

STATE OF WISCONSIN  
EMPLOYMENT RELATIONS COMMISSION

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SERVICE EMPLOYEES INTERNATIONAL  
UNION HEALTHCARE WISCONSIN  
and UNIVERSITY OF WISCONSIN  
HOSPITALS AND CLINICS AUTHORITY,

Case No. \_\_\_\_\_

Joint Petitioners.

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**JOINT PETITION FOR DECLARATORY RULING**

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Pursuant to Wis. Stat. § 227.41, the Service Employees International Union Healthcare Wisconsin (SEIU) and the University of Wisconsin Hospitals and Clinics Authority (UWHCA) jointly petition the Wisconsin Employment Relations Commission to issue a declaratory ruling on the following question:

**Does the Wisconsin Employment Peace Act, Wis. Stat. ch. 111 subch. I (WEPA), apply to UWHCA and its employees and their chosen representatives, if any?**

SEIU and UWHCA bring this petition in connection with a dispute addressed in SEIU and UWHCA's September 11, 2022 Memorandum of Understanding (MOU), which WERC assisted the parties in negotiating. A copy of that MOU is attached hereto as Exhibit A.

In connection with this petition, SEIU and UWHCA also jointly request that the Commission:

1. Appoint a hearing examiner to preside over these proceedings.
2. Accept simultaneous opening briefs from the parties on the question above, to be submitted electronically to the hearing examiner and opposing counsel no later than September 23, 2022.

3. Accept simultaneous reply briefs from the parties, to be submitted electronically to the hearing examiner and opposing counsel no later than September 30, 2022.

4. Issue the Commission's final, appealable ruling on the question above as soon as practicable, and if at all possible, no later than within 30 days after the close of the parties' briefing.

The parties seek a declaratory ruling on the applicability of WEPA as described above because SEIU contends that WEPA applies, while UWHCA contends that it does not. The following facts may be relevant to this dispute, though the parties reserve the right to argue that one or more of these facts are irrelevant, and to assert additional facts in their briefs:

1. UWHCA was created as a public body corporate and politic by 1995 Wisconsin Act 27 (Act 27), which created Wis. Stat. Ch. 233.

2. UWHCA was created to operate and manage the University of Wisconsin Hospitals and Clinics (hospitals and clinics), and it has done so since June 29, 1996.

3. With passage of Act 27, certain people who worked at the hospitals and clinics became employees of UWHCA (including "professional employees" such as registered nurses and other allied health professionals), while others became employed by the University of Wisconsin Hospitals and Clinics Board (UWHCB), a state board. Those people employed by the UWHCB continued to work at the hospital and clinics under a contract between UWHCA and UWHCB.

4. 2011 Wisconsin Act 10 made changes to statutory language referencing UWHCA, including changes to WEPA provisions addressing UWHCA. SEIU and UWHCA disagree regarding the legal effects of those changes.

5. Prior to 2014, SEIU was the certified bargaining agent for collective bargaining purposes for certain registered nurses and other allied health professionals employed by UWHCA, pursuant to WEPA.

6. Upon expiration of the collective bargaining agreement between UWHCA and SEIU in 2014, UWHCA indicated that it would no longer recognize SEIU. Since that time, the registered nurses and other allied health professionals employed by UWHCA have had no union representation recognized by UWHCA.

7. In 2018, certain registered nurses and other allied health professionals employed by UWHCA began efforts to reorganize a union and sought UWHCA recognition of the union, initially for purposes of meet and confer, and then beginning in 2021 for purposes of collective bargaining. The UWHCA declined, and continues to decline, voluntary recognition of the union for purposes of engaging in collective bargaining.

8. As relevant to this proceeding, UWHCA's position is that the answer to the question presented for declaratory ruling is "No."

9. As relevant to this proceeding, SEIU's position is that the answer to the question presented for declaratory ruling is "Yes."

Dated: September 20, 2022.

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/s/ Tamara Packard

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## MEMORANDUM OF UNDERSTANDING

The parties to this Memorandum of Understanding ("MOU") are the University of Wisconsin Hospitals and Clinics Authority ("UWHCA") and the Service Employees International Union Healthcare Wisconsin ("SEIU") (collectively "the Parties"). In order to advance the mutual desires and interests of UWHCA and SEIU to avert the strike currently scheduled to take place on September 13, 14 and 15, 2022, and to expeditiously and definitively resolve the currently disputed legal issues between the parties, and other mutual interests, UWHCA and SEIU agree as follows.

### A. Determination of the Applicability of the Wisconsin Employment Peace Act

1. The Parties shall immediately submit a joint petition to the Wisconsin Employment Relations Commission ("WERC") for a Chapter 227 declaratory ruling on the question of whether the Wisconsin Employment Peace Act (Wis. Stat. 111.02 et seq., the "WEPA") applies to UWHCA and its employees and their chosen representatives.
  - a. Briefing on the joint petition shall be made by simultaneous opening briefs exchanged and submitted electronically to the appointed WERC hearing examiner by September 23, 2022, and by simultaneous reply briefs exchanged and submitted electronically to the appointed WERC hearing examiner by September 30, 2022.
  - b. The parties shall jointly request that WERC issue its written decision on the petition as soon as practicable, but no later than within 30 days after the close of briefing.
  - c. The Parties agree that the WERC determination as described above will conclude that proceeding, making the issue ripe for appeal. SEIU may simultaneously file, in a separate proceeding, a Petition for Recognition Election pursuant to Wis. Stat. 111.05.
2. During the pendency of the Chapter 227 declaratory ruling petition described above, both Parties are free to pursue any other right or remedy through WERC or the courts provided that doing so does not interfere with WERC's timely determination of the applicability of WEPA.



3. Should WERC find that WEPA applies to UWHCA and its employees and their chosen representatives, any election petition filed by SEIU shall proceed accordingly under WEPA.
  - a. UWHCA agrees not to seek a stay of the election petition proceedings under WEPA pending the outcome of any related legal action.
  - b. UWHCA does not waive any additional rights and specifically reserves all rights to appeal the WERC determination as well as all rights to pursue other rights or remedies available to it under state or federal law including but not limited to petitioning the Wisconsin Supreme Court to accept an original action.
  - c. SEIU reserves the right to oppose UWHCA's other legal efforts including any petition for original action to the Wisconsin Supreme Court.
4. Should WERC find that WEPA applies to UWHCA and its employees and their chosen representatives, the election shall proceed according to WEPA.
  - a. The parties shall make their best efforts to ensure an election is completed no later than December 31, 2022.
  - b. The Parties shall meet and discuss the election process with the goal of minimizing conflict in the conduct of the election.
  - c. Should the UWHCA registered nurse employees vote to choose union representation, the parties shall, upon certification of the union by the WERC, proceed to bargaining in good faith toward a written Collective Bargaining Agreement.
5. If WERC rules WEPA does not apply, SEIU reserves all rights to appeal the WERC determination as well as all rights to pursue other rights or remedies available to it under state or federal law including but not limited to a direct action to the Wisconsin Supreme Court. UWHCA reserves the right to oppose SEIU's other legal efforts including any petition for original action to the Wisconsin Supreme Court.

**B. Determination of Whether UWHCA is Authorized to Voluntarily Collectively Bargain**

1. The Parties have a good faith dispute regarding the legal question as to whether UWHCA is legally authorized to collectively bargain on a voluntary basis. Either party may pursue a determination from the courts, including but not limited to the Wisconsin Supreme Court, regarding the answer to that question. The Parties reserve their right to oppose any such legal actions.
2. In exchange for SEIU's agreement that it shall not engage in the strike, work stoppage and picket for voluntary recognition and collective bargaining currently scheduled to take place on September 13, 14, and 15, 2022, and to not engage in or threaten any further strikes, work stoppages or pickets for voluntary recognition, unless and until there is a definitive resolution on UWHCA's authority under Wisconsin law to voluntarily recognize and bargain with a union, UWHCA agrees to, upon request of SEIU, engage with SEIU in a good faith "meet and discuss" process during the pendency of court proceedings on the following conditions:
  - a. The Parties will meet every other month, unless mutually agreed otherwise. The Parties are free to raise any issues of concern, but there shall be no duty to negotiate or bargain regarding any such issues.
  - b. UWHCA represents that it currently is considering a policy to allow employees to access peer support in disciplinary proceedings. The Parties agree to prioritize this issue in the meet and discuss process.
  - c. Employees may authorize deduction of dues to SEIU, and such authorization shall be honored by UWHCA. UWHCA will assume that dues-paying nurses are the nurses represented by SEIU for purposes of the meet and discuss process.
  - d. The meet and discuss process will be negotiated and shall complement UWHCA's own Shared Governance process.
  - e. The Parties acknowledge that the meet and discuss process will not be intended to result in any binding agreement between UWHCA and SEIU or between UWHCA and nurses represented by SEIU.

3. If a determination is made that UWHCA is not legally permitted to voluntarily collectively bargain, the parties will meet in good faith to determine whether the meet and discuss processes above will continue with or without modification. The nurses shall be given an opportunity to address the Board on this issue at a Board meeting before any decision is made by the Board.
4. If a determination is made that UWHCA is legally permitted to voluntarily collectively bargain, UWHCA will endeavor in good faith to evaluate whether doing so would be in the best interest of UWHCA. The UWHCA Board of Directors will be the ultimate decision-maker on the issue. The nurses shall be given an opportunity to address the Board on this issue at a Board meeting before any decision is made by the Board.

#### **C. Rights and Responsibilities**

1. UWHCA and SEIU are committed to working together to build a productive, collaborative relationship rooted in mutual respect and civility. UWHCA and SEIU will at all times endeavor to communicate in a mutually respectful and non-disparaging manner. The parties intend to work together to address critical challenges and issues facing the nursing profession at UWHCA in order to promote the highest quality of patient care, retention and recruitment of skilled professional nurses, and highest job satisfaction of UWHCA registered nurses.
2. UWHCA and SEIU recognize and respect that UWHCA employees have important constitutional rights relating to association, self-organization and participation in labor organizations and other concerted activities, as well as rights to refrain from such activities. This MOU in no way expands, limits, or otherwise modifies those rights. Exercise of such rights shall not disrupt patient care or the operations of UWHCA.
3. Neither the provision of any consideration by either of the Parties nor the execution of this MOU can be construed as an admission of unlawful conduct or liability by any Party, which the Parties expressly deny, nor an admission of the validity of any legal position taken by the other Party.
4. This MOU shall be governed by Wisconsin law.

5. This MOU shall be enforced exclusively by binding arbitration conducted by WERC staff, and WERC's decision shall be final and not appealable.

**D. Miscellaneous**

1. In exchange for SEIU promptly withdrawing its pending appeal before the National Labor Relations Board, UWHCA agrees that it will offer to reinstate the employee who is the subject of that matter on final written warning status, without backpay, pursuant to UWHCA's usual reinstatement practices, including execution of a settlement agreement between the employee and UWHCA. The employee will not return to the employee's prior unit.
2. The parties agree to issue a joint press release relating to this MOU.

**E. Duration**

1. This MOU shall terminate upon the earlier of (1) six months after final court disposition of the legal issues relating to whether WEPA applies to UWHCA and its employees and their chosen representatives, and whether UWHCA is legally authorized to collectively bargain on a voluntary basis, including the exhaustion of any appeals relating to such issues; or (2) September 1, 2025, whichever comes first. The Parties will meet and discuss in good faith the potential extension or modification of this MOU before its termination.
2. This MOU shall become effective upon ratification and/or approval by the Parties.

*[Signature page follows]*

UNIVERSITY OF WISCONSIN HOSPITALS AND CLINICS AUTHORITY

By:

Alan S. Kaplan

Alan S. Kaplan, MD

Its: Chief Executive Officer

Dated: 09/11/2022

SERVICE EMPLOYEES INTERNATIONAL UNION HEALTHCARE WISCONSIN

By:

Patricia J. Raes

Patricia J. Raes

Its: President

Dated: 9/11/2022