

BULLETIN

Validity of HSA's certifications upheld by Labour Board

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A recent Labour Relations Board (LRB) decision suggests the LRB may likely follow a rational approach to health care bargaining in the future - instead of maximizing the confusion caused by the Health Authorities Act, as advocated by some. This decision - British Columbia Society of Clinical Perfusion, BCLRB - upheld earlier rulings confirming the validity of HSAs certifications for certain employees.

In dismissing two appeals by HEU respecting the prior rulings, the Board noted that, although associations of trade unions hold bargaining rights for some purposes, the Health Authorities Act confirms that "the certifications held by the individual trade unions that are members of the association remain in effect for all other purposes." In other words, where HSA is certified to represent paramedical professional employees, those certifications remain in effect, and HEUs bid to encroach upon those certifications was denied.

These attempts by HEU to expand their bargaining rights by encroaching into HSAs certification was based on an unusual reading of certain provisions of the Health Authorities Act which permit more than one union to represent employees in a single bargaining unit in certain circumstances. They argued, in effect, that the new statute gave them bargaining rights for employees properly covered by HSAs certifications.

The issue before the Board was complicated in its legal details but relatively straightforward in its facts. In various facilities around the province, employers had improperly placed employees in the wrong bargaining units; specifically, employers improperly treated paramedical professionals as members of the facilities support bargaining unit.

An Occupational Therapist at Little Mountain Residential Care Facility was improperly placed in the support unit represented by HEU instead of the paramedical professional unit represented by HSA. The employer and HEU admitted that the individual affected was a paramedical professional, and that HSA held the certification for paramedical employees. Regardless, HEU claimed that it had gained representational rights for the employee in the paramedical unit by virtue of the employers initial improper placement of her in the HEU unit.

HEU made a similar claim in respect of Clinical Perfusionists working at a number of facilities throughout the Province. In 1997, the BC Society of Clinical Perfusion successfully advanced at the LRB its members longstanding claim for inclusion in the paramedical unit. Then, HEU again attempted to rely on the Health Authorities Act to argue it had obtained permanent bargaining rights for Perfusionists by virtue of their placement in support bargaining units in the past. In both cases the Labour Board ruled against HEU, saying that HEU had no legal claim to represent the employees.

Employers can generally save money on wages and benefits by "erroneously" placing paramedical employees in a support bargaining unit and allowing the situation to persist as long as possible, usually until affected

employees get together and hire a lawyer to correct the situation.

HEU sought to take additional advantage of such improprieties by employers, claiming that its "rights" obtained in this way must continue in perpetuity - even after the LRB issues a direction requiring employees to be included in the proper unit.

Had HEUs appeal been successful it would have meant that employers could determine what union represents employees, rather than leaving this decision to the democratic wishes of the employees themselves.

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