

FILED
12-21-2022
CIRCUIT COURT
DANE COUNTY, WI
2022CV003199
Honorable Jacob Frost
Branch 9

STATE OF WISCONSIN

CIRCUIT COURT DANE COUNTY
BRANCH __

SERVICE EMPLOYEES INTERNATIONAL
UNION HEALTHCARE WISCONSIN,
33 Nob Hill Road
Madison, WI 53713,

Petitioner,

Case Code: 30607
Administrative Agency Review

v.

WISCONSIN EMPLOYMENT RELATIONS
COMMISSION,
2418 Crossroads Drive, Suite 1000
Madison, WI 53718

Respondent.

PETITION FOR JUDICIAL REVIEW

Petitioner Service Employees International Union Healthcare Wisconsin (SEIU), by its attorneys Pines Bach LLP, petitions the court pursuant to Wis. Stat. §§ 227.52 & 227.53 to review the declaratory ruling issued by Respondent Wisconsin Employment Relations Commission (WERC) that “The Wisconsin Employment Peace Act, Wis. Stat. ch. 111, subch. 1 (WEPA) does not apply to the University of Wisconsin Hospitals and Clinics Authority and its employees and their chosen representatives, if any.” A copy of the declaratory ruling, which SEIU obtained from WERC on November 25, 2022 (Ruling) is attached hereto as **Exhibit A**.

PARTIES

1. Petitioner Service Employees International Union Healthcare Wisconsin is a labor union with a physical and mailing address of 33 Nob Hill Road, Madison, Wisconsin, 53713. SEIU is the recognized certified collective bargaining agent for

thousands of employees working for numerous health care industry employers in the State of Wisconsin. In addition, approximately 1500 nurses and other allied health professionals employed by the University of Wisconsin Hospitals and Clinics Authority (UWHCA) in a proposed bargaining unit of approximately 2600 employees have expressed their wish to SEIU and UWHCA for UWHCA to again recognize SEIU as their certified collective bargaining agent; in 2014 the UWHCA disavowed its previous recognition of SEIU in that capacity. SEIU and UWHCA jointly petitioned WERC for the Ruling challenged here, and SEIU was a party to the WERC proceeding that resulted in that Ruling. SEIU's substantial interests are affected by the Ruling and it is a "person aggrieved" by the Ruling for purposes of Wis. Stat. §§ 227.52 and .53(1).

2. Respondent Wisconsin Employment Relations Commission is a state agency created by Wis. Stat. § 15.225. It has a physical and mailing address of 2418 Crossroads Drive, Suite 1000, Madison, WI 53718. WERC is the agency responsible for administration and enforcement of several laws and administrative rules governing labor relations in Wisconsin, including but not limited to the Wisconsin Employment Peace Act, Wis. Stat. ch. 111, subch. 1 (WEPA or Peace Act).
3. WERC has authority under Wis. Stat. § 227.41 to issue declaratory rulings upon petition by any interested person with respect to the applicability to any person, property or state of facts of any rule or statute enforced by it, including but not limited to the Peace Act.

JURISDICTION AND VENUE

4. The Ruling of the WERC at issue is subject to review in the circuit court under Wis. Stat. § 227.52, *et seq.* Wis. Stat. § 227.41(1).
5. Because SEIU is located in Dane County, and the dispute arose in Dane County, venue is proper in the Dane County Circuit Court under Wis. Stat. § 227.53(1)(a)3.

FACTS

6. The Peace Act regulates labor relations between “Employers” and “Employees,” as those terms are defined in the Peace Act, and the chosen representatives of the Employees. Wis. Stat. ch. 111 subch. I.
7. Prior to 2014, SEIU was recognized as the certified bargaining agent for collective bargaining purposes for certain registered nurses and other allied health professionals employed by UWHCA, pursuant to the Peace Act.
8. Upon expiration of the collective bargaining agreement between UWHCA and SEIU in 2014, UWHCA indicated that it would no longer recognize SEIU. Since then, the registered nurses and other allied health professionals employed by the UWHCA have had no union representation recognized by UWHCA, although SEIU was never decertified as the representative of its members employed by the UWHCA. Thus, it continues in its elected role as the certified representative of the nurses and allied health professionals employed by UWHCA.
9. In 2018, certain registered nurses and other allied health professionals employed by UWHCA began efforts to reorganize a union and sought UWHCA’s renewed recognition of SEIU as their 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, to recognize SEIU for purposes of engaging in collective bargaining.
10. SEIU seeks once again to be recognized as the certified bargaining agent for collective bargaining purposes for certain registered nurses and other allied professionals employed by the UWHCA.
11. On September 20, 2022, SEIU and UWHCA jointly petitioned WERC pursuant to Wis. Stat. § 227.41 for a declaratory ruling on the applicability of the Peace Act to the UWHCA (as an Employer), Employees of the UWHCA, and the chosen representatives of those Employees.
12. SEIU contends that the Peace Act does so apply, and UWHCA contends that it does not.

13. UWHCA was created as a public body corporate and politic by 1995 Wisconsin Act 27 (Act 27), which also created Wis. Stat. Ch. 233. It has a physical and mailing address of 600 Highland Avenue, Madison, Wisconsin, 53792.
14. 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.
15. Prior to June 29, 1996, the hospitals and clinics at the University of Wisconsin were operated by the University of Wisconsin-Madison. As such, the operations of the hospitals and clinics were subject to University Board of Regents as well as executive branch and legislative oversight, which could be slow-moving and burdensome. All people employed to work at the hospitals and clinics were employees of the State of Wisconsin.
16. Since 1996, pursuant to 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. At the same time, others became employed by the University of Wisconsin Hospital and Clinics Board (UWHCB), a state board. Those people employed by the UWHCB continued to work at the hospitals and clinics under a contract between UWHCA and UWHCB.
17. Then-Governor Tommy Thompson proposed to restructure operational control of the hospitals and clinics to address the perception that the administrative review and approval faced by the hospitals and clinics was burdensome and will (or has) negatively affect its teaching, research and patient care missions.
18. The restructuring accomplished through Act 27 in 1996 peeled away the operational control of the hospitals and clinics from the University and placed that control in the hands of two distinct new entities: the UWHCA and the UWHCB.
19. Among other things, it was believed that the restructuring, as it concerned employees, would improve the effectiveness and efficiency of the hospitals and

clinics by freeing them from the rules and regulations governing the State's civil service system.

20. Replacing compliance with the civil service system, Act 27 provided UWHCA with the authority to select and hire its own employees, assign their duties and positions, and fix their pay and benefits.
21. With respect to its employees, as with all other aspects of its operations, it was explicitly envisioned that regardless of who or how individuals were appointed to UWHCA's governing body, for all practical purposes, it would operate independent of Regent, legislative or executive control.
22. While the UWHCA would be subject to auditing by the Legislative Audit Bureau and there would be some requirements to make reports to the Legislature and Governor, those bodies were to have no ability to remedy any perceived problem at UWHCA short of eliminating UWHCA.
23. Act 27 added provisions specific to UWHCA to the Peace Act which provided for continuity in the transition of employees from State employment to UWHCA employment, expressly preserving the existing relationships with unionized employees already working at the hospitals and clinics and already organized into specific bargaining units with existing collective bargaining agreements governed by the State Employment Labor Relations Act.
24. 2011 Wisconsin Act 10 (Act 10) made all of those individuals who worked at the hospitals and clinics as employees of the UWHCB into employees of the UWHCA, ending the mixture of UWHCA and UWHCB employees at the hospitals and clinics and unifying all employment under the UWHCA.
25. Act 10 also made changes to some statutory language referencing UWHCA, including changes to Peace Act provisions addressing UWHCA, none of which expressly excluded UWHCA from the definition of "employer" as the Peace Act specifically does for certain other entities. *See* Wis. Stat. §111.02(7)(b). SEIU and UWHCA disagree regarding the legal effects of those changes, as do SEIU and WERC.

26. In 2015, SwedishAmerican Health System Corporation, an Illinois-based non-profit organization that owns and operates various medical facilities in Illinois, became a wholly owned subsidiary of UWHCA, i.e., a “division” of UWHCA.
27. SwedishAmerican Health System Corporation facilities acquired by UWHCA in the merger include SwedishAmerican Hospital, a hospital in Rockford, Illinois; a medical center in Belvidere, Illinois; a regional cancer center; and more than 30 clinics, all in Illinois. All of these Illinois facilities are now called “UW Health” facilities, just as UWHCA facilities in Wisconsin are called “UW Health” facilities.
28. Following acceptance of their Joint Petition to WERC, by stipulation, SEIU and UWHCA submitted simultaneous opening, reply, and supplemental briefs to WERC, with exhibits, detailing their facts and legal arguments as to why the Peace Act does (as argued by SEIU) or does not (as argued by the UWHCA) currently apply to the UWHCA, its employees, and their chosen representatives.
29. On November 25, 2022, WERC issued the declaratory ruling requested by SEIU and UWHCA, finding that the Peace Act “does not apply to the University of Wisconsin Hospitals and Clinics Authority and its employees and their chosen representatives, if any.”
30. The effect of the Ruling, if upheld, is that UWHCA has no obligation under the Peace Act to recognize and collectively bargain with the registered nurses and other allied health professionals employed by UWHCA and their chosen representatives, including SEIU.
31. SEIU is aggrieved by the Ruling in that it wishes to serve as the chosen representative of the registered nurses and other allied health professionals employed by the UWHCA, to engage in collective bargaining with UWHCA on their behalf, and has substantial majority support of such employees to serve in that capacity.

CAUSE OF ACTION

32. Petitioner SEIU realleges Paragraphs 1 through 31 above, as if incorporated herein.

33. Respondent WERC made errors of procedure, law, discretion, and fact in the Ruling, *see* Wis. Stat. § 227.57(4), (5), (7), and (8), all of which are subject to the review of this court and an order setting aside, reversing, or vacating the Ruling, or remanding the matter for further proceedings, or an order for other relief as appropriate, pursuant to Wis. Stat. § 227.57.

34. Specifically, WERC:

- a. Failed to make factual findings based on undisputed factual assertions of the parties, supported by the record;
- b. Failed to consider numerous undisputed facts presented by the parties;
- c. If it believed there were factual disputes, failed to provide a hearing from which to resolve disputed issues of fact;
- d. Failed to address numerous legal arguments briefed by the parties;
- e. Reached incorrect conclusions of law, including the single stated conclusion of law and the declaratory ruling itself. WERC should have found that UWHCA is an “employer” as that term is defined in the Wisconsin Peace Act, Wis. Stat. § 111.02(7), and that the Wisconsin Employment Peace Act, Wis. Stat. ch. 111 subch. I, applies to UWHCA and its employees and their chosen representatives.

35. SEIU is aggrieved by the Ruling because it prevents SEIU from serving as the chosen representative (i.e., certified collective bargaining agent) of the registered nurses and other allied health professionals for collective bargaining purposes with UWHCA under the Peace Act.

PRAYER FOR RELIEF

WHEREFORE Petitioner Service Employees International Union Healthcare Wisconsin requests judgment in its favor as follows:

1. Declaring that the Ruling is reversed, set aside, and vacated, and instead declaring that the Wisconsin Employment Peace Act, Wis. Stat. ch. 111 subch. I, applies to UWHCA and its employees and their chosen representatives;
2. Ordering the Wisconsin Employment Relations Commission to modify the Ruling to conform with the court's declaration that the Peace Act applies to UWHCA and its employees and their chosen representatives, including to require UWHCA to immediately engage in good faith collective bargaining with the certified collective bargaining agent(s) of its employees, including SEIU, as applicable;
3. Awarding costs and attorneys fees as allowed by law;
4. Granting such other and further relief as the court deems just and proper.

Respectfully submitted this 21st day of December 2022.

PINES BACH LLP

Electronically signed by Tamara B. Packard

Tamara B. Packard, SBN 1023111
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STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Joint Petition of

SERVICE EMPLOYEES INTERNATIONAL UNION HEALTHCARE WISCONSIN

and

UNIVERSITY OF WISCONSIN HOSPITALS AND CLINICS AUTHORITY

Requesting a Declaratory Ruling Pursuant to Wis. Stat. § 227.41

Case ID: 640.0000

Case Type: DR

DECISION NO. 39765

Appearances:

Tamara B. Packard and Lester A. Pines, Attorneys, Pines Bach LLP, 122 W. Washington Avenue, Suite 900, Madison, Wisconsin, appearing on behalf of Service Employees International Union Healthcare Wisconsin.

James Goldschmidt, Attorney, Quarles & Brady LLP, 411 E. Wisconsin Avenue, Suite 2400, Milwaukee, Wisconsin, and Matthew Splitek, Attorney, Quarles & Brady LLP, 33 East Main Street, Suite 900, Madison, Wisconsin, appearing on behalf of University of Wisconsin Hospitals and Clinics Authority.

FINDINGS OF FACT, CONCLUSION OF LAW, AND DECLARATORY RULING

On September 20, 2022, Service Employees International Union Healthcare Wisconsin (SEIU) and the University of Wisconsin Hospitals and Clinics Authority (UWHCA) filed a joint Petition for Declaratory Ruling with the Wisconsin Employment Relations Commission pursuant to Wis. Stat. 227.41 requesting that the Commission answer the following question:

Does the Wisconsin Employment Peace Act, Wis. Stat. ch. 111 subch. 1 (WEPA) apply to UWHCA and its employees and their chosen representatives, if any?

The parties thereafter filed briefs and reply briefs by September 30, 2022. At the request of the Commission, the parties filed supplemental briefs by October 25, 2022.

EXHIBIT
A

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following:

FINDINGS OF FACT

1. Service Employees International Union Healthcare Wisconsin (SEIU) is a labor organization that functions as a collective bargaining representative of employees.

2. University of Wisconsin Hospitals and Clinics Authority (UWHCA) is an employer.

3. Prior to July 1, 1997, the Wisconsin Employment Peace Act defined an “employer” as “a person who engages the services of an employe[e],” Wis. Stat. § 111.02(7) (1995–96), and defined the term “person” to include “individuals, partnerships, associations, corporations, limited liability companies, legal representatives, trustees or receivers.” Wis. Stat. § 111.02(10) (1995–96):

4. Effective July 1, 1997, the Wisconsin Legislature amended the Peace Act definition of “employer” by adding a sentence to § 111.02(7) which stated: “For purposes of this subsection, a person who engages the services of an employe[e] includes the University of Wisconsin Hospitals and Clinics Authority.” 1995 Wis. Act 27 § 3782g; Wis. Stat. § 111.02(7) (1997–98).

5. Effective July 1, 1997, the Wisconsin Legislature created the following additional statutory provisions applicable to the UWHCA functioning as an “employer” under the Peace Act:

Wis. Stat. §§ 111.02(1), 111.02(7)(a)2., 111.02(7m), 111.02(9m), 111.02(10m), 111.05(5)–(6), 111.075, 111.115(2), 111.17(2); Wis. Stat. §§ 233.02(1)(h), 233.03(7), 233.10(2).

6. 2011 Wisconsin Act 10 eliminated all of the statutory provisions referenced in Findings of Fact 4 and 5 that became effective July 1, 1997.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following:

CONCLUSION OF LAW

The University of Wisconsin Hospitals and Clinics Authority is not an “employer” within the meaning of Wis. Stat. § 111.02(7).

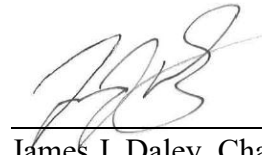
Based on the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following:

DECLARATORY RULING

The Wisconsin Employment Peace Act, Wis. Stat. ch. 111, subch. 1 (WEPA) does not apply to the University of Wisconsin Hospitals and Clinics Authority and its employees and their chosen representatives, if any.

Issued at the City of Madison, Wisconsin, this 25th day of November, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in dark ink, appearing to be 'JD', is written over a horizontal line.

James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW, AND DECLARATORY RULING**

The parties seek an answer to the following question:

Does the Wisconsin Employment Peace Act, Wis. Stat. ch. 111 subch. 1 (WEPA) apply to UWHCA and its employees and their chosen representatives, if any?

As well briefed by the parties, this question is answered by applying current Wisconsin Supreme Court precedent as to statutory interpretation. *See generally State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110. The parties disagree as to whether statutory history is always to be considered when seeking the “plain meaning” of a statute. SEIU asserts that it is only appropriate to look at statutory history if it confirms the “plain meaning” derived from an analysis of the statutory language itself. UWHCA argues that statutory history is always to be considered. The Commission concludes that UWHCA is correct.

As our Supreme Court held recently in *Brey v. State Farm Mut. Automobile Ins. Co.*, 2022 WI 7, ¶ 20, 400 Wis. 2d 417, 970 N.W.2d 1400:

Statutory history, which involves comparing the statute with its prior versions, "may also be used as part of 'plain meaning analysis.'" *James v. Heinrich*, 2021 WI 58, ¶26, 397 Wis.2d 517, 960 N.W.2d 350 (quoting *Richards v. Badger Mut. Insurance Co.*, 2008 WI 52, ¶22, 309 Wis.2d 541, 749 N.W.2d 581). Unlike legislative history, prior versions of statutory provisions were enacted law; as such, statutory history constitutes an intrinsic source that "is part of the context in which we interpret the words used in a statute." *Richards*, 309 Wis.2d 541, ¶22; *see also United States v. Franklin*, 2019 WI 64, ¶13, 387 Wis. 2d 259, 928 N.W.2d 545 (quoting *Richards*, at ¶22).

Therefore, the Commission concludes it will consider both the current language of Wis. Stat. § 111.02(7) as well as the applicable statutory history when determining the statute’s “plain meaning.”

While the current version of Wis. Stat. § 111.02(7)¹ is certainly susceptible to the interpretation given it by SEIU, the statutory history summarized in Findings of Fact 3 – 6 provides clear determinative evidence of the Wisconsin Legislature’s intent. Act 10’s specific deletion of all statutory references related to the UWHCA as a Peace Act “employer” clearly establishes that

¹ Wis. Stat. § 111.02(7), states:

(a) “Employer” means a person who engages the services of an employee, and includes a person acting on behalf of an employer within the scope of his or her authority, express or implied.

(b) “Employer” does not include any of the following:

1. The state or any political subdivision thereof.
2. Any labor organization or anyone acting on behalf of such organization other than when it is acting as an employer in fact.

the UWHCA is not an “employer” within the plain meaning of Wis. Stat. §111.02(7). Contrary to the argument of SEIU, there are no plausible alternative explanations for the legislative deletions reflected in Act 10.²

Given the foregoing, the Commission declares that the Wisconsin Employment Peace Act, Wis. Stat. ch. 111, subch. 1 (WEPA) does not apply to the University of Wisconsin Hospitals and Clinics Authority and its employees and their chosen representatives, if any.

Issued at the City of Madison, Wisconsin, this 25th day of November, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION



James J. Daley, Chairman

² If it were concluded that consideration of the statutory text and the statutory history created ambiguity, resort to the legislative history would also yield a conclusion that the UWHCA is not an “employer” within the meaning of the Peace Act.