

United Nurses of Alberta Zoom discussion with **NURSE PRACTITIONERS**

FEBRUARY 25, 2021

TRANSCRIPT

David Harrigan, UNA Director of Labour Relations:

Background: 1999 there was a hearing at the Labour Relations Board with respect to 3 employees at Calgary Regional Health Authority. All three were advanced practice nurses - one was called a Nurse consultant, psychiatry. One was educational specialist, and one a Nurse Practitioner.

The employer took the view that they were out of scope, we took the view that they weren't out of scope and that they should be in our bargaining unit. The Labour Board ruled that the education specialists should be in Health Sciences because they didn't need a nursing background and there were people who were not nurses doing the same job.

For the nurse consultant and the Nurse Practitioner the Labour Board said what these people do for a living is actually closer to physicians and residents, but in terms of which bargaining unit they fall into there's only four so we're going to put them in direct nursing care.

And so, they did that an UNA briefly represented some Nurse Practitioners.

In 2003, a number of things happened. First is that the government changed the law so that Nurse Practitioners would not be able to unionize- regardless of where they worked, they were not to be considered employees so no Nurse Practitioner would be allowed to unionized. So the Nurse Practitioners that we did have were taken out of the bargaining unit.

The second thing that happened is that Nurse Practitioner became a protected title. And the third thing that happened is that the government said for regional health authorities, and at time there was still seven or nine, the four functional bargaining units are no longer labour relations board policies. Those four bargaining units were now legally required.

When Nurse Practitioners were taken out of UNA and the government said they couldn't be employees we didn't make a charter challenge at the time. At that time the Supreme Court of Canada had issued a few rulings to suggest the right to collective bargaining was not a protected right under the charter and that the chances of success in terms of pursuing that was small. But a few years ago the Supreme Court issued a new and major decision that talked about freedom of association which is in the Charter of Rights and Freedoms and also includes the freedom to some meaningful bargaining process, not necessarily unionization or Wagner-style collective bargaining as we know it.

The Supreme Court said there has to be some manner of employees to have meaningful input into their terms and conditions. That decision came out in 2015 and initially again we did not do anything with that.

UNA's approach to organizing is different from a lot of unions. A lot of unions have organizing departments. Our approach to organizing is we don't go out and seek people, we see if people are interested in organizing and if they contact us we see if there is sufficient interest. If there is sufficient interest then we say we can try to organize. So a few years back, Nurse Practitioners did approach UNA and came to UNA and said can you help us with this. And so, we filed at the Labour Board and asked for two things. We said that first of all the section of the Labour Relations Code that prohibited Nurse Practitioners from unionizing was unconstitutional, and so Nurse Practitioners should be recognized as employees, and then based on that because they had to fall into one of the four bargaining units they should fall into the UNA bargaining unit.

The Labour Board split the hearing into two. They said first we're going to look at the question of the Charter to see if it is a breach of the charter and if it is not a breach we don't need to go any further. If there is a breach then we need to decide what to do.

The Nurse Practitioner Association of Alberta and the other unions that we involved agreed that it was a breach of the Charter. Alberta Health Services did not take any position. And so basically there was no opposition to the concept that this was a breach of the Charter.

So the Labour Board ruled it was a breach of the charter. The ruled that they were not going to proceed with the second half. Instead we're going to tell the government that it is a breach of the charter and you have one year to decide what you're going to do about that. Which is not terribly unusual, a lot of times when courts and administrative tribunals rule that something breaches the charter they throw it back to the government and tell them they have some time to fix that.

The government could have done a number of things. They could have done nothing it would have gone back to the Labour Board to decide which bargaining unit the Nurse Practitioners fall into. The government could have created an additional bargaining unit of just Nurse Practitioners. Or the government could have created some entirely new process so that NPs would have meaningful impact into their terms and conditions of employment.

What the government did was create a fifth bargaining unit for Nurse Practitioners. Nurse Practitioners now have their own functional bargaining unit.

A couple of things about that. At first to some people that looked a little odd because all the other bargaining units have at least 20,000 employees in them and this bargaining unit has somewhere less than 400, so that seems a little odd.

But in some ways had we been successful and Nurse Practitioners would be placed into the direct nursing care bargaining unit, that would have meant that the entire provincial collective agreement, except for salary, would have automatically applied unless the parties agreed otherwise. We would have had to negotiate salaries; realistically we would have had to negotiate different scheduling provisions because the current scheduling provisions just don't work for NPs.

But it would have meant that everything else would have applied, which in the one hand is a good thing, but on the other hand for future rounds of bargaining if we ran into a situation when we're in bargaining and there is some issue that is important to the Nurse Practitioners - say prep time - or something that would be a big issue for Nurse Practitioners and not an issue for Registered Nurses, the Nurse Practitioners we heard from were concerned that their voice would be drowned out. So in that way it is good that the government has formed for AHS a specific bargaining unit just for Nurse Practitioners.

Now, I understand that the NPAA has created a new organization, the NPAAU, and what they want to do is to become the certified bargaining agent for all of Alberta's Nurse Practitioners. And I think it is important that people understand that is simply not possible. If a union wants to apply to become the certified bargaining agent, the union must make an application to the Labour Relations Board, they name the employer, they name the bargaining unit, and then they have to prove that they have sufficient support. And the bargaining unit has to be deemed an appropriate bargaining unit.

For AHS, Nurse Practitioners by law, is an appropriate bargaining unit. Almost certainly for Covenant Health and for nursing homes, I expect the board will determine that Nurse Practitioners are an appropriate bargaining unit.

But it is not the case that there would be an all Nurse Practitioner province wide bargaining unit. For example, there are some Nurse Practitioners who are faculty members at universities. Those individuals are represented by the faculty association. That is who their certified bargaining agent is. And no change to the Regional Health Authority Collective Bargaining Regulation has any effect on that.

In addition, there are a number of Nurse Practitioners who are involved with Primary Care Networks. Again, PCNs do not fall under the Regional Health Authorities Collective Bargaining

Regulation. And in addition to that, each PCN is unique. Some have employees, some have a number of employees including Nurse Practitioners, Registered Nurses, dieticians, social workers, etc. Some PCNs, particularly in the southern part of the province don't have any employees.

Some PCNs are a network of clinics and all of the employees are employees of the clinic as opposed to the PCN. But in either case, the functional bargaining units do not apply and the Labour Board would not agree that a bargaining unit solely of Nurse Practitioners would be an appropriate bargaining unit either for a clinic or for a PCN. Even if somehow a group was able to unionize the PCNs or the clinics, if you're negotiating the terms and conditions of employment for those people you have to negotiate with the employer. There has been discussion that a union can just speak to the government because the government funds the PCNs. The government does fund the PCNs, but the government also funds AHS and Covenant. If you are negotiating terms and conditions of government you have to do that directly with the employer.

Then there's other Nurse Practitioners who have all sorts of employment relationship, including those who are employed by counties who have created clinics. Some are employed at Societies such as Boyle McCauley Health Centre in Edmonton or the Alex Community Health Centre in Calgary. Some are employed by oil companies. And for all of those people the functional bargaining units do not apply.

No one can become the bargaining agent for all the Nurse Practitioners at all these other facilities. And of course a number of Nurse Practitioners are self-employed. If you are self-employed you are not eligible to join a union. Normally, the only people who would be eligible for membership are people who are eligible for collective bargaining.

The other thing I wanted to say is that if there is no obligation for Nurse Practitioners to unionize if they don't want. Nurse Practitioners can say as a group to UNA that they don't want to unionize. They can say the same to the NPAAU. But if you do unionize, I would encourage people to give some thought to what you want in a union that you are looking for.

A brand new union obviously by definition doesn't have experience, time, or the resources I would say to properly represent people. You can't just bring in people who don't have any experience in negotiating public sector collective agreements and expect to do it against Alberta Health Services and come out with a win-win, particularly given the government's announcement today that they want to spend less money on employee compensation.

So, it is not a matter of just bringing in somebody. I don't mean to knock the Teamsters, but you can't just take someone from a different industry and say here come and bargain a public sector health care agreement.

The other thing is preparation for bargaining and administration and policing a collective agreement is a time consuming and costly event.

When we prepare for bargaining with AHS for the Registered Nurses and Registered Psychiatric nurses, we bring the committee of ten in and they spend a week with Heather and I developing the proposals. Obviously people can't just take time off work unpaid, so we fund the people on the bargaining team to do that.

But if you start off with a brand new union, 400 people and each one has paid \$5, that is \$2000- that will fund one day. I think if you take a look you will find that UNA, HSAA, AUPE, and even AMA, negotiations are complicated and takes more than a day.

So, I will leave it at that and I think Jeannine and Lee were going to answer some questions that have been emailed and I think we will throw it open if people have any questions.

Heather Smith: I just wanted to add, David, in terms of your comments about the provincial agreement that there is a ten member team. And we spend a week working on the proposals. What we review in that week are the proposals that have come in from the locals. As a committee we don't generate the proposals, the proposals are generated by individuals in their worksites by their local and that is what we deal with. It is not that some team in Edmonton dreams up what the proposals are going to be going to the provincial bargaining table.

David Harrigan: And I see someone put in the chat and I meant to note that on our website we do have a frequently asked questions document where we try to provide some background and explanation.

Lee Coughlin: Thank you. My name is Lee Coughlin. I am a manger of labour relations with United Nurses of Alberta. Thanks for joining us tonight. We did get a few emailed questions in. The first one relates to UNA's motivation for wanting to represent Nurse Practitioners and making our application to the board in particular and there being, as I understand it, some narrative that we somehow took advantage of the Nurse Practitioners Association. Having be directly involved, I thought it would be good to give a bit of background.

Initially we had one Nurse Practitioner who signed on to take the application to the board to challenge the constitutionality of excluding NPS from the code and their right to unionize. NP Jessica Parker, she had been a member of UNA when she

worked as an RN. She continued working as an RN while she was completing her Nurse Practitioner education.

I worked very closely with Jessica on a Professional Responsibility Concern that we advanced up to the CEO level of Alberta Health Services. And we developed a very good working relationship. When she transitioned into being a Nurse Practitioner I was aware she was working on it at the time and she ran into some difficulty with some management in terms of how they were interacting with her and her role as Nurse Practitioner so she reached out to me for some advice and discussion. We were happy to help.

So as we kind of talked through that piece we also had discussion in our staff group. There were frequent questions about Nurse Practitioners and the constitutionality of the situation. We were happy to advance the issue if someone reached out to us. We let it be known to Jessica that we would pursue the issue if she wanted. So she wanted to move forward so that's how that came about. That's the backstory to how to UNA came to make that application.

The second question that I have here relates to the wages for Alberta Nurse Practitioners.

There is information out there that they have the highest wages in all of North America here in Alberta and how is UNA going to be able to negotiate anything better?

There are a couple of things to take a look at there. First I think I'd be remiss if I didn't say that UNA is fundamentally opposed to rollbacks. We consider that to be a bad word in our office. So that's not something that we would go in looking for.

Wages are negotiated and they would need to be ratified by Nurse Practitioners so even if for some reason UNA did want rollbacks, it's not our decision. Nurse Practitioners would develop their proposals and ultimately all their collective agreement terms and conditions, whether that's scheduling, or special leave or benefits, that you would develop your proposals and the bargaining committee would take that forward and Nurse Practitioners would vote at the end. That's not for UNA to decide for you.

In terms of looking at wages, we do have a report from CFNU from 2018 that went over it and so my understanding is that Alberta is third in the nation in terms of wages. The NWT and Saskatchewan have a higher median average.

CFNU is the Canadian Federation of Nurses Unions and which UNA is a member and very active. .

QUESTIONS

NP Question: The issue of the capacity of any bargaining unit to represent not just Nurse Practitioners that are employed by AHS and potentially Covenant Health is debated in some of these forums.

I called the Labour Board today and had a conversation with Dan Galdamez who worked with Ms. Wakeford to review the original application. I asked him a specific question: If you look at the Mosaic Primary Care Network which was unionized in 2018 and is covered under the HSAA, if there was a Nurse Practitioner that existed in practice in one of those Mosaic PCNs, would a fifth bargaining unit that represents Nurse Practitioners be able to represent those NPs in that employment.

He unequivocally said no. As soon as Nurse Practitioners are recognized as being organized labour in a bargaining unit they would automatically not under their vote or choice - they would automatically become members of the HSAA at that place of employment. And that is a message that has been mixed and I think I only being it up not in anyway to undermine your obvious credibility but this is an independent group that actually makes those decisions. And they have completely unequivocally confirmed what you said.

David Harrigan: I think it is good to double check. Most people here don't know me and I don't expect everyone to just take my word for it. It makes a lot of sense to double check. I think if you talk to people who understand how labour relations and, particularly public sector labour relations, work in Alberta, the answer is clear that those functional bargaining units only apply to the regional health authorities as well as Covenant and nursing homes. If you start working at Mosaic and Mosaic has an all employee bargaining unit, which is HSAA, then you will be a member of the HSAA. If you are a Nurse Practitioner and you get on as a faculty member at the university, then you're being represented by the faculty association.

Heather Smith: David are you saying that in terms of primary care networks, if they have an all employee bargaining unit would those Nurse Practitioners be swept in now?

David Harrigan: Yes, but as far as I know Mosaic is the only PCN that is organized. So I would think that if a Nurse Practitioner starts working tomorrow, he or she would automatically be part of HSAA and would be part of that all employee bargaining unit.

Heather Smith: So what you've been saying that in terms of the labour laws, Primary Care Networks don't have the five functional bargaining units. So it would have to be an all employee bargaining unit and if you were hired by Mosaic which is represented by HSAA for all of the employees there they would become part of that bargaining unit automatically.

David Harrigan: Right, in the same way a number of years ago UNA organized the employees at Agape Hospice in Calgary. Our initial preference was to just organize the RNs but it became clear that those functional bargaining unit don't apply to the hospice. It's not a hospital or a nursing home. So if we wanted to organize the RNs we needed to organize all the employees - the RNs, the LPNs, the chaplains, the cooks, the social workers.

NP Question: To my colleagues, I think this is important to clarify these questions that keep coming up where I feel that people are stuck trying to figure out where those details exist. Don't be afraid to look into different organization and just ask. This information is out there and I found that talking to someone from the Labour Board was helpful. I'll also be honest, reading the decision from the Labour Board in response to the Wakeford complaint was interesting. The story of the two complaints is the story of NPs complaints about wages with Alberta Health Services.

Jeannine Arbour: My name is Jeannine Arbour and I'm manager of Labour Relations in UNA's Calgary office. Just to highlight what you've heard so far, this is very complex and we really encourage you to ask as many questions as you can. Even within our group, getting these answers straight can be complicated, which is why we have a team of people who are specialists in this. One of the questions that came up to us though was a belief that the NPAA doesn't actually want to be a union, it actually wants to be like the AMA.

I think David explained quite well why it is that individual Nurse Practitioners can't choose to join in NPAA and have NPAA bargain directly with the government, similar to what the AMA does. Ultimately what the question actually turns into is one of the barriers that makes doing that quite unlikely. The functional bargaining unit is one thing, but the status of employee is the primary barrier. As soon as the Labour Code was rewritten to allow Nurse Practitioners to be considered employees, that precluded them from potentially lobbying the government in that way to form something like the AMA.

Just on "the NPAA doesn't want to be a union," I'm not sure what they want to do or not, but the reality is that we understand they are going to attempt to apply to have trade union status with the Labour Relations Board. So ultimately if that is successful they're going to have to operate as a union whether they understand that or not, and along with that comes a whole host of responsibilities.

One of them is Duty of Fair Representation, which means that regardless if someone wants to be a member of the union the union has to represent them anyway. They have to bargain collective agreements for them and they have to represent their rights. There is obviously financial reporting obligations that at this point we don't really understand entirely because the changes to the regulations are coming, we anticipate sometime soon. But we also anticipate that some of those financial reporting responsibilities will create a fairly significant administrative burden on organizations.

NP Question: Having negotiated collective agreements in the past, what you would estimate the cost of a contract would be?

David Harrigan: I don't have a number off the top of my head. Part of it depends on how long bargaining takes.

The first issue is how are you going to fund the members of the negotiating committee. UNA's belief has always been that, number one, we don't want our members doing union work on employer time. That's not appropriate.

Number two, if we're asking people to give up all of their free time to take on these roles, people are going to get burned out, so what we do is that we get our members to take an unpaid LOA from the employer and we will pay you for that day directly. So we pay the elected members of our negotiating committees.

Each round of bargaining is different in terms of how long it takes. But it certainly takes at least twenty to thirty days of work from each person on the negotiating committee.

If you are starting from scratch and you don't have a current collective agreement, it is going to be a lot of work. So if you are going to put the proper time into it, and you're going to pay people, it's going to likely be very expensive.

When you get into disputes about bargaining, a union might have to file a bad faith bargaining against the employer. We can do that. We have lawyers and in house staff people that can do that. But if you are a brand new union, you're going to have to retain people to do that. And this is before a collective agreement is even reached. So it can get very expensive.

I'll see if I can get some numbers and post them on our website. Actuals instead of trying to brain storm.

NP Question: There are people on different ranges of benefit plans, salary scales and different provisions than we would typically see in a Registered Nurses collective agreement. There might be some concerns that they might lose all of those things.

Answer: Bargaining a first collective agreement is challenging and ultimately it is up to that bargaining unit to decide what kind of provisions they want in that collective agreement. That is all decided by the elected bargaining committee.

What I can say though, having negotiated some first collective agreements with UNA, when we say don't do rollbacks - we really don't. When we negotiate a new agreement and there are some people who are far above the wage grid, we often "red circle" them and then we wait for the grid to catch up to them in the following collective agreements.

With sick leave and vacations, we often negotiate transition language in collective agreement that gives people the ability to adapt to the new agreement.

This is prefaced with the bargaining committee making the decisions. Ultimately if those decisions reach an agreement, then they are ratified by a vote of the members.

Question: Do you have a strategy for communication with all Nurse Practitioners?

Answer: UNA has a list of people who have volunteered to assist and in the next week or two we're going to be holding a meeting and trying to develop those plans. It's not going to be easy, of course, because people are spread out all over the province. We're going to sit down with Nurse Practitioners who are interested in volunteering and make a plan.

NPs interested in getting involved can reach us at np@una.ca.

NP Question: Nurse Practitioners across Alberta work in very diverse areas, even with AHS. Is the plan for UNA to have one collective agreement apply to all Nurse Practitioners?

Answer: For Alberta Health Services, there would be one collective agreement, but we would need to have more discussions with Nurse Practitioners on the bargaining team. With the UNA main collective agreement, we have a main body of the agreement and scheduling provisions, and then there are local addendums that are specific to certain worksites. I would not be surprised if there are some areas where Nurse Practitioners scheduling provisions are quite different than somebody else's.

NP Question: What could Nurse Practitioners expect to gain from joining UNA?

Answer: UNA would offer expert labour relations staff and that have expertise in negotiating and handling labour relations. We also have occupational health, safety and professional responsibility, and education staff. We have four individuals who deal with patient safety. We provide representation in CARNA in dealing with regulatory complaint processes. And we have two communications staff.

Now that's just looking at labour relations.

We also have the infrastructure of a top rate systems and IT group, an amazing administration and finance staff, which you need to be able to collect dues and administer the operations of the organization.

We also bring a broad understanding of the health care system and the specific employers within that system, who we have relationships built up with them.

We have a history of successfully negotiating the best terms and conditions for RNs in the country. And that ability to negotiate is a transferable skill set that we could bring to Nurse Practitioners.

NP Question: How would Nurse Practitioners be hired and elected to represent Nurse Practitioners in UNA? Would those positions be paid?

Answer: We do believe in providing funding for members who work for UNA. We use a governance structure that includes a provincial executive board and locals, and there are different funding for positions within that. Nurse Practitioners would operate within that. In terms of a local structure, we have not made any decisions at this point. We need to understand better how many Nurse Practitioners would be represented by UNA and where they are located and what structure would work best.

NP Question: Do you have any thoughts on how unionizing might affect the NP position numbers?

Answer: We're not convinced that it will. The reality is that AHS has 100,000 employees and except for 400 of them they are all unionized if they are in-scope. The concept that 400 Nurse Practitioners might become unionized is not going to frighten AHS into eliminating positions.

NP Question: How much support has UNA received to have UNA represent and certify?

Answer: We have solidly 13 volunteers who have put their names forward to help us through that potential certification application. We have not begun to sign up NPs for membership, so we do not have an answer for you.

NP Question: If UNA becomes the certified bargaining agent for Nurse Practitioners and then we change our mind and don't want UNA to represent us anymore. What are our options?

That is called decertification and there is a process to do that. It is a bit complicated as respect to the timelines to decertify but the process is in the Labour Code. If you attempt to decertify within the right timelines you need to show 40 per cent of the bargaining unit has chosen to say they want to decertify. That is by signature. Once the board is satisfied that the 40 per cent exists, they hold a secret ballot vote, similar to when you vote to certify. If the majority vote to decertify then UNA would lose the certificate.

NP Question: Could you explicitly clarify for us how, as a 5th independent bargaining unit of Nurse Practitioners, we would be the voice of that bargaining unit?

When it comes to Collective Bargaining, it is only people in that bargaining unit who decide what the ingoing proposals would be, what the Memorandum of Agreement would be, and it is only Nurse Practitioners who would vote on "Do we accept this contract." The UNA Executive Board would have no say. On Collective Agreement issues it is absolutely only Nurse Practitioners who decide. On governance matters - if there is an Annual Meeting and there is a question "Should we give \$1,000 to Friends of Medicare or should we give \$4,000?" that matter is decided by all delegates. But there is no reason to believe on a question of should we give money to Friends of Medicare that Nurse Practitioners would automatically have a different interest than RNs or RPNs.

NP Question: Could you explain again about Nurse Practitioners at Primary Care Networks?

The 5 functional bargaining units do not apply at PCNs or clinics. So no organization could successfully be the certified bargaining agent for only the Nurse Practitioners at a PCN. Almost certainly any group applying at a PCN or clinic would need to apply for an "all employee unit." If you are an organization that only permits Nurse Practitioners as members, then by definition, that organization cannot be the bargaining agent for NPs at PCNs.