

Form 10

[Rule 3.25]

COURT FILE NUMBER

1903 13 591

COURT

COURT OF QUEEN'S BENCH OF
ALBERTA

JUDICIAL CENTRE

EDMONTON



PLAINTIFFS

United Nurses of Alberta, Heather Smith,
Diane Lantz, Jamie Suchan, Lisa Hein,
Melinda Skanderup, Malcolm Weisgerber,
Heather Venneman, Leslie Perry, Jens
Gundermann, Gail Pederson Todd, and Gwen
Prusak

DEFENDANT

Her Majesty the Queen in Right of Alberta

DOCUMENT

STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

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NOTICE TO DEFENDANT

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Statement of facts relied on:

The Parties

1. The Plaintiff, the United Nurses of Alberta ("UNA"), has been a trade union since 1977. UNA currently represents approximately 30,000 registered nurses, registered psychiatric nurses, student nurses, and allied healthcare professionals in Alberta employed by a variety of employers.

2. The *Labour Relations Code*, RSA 2000, c L-1, governs labour relations in the province of Alberta with respect to the employees and employers covered by it. Among other things, it regulates the organizing of workplaces by trade unions, the collective bargaining between trade unions and employers, and strikes by trade unions and employees and lockouts by employers.

3. The *Labour Relations Code* also establishes the Labour Relations Board (the “Board”). The Board has certified UNA as the bargaining agent for various nursing employees employed by various employers, including those members employed by Alberta Health Services (“AHS”), Covenant Health, Lamont Health Care Centre and the Bethany Group (Camrose) (the “Employers”). As bargaining agent, UNA represents its members in collective bargaining with employers regarding the terms and conditions of its members’ employment, represents members as workplace issues arise, and advocates for nurses, the nursing profession, and public health care.

4. UNA brings this claim on its own behalf and on behalf of its members affected by the *Public Sector Wage Arbitration Deferral Act*, SA 2019 (“Bill 9”).

5. The Plaintiff, Heather Smith, is a Registered Nurse, an employee of Covenant Health, President of UNA, and an officer and representative of UNA.

6. The Plaintiff, Diane Lantz, is a Registered Nurse employed by AHS. She is also the President of UNA Local 1, the Co-Chair for UNA’s Provincial Negotiating Committee, and a member of UNA/AHS/Covenant’s Joint Committee.

7. The Plaintiff, Jamie Suchan, is a Registered Nurse employed by AHS. He is also the President of UNA Local 183, a member of UNA’s Provincial Negotiating Committee, and a member of UNA/AHS/Covenant’s Joint Committee.

8. The Plaintiff, Lisa Hein, is a Registered Nurse employed by AHS. She is also a member of UNA’s Provincial Negotiating Committee and UNA/AHS/Covenant’s Joint Committee.

9. The Plaintiff, Melinda Skanderup, is a Registered Nurse employed by AHS. She is also the President of UNA Local 126, a member of UNA's Provincial Negotiating Committee, and the Secretary/Treasurer of UNA South District and member of the UNA/AHS/Covenant's Joint Committee.
10. The Plaintiff, Malcolm Weisgerber, is a Registered Nurse employed by AHS. He is also the Co-Chair of UNA's Provincial Negotiating Committee and a member of UNA/AHS/Covenant's Joint Committee.
11. The Plaintiff, Heather Venneman, is a Registered Nurse employed by AHS. She is also the Secretary of UNA Local 43, and a member of UNA's Provincial Negotiating Committee and a member of UNA/AHS/Covenant's Joint Committee.
12. The Plaintiff, Leslie Perry, is a Registered Nurse employed by AHS. She is also the Vice-President of UNA Local 119, a member of UNA's Provincial Negotiating Committee, and a member of UNA/AHS/Covenant's Joint Committee.
13. The Plaintiff, Jens Gundermann, is a Registered Nurse employed by AHS. He is also on the Executive of UNA Local 301, and a member of UNA's Provincial Negotiating Committee.
14. The Plaintiff, Gail Pederson Todd, is a Registered Nurse employed by AHS. She is also member of UNA's Provincial Negotiating Committee.
15. The Plaintiff, Gwen Prusak, is a Registered Nurse employed by AHS. She is also a member of UNA's Provincial Negotiating Committee.
16. The Defendant, Her Majesty the Queen in Right of Alberta, is responsible for Bill 9.

UNA's Collective Agreement with Alberta Health Services and Other Employers

17. UNA and the Employers are parties to a Collective Agreement with a term from April 1, 2017 to March 31, 2020. UNA's members employed by the Employers ratified this Agreement on February 15, 2018.

18. Typically, AHS bargains with UNA on behalf of all the Employers who are signatories to the Collective Agreement.

19. The Collective Agreement stipulates the wages for April 1, 2017 to March 31, 2018, and for April 1, 2018 to March 31, 2019. With respect to wages for April 1, 2019 to March 31, 2020, the Collective Agreement contains a "wage re-opener" provision in the Salary Appendix on the last page of the Collective Agreement (the "Wage Reopener Provision"). That provision provides:

WAGE RE-OPENER

Year 3 - The Parties shall commence negotiations to reach agreement on the wages payable in Year 3 (April 1, 2019 to March 31, 2020) of the Collective Agreement on February 15, 2019.

The Parties agree that the only item open for negotiations shall be the wages in the Salary Appendix of the Collective Agreement. This re-opener shall not be construed in any way as "opening the agreement" for negotiations on any other issues by either side.

If the Parties have not been able to agree upon the wage adjustment, at any time after March 31, 2019, either Party may give written notice to the other Party of its desire to submit resolution of the wage adjustment to interest arbitration before a three-member panel comprised of a nominee of both parties and a chair chosen by the parties from among the following arbitrators: David Phillip Jones, Andrew C. L. Sims, or W. D. McFetridge.

If the parties are unable to agree upon the chair, the Director of Mediation Services shall choose the chair from among the arbitrators named above.

The arbitration hearing shall be held by no later June 30, 2019. In reaching its decision, the arbitration panel shall consider the matters identified in section 101 of the Alberta Labour Relations Code.

(emphasis added)

20. Thus, through the Wage Reopener Provision, UNA and the Employers agreed to either negotiate or arbitrate wages for 2019-2020. By stipulating the date by which the arbitration had to be completed, they also ensured that there would not be a delay in resolving this issue. This was particularly important to UNA.

21. In November 2018, when inquiring as to Arbitrator David Jones' availability in May or June 2019 for the wage re-opener arbitration hearing, David Harrigan, UNA's Director of Labour Relations, sent Arbitrator Jones the Wage Reopener Provision.

22. On February 15, 2019, the parties attempted to agree on a wage adjustment but did not reach an agreement.

23. After March 31, 2019, the parties referred the wage re-opener dispute to an arbitration board comprised of the Chair, David Jones Q.C., the AHS nominee, Lynn Michele Angotti, and the UNA nominee, David Williams. The hearing was set for Monday, May 13, and Friday, May 17, 2019.

24. On Friday, May 10, 2019, AHS asked the arbitration board for a conference call to address AHS's request to adjourn the arbitration hearing. UNA opposed the adjournment request.

25. At the commencement of the call on May 10, 2019, when it was determined that the UNA nominee was not available, counsel agreed that the Chair of the arbitration board could hear and decide the adjournment application without the participation of the nominees.

26. Counsel for AHS informed the Arbitration Board Chair that AHS's primary funder, the Government of Alberta, had directed AHS to seek an indefinite adjournment of the arbitration hearing because the Government intended to pursue consultations with public sector employers and unions who were parties to wage re-opener provisions in their collective agreements in the 2019-2020 fiscal year, and that these consultations may result in government intervention that could affect the outcome of wage re-opener arbitration proceedings. Counsel for AHS indicated that he did not know when the consultations would occur or how long they would take.

27. Counsel for UNA informed the Arbitration Board Chair that UNA opposed the adjournment request on the grounds that the Collective Agreement provided for the arbitration hearing of the Wage Reopener Provision to take place by June 30, 2019, the parties were aware when they negotiated and agreed to the wage re-opener provision that there could be a change in government, and UNA is bargaining with AHS, not the Government.

28. Before ruling on the adjournment request, the Arbitration Board Chair canvassed the availability of both counsel and the Chair to attend the arbitration hearing on dates subsequent to May 13 and 17, 2019. The earliest common dates identified were July 2, 3 and 8, 2019.

29. The Arbitration Board Chair then ruled that he would not grant AHS's application to adjourn the arbitration hearing indefinitely, but would grant an adjournment of the arbitration hearing to July 2, 3 and 8, 2019.

30. The Arbitrator subsequently provided a written decision via email confirming his ruling:

This is to confirm my ruling on the conference call just now about the Employer's request to adjourn the hearing *sine die*:

1. I am as chair without the nominees made the decision with the consent of counsel for both parties.
2. Given the circumstances referred to by counsel for the Employer, the hearing scheduled for May 13 and 17 is adjourned (but not *sine die*).
3. The hearing is rescheduled to two of the following dates: July 2, 3 and 8, 2019. Counsel for UNA will as soon as possible advise which two of these dates would be more convenient.
4. Granting the adjournment to dates certain does not preclude either party's ability to apply for an adjournment of the re-scheduled dates for the hearing if circumstances warrant.
5. One day of the re-scheduled hearing will take place at UNA's offices, and one day at AHS's offices, the location to be agreed upon by counsel.

(the "Decision")

31. On May 13, 2019, UNA filed an application with the Board asking the Board to review the above Decision pursuant to s. 145 of the *Labour Relations Code*. In a decision dated June 5, 2019, the Board determined it does not have jurisdiction to review the Decision.

32. On June 7, 2019, UNA filed an application for judicial review of the Board's decision, as well as an application for judicial review of the Arbitrator's Decision. Those applications have yet to be set down for hearings in Special Chambers.

Bill 9: *Public Sector Wage Arbitration Deferral Act, SA 2019*

33. Bill 9 was introduced into the Legislature of Alberta on June 13, 2019. On June 28, 2019, Bill 9 received Royal Assent and became a validly enacted law in Alberta.

34. At no time prior to the introduction of Bill 9 in the Alberta Legislature, or subsequent to its introduction and prior to it receiving Royal Assent, did the Defendant or the Employers engage in meaningful consultation with the individual plaintiffs, UNA, or UNA's members regarding Bill 9.

35. Through Bill 9, the Defendant has overridden the Wage Reopener Provision. Pursuant to s. 2 of Bill 9 and Bill 9's Schedule, the Wage Reopener Provision is suspended until October 31, 2019. While UNA and the Employers have July dates scheduled for the wage reopener arbitration hearing, Bill 9 states that "no arbitration hearing shall be commenced, continued or completed and no arbitration decision shall be rendered in respect of a wage reopener provision during the time period beginning on the day this Act comes into force and ending on October 31, 2019" (s. 2(2)(a)). In this way, Bill 9 overrides the Wage Reopener Provision which UNA and the Employers agreed to during collective bargaining.

Summary of the Claims

36. The Plaintiffs state that Bill 9 violates the freedom of association of UNA, UNA's Members employed by the Employers, and the individual Plaintiffs. This freedom is protected under section 2(d) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*

1982 being Schedule B to the *Canada Act* 1982 (UK), 1982, c 11 (“*Charter*”) and the violation of this freedom is not demonstrably justified under section 1 of the *Charter*.

37. The freedom of association the *Charter* protects includes the freedom of employees to engage in collective bargaining, including good faith negotiations with an employer; and to enter into a binding collective agreement with an employer regarding terms and conditions of employment. Employees have a right to unite, to present demands to employers collectively, to access a dispute resolution mechanism, and to engage in meaningful discussions in an attempt to achieve workplace-related goals.

38. In addition to being protected by s. 2(d) of the *Charter*, freedom of association is also recognized in the common law and in international law.

Remedy Sought

39. The Plaintiffs seek the following relief:

- A declaration that Bill 9 violates section 2(d) of the *Charter* and is not saved by section 1 and is of no force or effect;
- Damages pursuant to s. 24(1) of the *Charter*;
- Costs of this Action; and
- Such other relief as may be requested, and this Honourable Court deems just.

NOTICE TO THE DEFENDANT

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.