board finds that AUPE has not demonstrated a sufficiently direct legal interest in the outcome, and its request for affected party status is not granted.

[11] However, even if one is not an affected party, *Dynacare* states at pages 2-3 the Board may still grant intervenor status after considering a number of factors including:

1. The relationship of the person to the application
2. The potential assistance that the intervenor may provide to the Board;
3. The directness of the effect of any decision on the intervenor, and;
4. Any other matters impacting the application.

[12] Considering the first and third factors, does AUPE have some relationship to the MHT Application in its role as bargaining agent for LPNs in the auxiliary nursing unit, and how direct would any effect be? Within the MHT Application, UNA seeks:

... [r]econsideration/reference of the analysis in *Chinook HR* with respect to the factors to consider for when nurses fall within the direct nursing care bargaining unit;

and

... [a] declaration that if the Employer requires in a job posting that an RN/RPN be registered or eligible to register with his or her professional association, then the RN/RPN falls within the direct nursing care bargaining unit.

[13] The MHT Application asks the Board to reconsider the appropriate factors to consider when determining which employees fall within which health care bargaining unit. The Board's decision may broadly impact upon the other bargaining units in the health care sector, and thereby affect AUPE in its role as bargaining agent for LPNs in the auxiliary nursing unit. In our view, this differentiates the situation of AUPE's potential intervention in the MHT Application from that considered in the various determination cases raised by the parties, such as *Calgary Health Region*, [2010] Alta L.R.B.R. LD-068.

[14] The fact the specific cases sought to be reconsidered arose in the context of MHTs does not mean the effect of the MHT Application is necessarily limited to MHTs. Nor does the establishment of health care bargaining unit descriptions by regulation mean that the MHT Application cannot affect AUPE. The MHT Application seeks a reconsideration of the factors to consider when analyzing bargaining unit placement. A reconsideration of the factors to consider when determining which employees fall within which health care bargaining unit has a sufficiently direct effect upon AUPE as bargaining agent for LPNs in the auxiliary nursing unit to consider granting intervenor status in this case.

[15] Dealing with the fourth factor, it is appropriate to consider intervenor status in the MHT Application for a broader range of intervenors than might have been appropriate in a determination application. This is consistent with the Board's interest in permitting more expansive stakeholder involvement in appropriate cases that may impact the Board's treatment of bargaining unit placement within the health care field. It is consistent with the views of the Board expressed in *UNA (Various Locals) v. The Good Samaritan Society and AUPE et al.*, [2009] Alta. L.R.B.R. 1:

[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. [Emphasis added]

[16] In light of the factors above, the Board exercises its discretion to grant intervenor status to AUPE.

Mark L. Asbell, Q.C., Chair