

ALBERTA LABOUR RELATIONS BOARD

A BAD FAITH BARGAINING COMPLAINT filed pursuant to sections 12(1)(2), 60(3) of the *Labour Relations Code*, RSA 2000, c L-1 (the “Code”)

I. COMPLAINT

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II. RESPONDENT

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III. Sections of the Code Violated

Alberta Health Services (the “Employer” or “AHS”) alleges the United Nurses of Alberta (the “Union” or “UNA”) has violated sections 60(3) of the *Code*.

IV. Particulars

1. AHS is an Employer within the meaning of the *Code*. To negotiate with the Union, AHS bargains on its own behalf and acts as agent for Covenant Health Care Centre, Lamont Health Care Centre, and the Bethany Group (Camrose) (collectively the “Employers”).
2. The Union is a trade union within the meaning of the *Code*.
3. The Union is the certified bargaining agent for AHS’ employees when employed in direct nursing care or nursing instruction as described in Board Certificate No. 73-2013.
4. The Union is also the certified bargaining agent for employees employed by Covenant Health, Lamont Health Care, and the Bethany Group when employed in direct nursing care or nursing instruction.
5. The Union, AHS, and the other Employers are parties to a Collective Agreement with an effective term of April 1, 2017 to March 31, 2020, that has continued in force as a result of collective bargaining.
6. The parties have not filed an essential services agreement with the Commissioner pursuant to Division 15.1 of the *Code*, nor have the parties been exempted from their requirement to do so.
7. On December 17, 2019, the Union served notice to bargain on AHS and the other Employers.
8. Raelene Fitz, AHS’ Lead Negotiator with UNA, acts as AHS’ and the Employer’ bargaining committee spokesperson.
9. David Harrigan, the Union’s Director of Labour Relations, acts as the Union’s bargaining committee spokesperson.
10. On January 14, 2020, the parties commenced collective bargaining and exchanged opening proposals.

11. On or about March 17, 2020, the parties agreed to postpone bargaining and extend a Letter of Understanding in relation to job security.
12. The parties recommenced bargaining on July 6, 2021 and have met for bargaining on the following dates: July 6, 8, 13, 14, 22 and August 4, 5, 10 and 13, 2021.
13. On July 6, 2021, AHS removed several of the proposals it had tabled in bargaining in 2020. AHS also communicated that the renewal of the LOU #20: Job Security, in the form of FTE protection for all regular UNA members, until March 31, 2024, was contingent upon UNA accepting a compensation adjustment of negative three percent (-3%) effective on the date of ratification with no further compensation adjustments through to March 31, 2024. AHS has disclosed relevant information about staffing plans to UNA as required.
14. On August 5, 2021, Ms. Fitz proposed in a letter to Mr. Harrigan that the parties pursue informal mediation and discuss a mutually agreeable mediator at the bargaining dates that week. UNA refused a joint application for mediation.
15. On August 11, 2021, UNA members held information pickets at health care centres across Alberta.
16. Also, on August 11, 2021 at approximately 16h30, Mr. Harrigan sent an email to Ms. Fitz and the other members of AHS' bargaining team as well as UNA's communication team stating that AHS was in discussions with Greenstaff Medical in Toronto to perform direct nursing care at AHS facilities across the province (the "August 11th Email"). Within this email, UNA took the position that this was yet another example of AHS' bad faith bargaining and requested that AHS be prepared to discuss the matter at bargaining on August 13, 2021.
17. On August 13, 2021 during bargaining, Ms. Fitz responded to Mr. Harrigan's August 11, 2021 email. Specifically, she advised Greenstaff had approached AHS to offer their services and there was no contract between the parties. She further advised that AHS' preference is always to recruit to AHS but, as UNA is aware, agency nurses are used for short periods of time in some locations such as the North Zone where staffing needs cannot be met. Ms. Fitz also clarified that, as when it has used agencies in the past, the UNA local is notified when the nurses go to site
18. In response to Ms. Fitz' factual explanation, Mr. Harrigan acknowledged he was aware that there was no contract between AHS and Greenstaff but insisted that AHS was being dishonest and that the AHS was required to disclose to UNA as soon as it had discussions with Greenstaff.
19. At the end of the August 13, 2021 bargaining meeting, AHS advised UNA that it would be applying for informal mediation under s. 64 of the *Code* to assist the parties in entering into a collective agreement.
20. The parties cannot apply for formal mediation under the *Code* because they have not signed an essential services agreement.
21. In response to the notice of informal mediation, UNA stated that it will be holding a delegate meeting with its principals on August 25, 2021 to consider its options going forward.
22. Bargaining adjourned at approximately 10h50 on August 13, 2021.
23. At approximately 11h40 on August 13, 2021, UNA posted a Media Statement which largely echoed Mr. Harrigan's August 11th Email, stating in part "UNA was also alarmed to learn that

contrary to AHS's claim any staffing shortages are short term and a result of summer holidays, the employer plans to address shortages by hiring contract nurses at a higher rate of pay while demanding pay cuts from the nurses it employs. AHS is in discussions with Toronto-based Greenstaff Medical Canada to recruit Registered Nurses to perform direct nursing care at AHS facilities across Alberta" [TAB A].

24. At the same time, UNA posted the same Media Statement on its public Facebook page [TAB B].
25. Later in the day on August 13, 2021, Ms. Fitz sent a letter to Mr. Harrigan asking him to correct the information in the Media Statement and reiterated the information she had attempted to provide Mr. Harrigan in bargaining that day [TAB C].
26. As at the filing of this Application, UNA has not corrected the information in its Media Statements and the Facebook post remains up and continues to be posted by others.
27. UNA and AHS plan to meet with Arbitrator Kanee on August 30, 31 and September 1, 2, 10 and 13, 2021 to tour the Royal Alexandra Hospital in Edmonton in relation to the essential services agreement.

V. BASIS FOR COMPLAINT

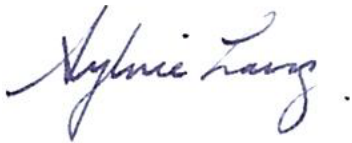
28. UNA is publicly making false representations about material facts. This is intended to sway members of the public and UNA members into believing that the Employer is recruiting registered nurses through a third-party recruiter across the province. These representations are either deliberate or reckless and are the antithesis of good faith bargaining.
29. UNA's actions demonstrate a plan to present inaccurate information in a public setting regarding a material issues – wages and job security, and this despite the correct information provided to it by AHS during bargaining.
30. Furthermore, UNA is well aware that there is no provision within its current collective agreement between UNA and AHS which prohibits contracting out of bargaining unit work with agency nurses who are not employed by AHS.
31. On April 16, 2021, UNA sought judicial review before this Board of a 2020 decision by Arbitrator Tettensor who found that AHS' use of agency nurses to temporarily fill staffing shortages in the rural Breton Long Term Care facility was permissible under the current collective agreement (**Board File No. AR-00038**).
32. AHS notes that UNA brought the grievance forward in 2018, prior to commencing the current round of bargaining and yet has not sought changes to the language within the collective agreement at the bargaining table.
33. UNA is sophisticated union with a long bargaining relationship with AHS. UNA ought to be well aware of what rises to creating a legal obligation to disclose during bargaining. The jurisprudence on this matter is clear that even if a Union requests information, that "request does not create an obligation on an employer to disclose all its plans no matter how tentative and undigested those plans may be." [*United Nurses of Alberta v Alberta Health Care Association et al.*, [1994] Alta LRBR at p 278], [TAB D].

34. UNA actions of both providing inaccurate information and taking a position on the use of agency nurses that is inconsistent with the collective agreement and current collective agreement, amounts to bargaining in the media to incite its members and the public to believe that AHS plans to hire nurses through a third party rather than as AHS' employees.
35. By bargaining in the media, UNA is failing to make reasonable efforts to bargain in good faith and enter into a collective agreement with AHS, in contravention of article 60(3) of the *Code*.

VI. REMEDIES REQUESTED

36. AHS requests the following remedies:
 - a. a declaration that UNA has violated the *Code*;
 - b. an order that UNA cease and desist in violating the *Code* and withdraw its Media Statement and Facebook messages of August 13, 2021;
 - c. a directive that UNA provide a notice to all members employed by AHS that clearly identifies the incorrect August 13, 2021 messaging and provides the correct information;
 - d. any other order or direction the Board considers appropriate in the circumstances.

All of which is submitted this 16th day of August, 2021.



Sylvie Lang, Legal Counsel – Labour & Employment
Alberta Health Services