**IN THE MATTER OF THE LABOUR RELATIONS CODE**

**AN APPLICATION FOR SUMMARY DISMISSAL BROUGHT BY:**

**ALBERTA UNION OF PROVINCIAL EMPLOYEES, CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 408, and UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION (UNITED STEELWORKERS), LOCAL 1-207**

Applicants (Respondents to a Reference of a Difference)

– and –

**CERTAIN EMPLOYEES OF ALBERTA HEALTH SERVICES AND COVENANT HEALTH**

Respondents (Applicants to a Reference of a Difference)

– and –

**UNITED NURSES OF ALBERTA, ALBERTA HEALTH SERVICES, COVENANT HEALTH, HEALTH SCIENCES ASSOCIATION OF ALBERTA, and ALBERTA UNION OF NURSE PRACTITIONERS**

Affected Parties

**Date of Decision: December 11, 2023**

**FILE NO.: GE-08940**

**BOARD MEMBERS**

Nancy Schlesinger - Chair
Allan Brown - Member
Lynda Flannery - Member

**APPEARANCES**

For the Applicant, Alberta Union of Provincial Employees: Pat Nugent (Counsel) / Adam Cembrowski (Counsel) / Carl Soderstrom (Advisor)

For the Applicant, Canadian Union of Public Employees, Local 408: Sachia Longo (Counsel) / Aneen Albus (Advisor)

For the Applicant, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), Local 1-207: Lily Hassall (Counsel) / Misty Lafond (Advisor)

For Certain Employees: Ginny Wong (Spokesperson), Quintin Martin, Amy Whitehead, Lenora Evans, and Akanksha Gupta

For the Affected Party, United Nurses of Alberta: Kristan McLeod (Counsel) / David Harrigan (Advisor)

For the Affected Party, Alberta Health Services: Michelle Tremblay (Counsel) / Erin Ludwig (Counsel) / Leland McEwen and Kaetlyn Oates (Advisors)

For the Affected Party, Covenant Health: Elliot Watson (Counsel) / Monica Williams (Advisor)

For the Affected Party, Health Sciences Association of Alberta: Dan Scott (Counsel) / Mike Boyle (Advisor)

For the Affected Party, Alberta Union of Nurse Practitioners: Ed Picard (Counsel)

## REASONS FOR DECISION

[1] This decision addresses a summary dismissal application brought under section 16(4)(e) of the *Labour Relations Code* (the "*Code*") by the Alberta Union of Provincial Employees ("AUPE"), the Canadian Union of Public Employees, Local 408 ("CUPE"), and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), Local 1-207 (the "Steelworkers") (collectively the "Applicants"). Their application seeks dismissal of a reference of a difference brought under section 16(3) of the *Code* by four employees of Alberta Health Services and one employee of Covenant Health (collectively the "Employees"). The Employees oppose the Applicants' summary dismissal request. Alberta Health Services and Covenant Health (collectively the "Employers") take no position in relation to the summary dismissal request.

[2] Given the nature of the issue raised in the reference of a difference (as outlined in detail below), the Board provided notice of that application to a number of affected unions, including the United Nurses of Alberta ("UNA"). The Board permitted UNA to provide submissions in response to the Applicants' section 16(4)(e) request. UNA did so, asserting there was no basis for summary dismissal and the Board should send the Employees' reference of a difference to hearing.

[3] The Applicants, Employees, and UNA filed written submissions in support of their respective positions on the summary dismissal application. They also provided oral submissions at a hearing that took place on October 10, 2023. Having reviewed the written and oral arguments, the Board grants the Applicants' summary dismissal request. The Board's reasons follow.

### Background to the Summary Dismissal Application

[4] The Employees' reference of a difference under section 16(3) of the *Code* (the "Reference") asks the Board to make a significant change to the composition of existing bargaining units at Alberta Health Services and Covenant Health. Specifically at page 1 of the Reference, the Employees assert that LPNs working for the Employers are "performing 'direct nursing care or nursing instruction' rather than 'auxiliary nursing care.'" While expressly acknowledging that they do not represent other LPNs working in the Employers' workplaces, the

Employees ask the Board to "amend the existing structures of bargaining units at Alberta Health Services and Covenant Health" by moving LPNs from the auxiliary nursing care units in which they are presently placed and transferring them to direct nursing care and nursing instruction units: Reference, page 1. The Reference is unrestricted in scope and drafted to encompass *all* LPNs employed by Alberta Health Services and Covenant Health irrespective of worksite or practice area.

[5] AUPE is the bargaining agent for auxiliary nursing care ("ANC") units at both Alberta Health Services and Covenant Health. CUPE and the Steelworkers are bargaining agents for separate units that include LPNs at Covenant Health workplaces. UNA is the bargaining agent for all relevant direct nursing care or nursing instruction ("DNC") units.

[6] The Employees' Reference request is principally based on what they say is an evolving scope of practice for LPNs since 1988, and which they maintain has progressed to the point that it is now "largely similar" to the scope of practice for Registered Nurses ("RNs"), who fall in DNC units. The Employees further contend LPNs and RNs do the same work side-by-side in many healthcare settings: Reference, paragraph 3.

[7] There is little in the Reference that provides details about the specific work the Employees (or other LPNs working for the Employers) perform. Instead, as indicated, the Employees rely mainly on the evolving scope of practice that an LPN is qualified and permitted to perform, leading them to make these statements at paragraphs 19 and 20 of the Reference:

> 19 LPNs are allowed identical skills, scope, duties, and responsibilities, as RNs on many units, while other units are exclusively run by LPNs. LPNs are primary nurses in many acute and subacute units – examples are areas like acute cardiology units, medical and surgical units *(evidence will be provided when requested)*.
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> 20. LPNs and RNs are largely interchangeable – shift callouts in many units either state[:] "LPN/RN" or simply "nurse". LPNs and RNs are allowed to swap shifts, if there is a charge nurse trained RN on the schedule *(evidence will be provided when requested)*.

[8] In their June 19, 2023 response to the summary dismissal application, the Employees provide some additional details to support their Reference, including job descriptions provided by AHS. They also make the following statement: "The vast majority of LPNs have their own

patient assignments, assess all their patients, administer all patients' medications, and ensure all appropriate care is taken. They would call in a charge nurse when additional assistance is required, just as an RN would do."

[9] The Reference asserts there is now good reason to move the LPNs to the DNC units. In particular, the Employees take issue with the level of LPN compensation and point to low morale among nurses since the pandemic. Moving LPNs to the DNC units is justified, they say, because it "could show LPNs that they are a valuable part of the Alberta health care system and boost morale among LPNs" leading, in turn, to improved nursing staff recruitment and retention: Reference, paragraph 23.

**Why a Reference of a Difference Application?**

[10] While the Employees' Reference also mentions 12(3)(o),[1] which is the more commonly used provision for sorting out the bargaining unit allocation of employees, the application's real focus is on the *Code's* reference of a difference provision, section 16(3). The reason for this is rooted in this Board's decision in *U.N.A. (Various Locals) v. Good Samaritan Society and AUPE*, [2009] Alta. L.R.B.R. 1 ("*Good Samaritan*"). In that case, UNA brought determination applications seeking to move several discrete groups of LPNs from ANC units to DNC units. There were five applications at issue, involving roughly 68 LPNs spread between several health centres operated by different employers. In the course of rejecting UNA's applications, which the Board viewed as an attempt to upend the Board's long-standing practice of generally placing LPNs in ANC units, the Board said:

> 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

[1] The Reference also mentions section 12(3)(l), the Board's power to decide whether a group of employees is a unit appropriate for collective bargaining. As noted later in this decision, although bargaining unit appropriateness can be a factor in determining an employee's bargaining unit placement, the principal task undertaken by the Board in such matters is to determine whether an employee is included in or excluded from a bargaining unit. This authority generally lies in section 12(3)(o).

> 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.

[11] *Good Samaritan's* dismissal of the determination applications was upheld on reconsideration: [2010] Alta. L.R.B.R. 185 *("Good Samaritan Reconsideration").* A sixth determination application, involving Operating Room Technicians ("OPT")/ LPNs working in certain operating rooms, was similarly unsuccessful: *UNA v. Alberta Health Services and AUPE*, [2012] Alta. L.R.B.R. LD-050 ("*AHS*").

[12] As a result of the *Good Samaritan* decision, and given the scope of the Reference as framed, this matter proceeded before the Board as a reference of a difference rather than a determination application under section 12(3)(o). Consistent with the process signaled in *Good Samaritan* for applications seeking a change to long-standing health care bargaining unit practices with the potential to affect numerous employers and unions, the Board indicated in an earlier case management directive that, should the present summary dismissal application be refused, the Board would provide notice of the Reference to other employers and unions with ANC units in the province.

**Relevant Legislation**

[13] Section 16(3) permits parties to refer differences concerning the application or operation of the *Code* to the Board:

> 16(3) When a difference exists concerning the application or operation of this Act, a party to the difference may refer the difference to the Board.

[14] The Board's summary dismissal power is contained in section 16(4)(e) of the *Code*:

> 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, vexatious, filed with improper motives or an abuse of process, reject the matter summarily.

## Parties' Arguments

[15] In support of their request for summary dismissal, the Applicants argue this case amounts to a rehashing of matters already litigated and decided before the Board. They rely in particular on *Good Samaritan*, *Good Samaritan Reconsideration*, and *AHS*, to say that the underlying application is no different in substance from earlier failed determination applications. In addition to there being no material difference from those earlier matters, the Applicants say the Employees have provided no valid labour relations justification for the significant reorganization of bargaining units they seek. Both a material change and a valid labour relations reason must be established, the Applicants maintain, before the Board will make the kind of significant change to its practice sought here. In addition, the Applicants say the Reference provides so few particulars about the work actually performed that the Board cannot make the decision sought based on the facts pled. On this last point, the Steelworkers and CUPE add that the Reference fails to demonstrate any awareness whatsoever of the workplaces where these two bargaining agents represent LPNs.

[16] The Employees and UNA ask the Board to reject the request for summary dismissal. UNA says a cautious approach to section 16(4)(e) is particularly appropriate here where the Employees are self-represented and may fail to provide a sufficiently detailed background to support their application. UNA and the Employees do not take issue with the Applicants' assertion about the relevant law in relation to the underlying Reference: the need for a material change and valid labour relations purpose. However, they say the facts pled by the Employees are sufficient to allow the Reference to proceed to an evidentiary hearing, with UNA suggesting that the parties could identify representative test cases through which to explore the functions of LPNs working for Alberta Health Services and Covenant Health. UNA and the Employees argue that a preference for preserving the status quo should not be determinative of the outcome in this case.

## Decision

[17] The Board's test for summary dismissal is well established, and remains the test described at paragraphs 50-51 of *Good Samaritan:* whether there is a reasonable prospect of success. In assessing a summary dismissal request, the Board assumes the facts set out in the

underlying application to be true. This assumption is not limitless. It does not extend beyond an application's asserted facts to, for example, the legal conclusions a party asks the Board to make. Nor does it apply to assertions based on pure speculation rather than asserted fact.

[18] At the centre of the Reference are the standard functional bargaining units in health care. These are units of long standing, dating back to the late 1970s. While the manner in which healthcare is delivered has changed substantially over the years since, and the health care system has undergone several rounds of regionalization affecting the size of some of these units and number of unions and employers at issue, the functional units have remained relatively constant, with the main exceptions being the merging of the paramedical professional and technical units and the recent creation of an advanced nursing care unit.

[19] The stability of the functional units is important as it sets the foundation for collective bargaining. The parties must also bargain essential services agreements that identify the services that are to be maintained by employees in the unit at issue in the event of a strike or lockout: section 95.41(1) of the *Code*. There is good reason, therefore, for the Board to be cautious about instituting any significant changes to the Board's practices as set out under *Information Bulletin #10: Bargaining Units for Hospitals and Nursing Homes* when it comes to the composition of these units, especially with bargaining about to begin. Contrary to some of the submissions made by the Employees, this kind of thoughtful and measured approach is entirely appropriate and in keeping with good labour relations.

[20] *Information Bulletin #10* sets out the standard bargaining units descriptions the Board uses for AHS and non-AHS hospitals and nursing homes, along with a brief description of the categories of employees commonly found in each of the units. As noted in the *Information Bulletin*, where the employer is AHS, section 2 of the *Regional Health Authority Collective Bargaining Regulation*, A.R. 80/2003, (the "*Regulation*") establishes the following five region-wide functional bargaining units:

(a) direct nursing care or nursing instruction;
(b) auxiliary nursing care;
(c) paramedical professional or technical services;
(d) general support services;

(e) advanced nursing care or nursing instruction performed by a nurse practitioner.

[21] The above units are province wide. Where the employing entity is a non-AHS employer, the Board's practice has been to mirror the functional units established by the *Regulation*. These non-AHS units apply to Covenant Health, other quasi-public employers, and privately owned operators. The geographic scope of these non-AHS units can vary depending on what the Board has found to be an appropriate unit in a given case.

[22] Only two functional units are relevant for the purposes of this decision: the ANC unit and DNC unit. As alluded to above, for decades *Information Bulletin #10* has set out the standard units (whether prescribed by the *Regulation* or not), along with the standard unit wording used in certificates and a brief description of the categories of employees normally found in these units. In relation to the relevant units at issue in this case, *Information Bulletin #10* contains the following descriptions:

> *Direct Nursing Care or Nursing Instruction*
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> "All employees when employed in direct nursing care or nursing instruction."
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> 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 within this unit. It also includes people working in such categories as nursing orderlies.

[23] While the Employees' Reference is the first of its kind following the release of *Good Samaritan* in 2009, this is not the first time the Board has been asked to move LPNs from an ANC unit to a DNC unit. Those earlier cases (*Good Samaritan*, *Good Samaritan Reconsideration*, and *AHS*) therefore provide an important focal point for assessing the current application, particularly as those cases also involved summary dismissal applications. In particular, we take this opportunity to confirm that while the Reference was brought under

section 16(3) in accordance with the direction provided in *Good Samaritan*, the underlying principles set out in those earlier decisions, with their emphasis on the need for a material change and a valid labour relations purpose to justify a significant change to the Board's well-established practices on the composition of the standard health care bargaining units, remain appropriate. The idea that there must be a compelling basis for the Board to depart from its long-standing policies is consistent with this Board's approach in other contexts. We turn now to a more detailed consideration of the foundational decisions.

[24] Starting with *Good Samaritan*, in rejecting the determination applications aimed at moving several groups of LPNs working for different employers from ANC to DNC units, the Board noted:

- 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: *Good Samaritan* at paragraph 62;
- in close cases, the Board may 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 the units: paragraphs 63;
- a history of successful collective bargaining tends to reinforce the community of interest that exists within a bargaining unit, along with common membership in an occupational organization: paragraph 64;
- UNA's applications outlined certain functions performed by LPNs on patient assignments that were "essentially the same" as those performed by the RNs. The Board viewed the overlap of the particular functions as insufficient to support the allegations that the LPNs were engaged in direct nursing care: paragraph 66;
- the Board's long-standing general practice was to place LPNs in an ANC unit. This 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": paragraph 67;
- community of interest considerations can come into play, and relevant considerations included: 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: paragraph 68; and
- nothing was alleged to have happened that would serve to justify a change being made by the Board to its long established practice of normally including LPNs in the ANC units: paragraph 69.

[25] UNA's reconsideration application seeking to challenge the findings in *Good Samaritan* was unsuccessful. Specifically, in *Good Samaritan Reconsideration* the Board found as follows:

> 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 [*Good Samaritan*], 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.
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> 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 [*Good Samaritan*] no such change has been identified in this case.
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> 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 [*Good Samaritan*] at paragraph 60, the definition of units and, in turn, the dividing line between them, must accommodate specialization and change to remain relevant.
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> 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.
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> 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.
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> 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.

[26] In the Reference, the Employees assert that the LPN scope of practice has evolved over the years since *Good Samaritan* was decided. However, it is difficult to see this ongoing evolution as a material change given the overlap in function that was assumed for the purposes of deciding *Good Samaritan*.

[27] It is even more difficult to accept there is any material change here given the Board's comments in *AHS*. In that case, following the release of *Good Samaritan* the Board considered a further determination application involving LPNs who worked in a number of different operating rooms at the Royal Alexandra Hospital. UNA maintained that the RNs and ORT/LPNs working in the operating theatres at issue performed essentially the same duties, although it acknowledged a few differences. UNA argued the two groups worked collaboratively and interchangeably during surgical procedures, and shared a strong community of interest based on, among other things, their side-by-side work and interchangeable duties. On this basis, UNA submitted the ORT/LPNs provided direct nursing care and should be included in the relevant DNC unit. In attempting to distinguish this particular determination application from the ones at issue in *Good Samaritan*, one of UNA's arguments was that the overall functions performed by the ORT/LPNs as compared to their RN co-workers were more similar than the functions at issue in *Good Samaritan*. Starting at paragraph 25, the Board specifically rejected this submission, noting that in *Good Samaritan*, the Board assumed for the purposes of the summary dismissal application that the LPNs and RNs were performing essentially the same functions. Ultimately, in *AHS*, the Board found there were no material or relevant distinctions between that application and the determination applications before the Board in *Good Samaritan*: *AHS*, paragraph 24.

[28] There is little before us to suggest any material difference now. When it comes to LPNs, the dividing line between the ANC and DNC units has long been recognized as being difficult to draw. Based on the Board's well-established jurisprudence, community of interest considerations come into play for the purposes of resolving close cases. In the absence of a material change, those considerations tend to support the continued inclusion of LPNs in their current bargaining unit: see *Good Samaritan* (at paragraph 68) and *Good Samaritan Reconsideration* (at paragraphs 24 and 35).

[29] Further, even if the Reference set out particulars that arguably established a material change, it would not justify the modification of the Board's long-standing practice of placing LPNs in ANC units since no valid labour relations reason has been presented to suggest such a significant change is warranted.

[30] In their Reference, the Employees say moving LPNs to the DNC units could improve LPN morale and might result in an increase in LPN compensation. While the Board appreciates the importance of these issues to the Employees and to LPNs overall, these are not valid labour relations reasons for the Board to move LPNs out of one unit and into another. Permitting such issues to be the catalyst for redefining the boundaries of functional units, especially where the grounds articulated in the Reference are rooted in belief rather than asserted fact, would create tremendous instability, with employees on the borders of all functional units believing the grass might be greener elsewhere. A desire to achieve a particular bargaining outcome, as is effectively sought here, is not a valid labour relations reason that justifies a significant change to Board practice in terms of health care bargaining unit allocation.

[31] In oral argument, the Employees submitted there is another labour relations purpose to their application: they want to be in a bargaining unit with other nurses who perform the same work. This Board has already indicated that overlapping functions and performing essentially the same duties do not provide a sufficient basis to justify this kind of significant change to the Board's long-standing practice. While UNA attempted to prop up the absence of a labour relations purpose with one of its own, tied to the essential services regime, we decline to permit UNA to add to the stated labour relations purposes for an application that is not its own.

[32] We acknowledge the need for the Board to approach the exercise of its summary dismissal authority cautiously, as argued by the Employees and UNA. However, the summary dismissal power must also be approached in light of what makes labour relations sense. As noted by the Applicants, not dismissing the Reference at this stage would require many parties to expend significant resources for the Board to reach an outcome that is inevitable based on the Reference as framed. Proceeding further will also introduce significant uncertainty into labour relations at a time when these parties should be preparing for collective bargaining and engaging in essential service bargaining. The Reference serves to undermine accepted labour relations purposes, not promote them.

[33] While the Board agrees that the Employees provided few particulars to support their application as it relates to their own bargaining unit placement (let alone the placement of other LPNs working for Alberta Health Services and Covenant Health), our dismissal of the Reference is not premised on their failure to present a sufficiently particularized application. Instead, the decision is based on there being no material change from the circumstances at issue when *Good Samaritan* was decided and the absence of a valid labour relations reason to justify the significant change requested. The Reference has no reasonable prospect of success in the circumstances. However, we do wish to emphasize that a reference of a difference application, as contemplated in *Good Samaritan*, is not intended to be a process that bypasses the need for a well-particularized application.

[34] We add one further comment, although it too does not form a basis for our decision to summarily dismiss the Reference. References of a difference of the type contemplated in *Good Samaritan* are best brought by the unions or employers who operate in the industry. Section 16(3) signals such an approach to the section, saying a "*party* to the difference may refer the difference to the Board" (emphasis added). The relevant parties to significant changes sought in relation to the Board's long-standing standard health care bargaining unit practices are the parties to the relevant collective bargaining relationships: bargaining agents and employers. Indeed, we note that the applications in *Good Samaritan* were brought and responded to by such parties, and in our view, the intended recipients of the Board's guidance in that regard were unions and employers. In the future, for these reasons, the Board will no longer accept applications of this nature filed by employees under section 16(3). To do otherwise would allow a single employee

who is unhappy with their placement in a particular unit to bring an application of this sort when they (understandably) lack the expertise and resources to set out a properly particularized application. The reference of a difference section should not be used as an end-run around other processes that are available to employees (*i.e.*, collective bargaining with their current bargaining agent or other processes under the *Code*). We do not suggest that the Employees' application was not well-intentioned. The Employees are rightfully proud of their work and profession, and this is admirable. But, as this application drives home, they are not well-positioned to provide the labour relations experience and expertise needed to bring such an application.

[35] Finally, the Board understands the Employees object to the name of their bargaining unit. In particular, they take issue with the word "auxiliary", and maintain they are anything but. The Board has no jurisdiction to change the *Regulation* and the names of the functional units set out within it. With respect to the non-AHS functional bargaining units established by *Information Bulletin #10*, the Board's practice to-date has been to mirror the units set out under the *Regulation*. Changing the name of a non-AHS standard bargaining unit is unlikely to do anything other than create confusion without a coordinated change that would apply throughout the health care industry.

**Conclusion**

[36] For all the reasons set out above, the Employees' reference of a difference application has no reasonable prospect of success, and it is summarily dismissed under section 16(4)(e) of the *Code*.

ISSUED and DATED at the City of Edmonton, in the Province of Alberta, this 11th day of December 2023, by the Labour Relations Board and signed by its Chair.

Nancy Schlesinger
Chair