

Case Name:

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

**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**

[2009] A.L.R.B.D. No. 1

163 C.L.R.B.R. (2d) 1

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

GE-05481

Alberta Labour Relations Board

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

Decision: January 6, 2009.

(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 Bulletin # 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 Loughheed 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 intervenor, 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 five 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

cp/e/qlmss/qlhcs

---- End of Request ----

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Time Of Request: Tuesday, June 29, 2010 09:33:28