



Tony Evers

Office of the Governor | State of Wisconsin

March 21, 2022

The Honorable Joshua Kaul, Attorney General
Wisconsin Department of Justice
State Capitol, Room 114 East
Madison, WI 53702

Re: Request for a formal opinion of the attorney general

Dear Attorney General Kaul:

On behalf of Governor Tony Evers, I am requesting an expedited attorney general opinion regarding whether the University of Wisconsin Hospitals and Clinics Authority (UWHCA) is prohibited under state law from voluntarily recognizing an organization chosen by a majority of UWHCA nurses and voluntarily engaging in collective bargaining with that chosen organization.

Chapter 111, subchapter I of the Wisconsin Statutes relating to “Employment Peace,” or generally referred to as the “Wisconsin Employment Peace Act” (Peace Act) grants employees “the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection.”¹ Until 2011 Wisconsin Act 10, the UWHCA was included in the definition of “employer” under the Peace Act.² Currently neither the definition of “employee” or “employer” includes any mention of the UWHCA or its employees.

State employee relations are dictated by Chapter 111, subchapter IV, relating to “State Employment Labor Relations” (SELRA). This subchapter defines an “employer” as “the state of Wisconsin,” and it identifies a range of state employees, including employees in the classified service, many employees of the University of Wisconsin System, assistant district attorneys and public defenders, and certain research assistants employed at state universities.³ Like the Peace Act, neither the definition of “employee” nor “employer” in the current version of SELRA includes any mention of the UWHCA or its employees.⁴

¹ Wis. Stat. § 111.04(1).

² 2011 Wisconsin Act 10, § 188

³ Wis. Stat. § 111.81(7).

⁴ UWHCA and its employees are not mentioned within the subchapter relating to “Municipal Employment Relations” (MERA)

Because UWHCA is not addressed in the various statutory provisions about collective bargaining, there is no basis in the law to conclude that the UWHCA is prohibited from recognizing a representative of its employees and engaging with that representative regarding terms and conditions of employment. If the Legislature had intended to prohibit UWHCA from doing so, the Legislature would have stated as such. *See State ex rel. Kalal v. Cir. Ct. for Dane Cty.*, 2004 WI 58, ¶ 44, 271 Wis. 2d 633, 662 (“We assume that the legislature’s intent is expressed in the statutory language.”).

The Wisconsin Legislative Council reached a similar conclusion when it issued a memorandum in October 2021, opining that “2011 Act 10 simply deleted the obligation and duty for UWHCA to engage in collective bargaining with its employees, and did not replace the former duty with language prohibiting collective bargaining” and employees of the UWHCA “may seek voluntary recognition by UWHCA.”⁵

I hope that this matter receives your expedited review. Healthcare workers are dealing with burnout and exhaustion, which is compounding staffing shortages and problems retaining staff. Nurses continue to experience the impact of these issues and the effects of additional strain placed on them as frontline health care workers during the coronavirus pandemic. The Evers Administration has heard from nursing staff who have reported that morale is at a crisis point as hospitals resume elective procedures without contending with increased staffing shortages and retention considerations.

Additionally, resolution of this issue could be essential in avoiding a labor disruption. As we continue to navigate the coronavirus pandemic and currently decreasing community emphasis on protective measures, ensuring consistency of care is imperative. UW Health serves hundreds of thousands of patients annually in the upper Midwest. Its services go well beyond Madison, and any labor disruption has the potential to have a profound effect on Wisconsinites.

Your consideration in this matter is appreciated.

Sincerely,

A handwritten signature in black ink, reading "Ryan Nilsestuen". The signature is written in a cursive, flowing style.

Ryan Nilsestuen
Chief Legal Counsel

⁵ Wisconsin Legislative Council memorandum, October 4, 2021, “Re: Union Negotiations with University of Wisconsin Hospitals and Clinics Authority.”