STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

Appeal No. 2024AP0717

SERVICE EMPLOYEES INTERNATIONAL UNION HEALTHCARE WISCONSIN,

Petitioner-Appellant,

UNIVERSITY OF WISCONSIN HOSPITAL AND CLINICS AUTHORITY,

Other Party,

v.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,

Respondent-Respondent.

On Review from Dane County Circuit Court Case No. 22-CV-3199,
the Hon. Jacob B. Frost, Presiding

BRIEF OF SERVICE EMPLOYEES INTERNATIONAL UNION HEALTHCARE WISCONSIN

PINES BACH LLP

Tamara B. Packard, SBN 1023111
122 West Washington Avenue
Suite 900
Madison, Wisconsin 53703
(608) 251-0101 (telephone)
tpackard@pinesbach.com

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STATEMENT OF ISSUE PRESENTED FOR REVIEW

Does the Wisconsin Employment Peace Act, Wis. Stat. § 111.02 et seq., apply to the University of Wisconsin Hospitals and Clinics Authority and its employees and their chosen representatives?

Answered by the circuit court: No.

Answered by the Wisconsin Employment Relations Commission: No.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument is requested to address the legal issue presented in this matter, which involves interpretation of the state's oldest labor law and complex legal precedent regarding statutory interpretation, and to respond to questions that the court may have.

Publication is warranted under Wis. Stat. § 809.23(1)(a)5, as this is a case of substantial and continuing public interest: the question of whether the nurses, other health care providers, as well as service and support workers employed at the hospitals and clinics run by the University of Wisconsin Hospitals and Clinics Authority have rights and responsibilities like those unquestionably afforded by law to their peers employed by other health care systems is of great interest to the citizens of the state, many of whom are or could become patients at those hospitals and clinics. Publication is also warranted under Wis. Stat. § 809.23(1)(a)1 and 3, as the decision may clarify precedent for statutory interpretation and resolve or identify conflicts between prior decisions.

STATEMENT OF THE CASE

I. Nature of the case, procedural status, and circuit court disposition.

This is an appeal and review pursuant to Wis. Stat. §§ 227.52-.58 of a declaratory ruling issued on November 25, 2022 by Respondent-Respondent Wisconsin Employment Relations Commission (WERC) interpreting the definition of "employer" in the Wisconsin Employment Peace Act, Wis. Stat. § 111.02 et seq. (Peace Act). That declaratory ruling was made pursuant to Wis. Stat. § 227.41, following a September 22, 2022 joint petition from Petitioner-Appellant Service Employees International Union Healthcare Wisconsin (SEIU) and Other Party University of Wisconsin Hospitals and Clinics Authority (UWHCA) requesting that WERC declare whether the Peace Act applies to UWHCA, its employees and their chosen representatives. (R. 6, pp. 1-10) Following briefing, including submission of evidence, WERC declared it did not, instead finding as a matter of law that UWHCA is not an "employer" within the meaning of Wis. Stat. § 111.02(7) because of statutory changes to the Peace Act and Chapter 233 made by 2011 Wisconsin Act 10. (App-03; R. 12, pp. 36-40)

SEIU brought a petition for review of WERC's declaratory ruling to circuit court, pursuant to Wis. Stat. §§ 227.52 & 227.53. (R. 2) On March 22, 2024, after briefing and arguments presented by the parties, the Dane County Circuit Court, the Honorable Jacob B. Frost, presiding, ruled from the bench affirming WERC's ruling but on different legal grounds. (App-14; R. 42, p. 7) On March 26, 2024, the circuit court entered a Final Decision affirming WERC for the reasons stated on the record on March 22, 2024. (App-39; R. 39)

II. Statement of facts relevant to the issues presented for review.

A. The relationship between SEIU and UWHCA

UWHCA was created by 1995 Wisconsin Act 27 to operate and manage the hospitals and clinics at the University of Wisconsin (hospitals and clinics). (R. 6, p. 2) Before 2014, certain registered nurses and other allied health professionals employed by UWHCA bargained collectively with the Authority through their chosen union, SEIU. In 2014, after expiration of the UWHCA-SEIU collective bargaining agreement then in effect, UWHCA stopped recognizing SEIU as the nurses' and other professionals' collective bargaining agent, citing 2011 Wisconsin Act 10 as justification. Since 2014, the registered nurses and other allied professionals have had no union representation recognized by UWHCA. (R. 6, p. 3)

Beginning in 2018 and through the present, registered nurses and other allied health professionals employed by UWHCA (the nurses) have asked the Authority to again recognize SEIU as their union. UWHCA refuses to do so, claiming that it is not an employer as defined by the Peace Act. (R. 6, p. 3)

B. The history of UWHCA and its employees

Prior to June 29, 1996, hospitals and clinics at the University of Wisconsin were operated by the University of Wisconsin-Madison (*compare* Wis. Stat. § 36.25(13) (1993) *with* § 233.04(3b) (1995)), and thus the hospital and clinics' workers were State of Wisconsin employees (either classified employees or academic staff) (*compare* Wis. Stat. § 36.09(1)(e) (1993) *with* § 233.10 (1995)), and as such their rights as employees were governed by the State Employment Labor Relations Act, Wis. Stat. § 111.81

et seq. (SELRA). The operations of the hospitals and clinics were subject to oversight by the University of Wisconsin Board of Regents, as well as by the Executive Branch and the Legislature. *See, e.g.,* Wis. Stat. §§ 36.09(1)(j) (1993); 36.11 (1)(b) (1993); 36.47 (1993). The operational structure was streamlined through 1995 Wisconsin Act 27 (Act 27), which was passed by the Legislature and enacted on July 26, 1995.

Under Act 27, some hospitals and clinics workers became employees of UWHCA in 1996, including "professional employees" such as registered nurses and other allied health professionals. At the same time, other hospitals and clinics workers became employees of the University of Wisconsin Hospital and Clinics Board (UWHC Board), a new State board. 1995 Wis. Act 27 §§ 224m, 9159(4)(a) and (c) (App-53, 69). The employees of UWHC Board remained state employees and their labor relations relationship remained governed by SELRA.

Act 27 gave UWHCA the authority to select and hire its own employees, assign their duties and positions, and fix their pay and benefits. Wis. Stat. § 233.10(1) & (2) (1995). Act 27 also added provisions specific to UWHCA to the Peace Act. (App-04; R. 12, p. 37) Those provisions ensured continuity in the transition from State employment to UWHCA employment, expressly preserving existing relationships with the chosen representatives of unionized employees already working at the hospitals and clinics and already organized into specific bargaining units with existing collective bargaining agreements. *See, e.g.* Wis. Stat. §§ 111.02(7) (1995); 111.05(3g) (1995); 111.825(1m) (1995).

With these reforms, UWHCA would operate independently of Regent, Legislative Branch, or Executive Branch control with respect to its employees and other aspects of its operations. *See* Wis. Stat. § 233.03 (1995).

While UWHCA would be subject to auditing by the Legislative Audit Bureau (Wis. Stat. § 13.94(1)(o) (1995)) and would have to submit periodic reports to the Legislature and Governor (Wis. Stat. § 233.04(1) (1995)), neither the Legislative nor Executive Branches were to have any authority to remedy perceived problems at UWHCA short of eliminating the Authority entirely. *See* Wis. Stat. § 233.03 (1995). Thus, for all intents and purposes, UWHCA has, since 1996, operated as any private hospital or health system does.

In 2011, 2011 Wisconsin Act 10 ("Act 10") changed the employment system for hospital and clinic workers again. All those who had been State employees under UWHC Board were folded into UWHCA, unifying all employment under the Authority. 2011 Wis. Act 10 §§ 12, 377. Act 10 also made changes to some statutory references to UWHCA. (App-04; R. 12, p. 37) Among other things, Act 10 removed the explicit reference to UWHCA in the Peace Act's definition of "employer," which had been added through Act 27, but Act 10 did not change any other language in the definition of employer, nor did it explicitly exclude UWHCA from the employer definition as the Legislature has done for other entities and could have done for UWHCA. It essentially returned the language to its pre-Act 27 form. *See* Wis. Stat. § 111.02(7)(b).

C. UWHCA's acquisition of SwedishAmerican

In 2015, UWHCA acquired SwedishAmerican Health System Corporation, an Illinois-based non-profit organization, and SwedishAmerican became a wholly owned subsidiary or "division" of UWHCA. (R. 11, pp. 1-12; R. 12, p. 5) SwedishAmerican facilities acquired by UWHCA in the merger include SwedishAmerican Hospital in Rockford, Illinois; a medical center in Belvidere, Illinois; a regional cancer

center; and more than 30 clinics in Illinois. All of these Illinois facilities are now called "UW Health" facilities, just as UWHCA facilities in Wisconsin are called "UW Health." (R. 12, p. 7)

D. The Parties' Memorandum of Understanding

In the fall of 2022, after UWHCA refused to recognize its nurses' chosen bargaining representative, the nurses planned a strike for recognition of their union scheduled for September 13, 14, and 15, 2022. To avert that strike and to secure a resolution to legal disputes between them, UWHCA and SEIU entered into a Memorandum of Understanding (MOU). (R. 6, p. 5) Among other things, the MOU set forth an agreed-upon process through which SEIU and UWHCA would seek a legal determination regarding applicability of the Peace Act to UWHCA, its employees, and their chosen representatives. (R. 6, pp. 5-6)

Additional facts are discussed as necessary below.

SCOPE AND STANDARD OF REVIEW

State agency decisions are reviewed by Wisconsin courts pursuant to Wis. Stat. §§ 227.52-.58, part of the Wisconsin Administrative Procedures Act. "When an appeal is taken from a circuit court order reviewing an agency decision, we review the decision of the agency, not the circuit court." *Clean Wisconsin, Inc. v. Wisconsin Dep't of Nat. Res.*, 2021 WI 71, ¶14, 398 Wis. 2d 386, 961 N.W.2d 346 (citing *Hilton ex rel. Pages Homeowners' Ass'n v. DNR*, 2006 WI 84, ¶15, 293 Wis. 2d 1, 717 N.W.2d 166).

The scope and standards of the appellate court's review are set by Wis. Stat. § 227.57. The only error claimed here is an error of law. "The court shall set aside or modify the agency action if it finds that the agency has erroneously interpreted a provision of law and a correct interpretation

compels a particular action, or it shall remand the case to the agency for further action under a correct interpretation of the provision of law." Wis. Stat. § 227.57(11). This court reviews an agency interpretation of law without deference. Wis. Stat. § 227.57(11); *Tetra-Tech EC, Inc. v. Dep't of Revenue*, 2018 WI 75, ¶¶ 3, 84, 382 Wis. 2d 496, 914 N.W.2d 21.

After *Tetra-Tech*, reviewing courts may at most afford "due weight" to an agency's experience or specialized or technical knowledge. *Tetra-Tech*, 382 Wis. 2d 496, ¶ 3. "Due weight" means "giving respectful, appropriate consideration to the agency's views," which "is a matter of persuasion, not deference." *Id.*, ¶ 78; *see also* Wis. Stat. § 227.57(10) & (11). As shown below, even "due weight" is not appropriate here, as this court is at least as competent as the agency to decide the legal question involved. *See Samens v. Lab. & Indus. Rev. Comm'n*, 117 Wis. 2d 646, 669, 345 N.W.2d 432 (1984). Where disputed issues of law may be resolved from undisputed facts, the courts are at least as competent as an agency to determine such questions. *Id.*

The court's review is of the entire record. Wis. Stat. § 227.57(1). It is not confined to the agency's factual findings but is also to "consider unrebutted facts in the record so long as they do not conflict with those found by" the agency. *Coulee Cath. Sch. v. Lab. & Indus. Rev. Comm'n., Dep't. of Workforce Dev.*, 2009 WI 88, ¶ 69, 320 Wis. 2d 275, 768 N.W.2d 868; *see also* Wis. Stat. § 227.55(1) (defining record as everything from the "proceedings in which the decision under review was made, including all pleadings, notices, testimony, exhibits, findings, decisions, orders, and exceptions…"). In this case, SEIU does not dispute the six facts actually found by WERC (App-04; R. 12, p. 37), and indeed the case can be decided as a matter of law on the text of the statute and those facts. However,

should the court wish, it can fortify its interpretation of the Peace Act by reviewing the statutory history and referring to other undisputed facts, supported with evidence in the record, that the Commission did not mention in its ruling.[1]

Because WERC erred in applying the rules of statutory interpretation, and because applying those rules correctly shows that UWHCA is a Peace Act "employer," this court should so find as a matter of law, reverse WERC's declaratory ruling, and remand the case to WERC for specific further proceedings.

ARGUMENT

UWHCA meets the Peace Act's statutory definitions of "person" and therefore "employer" and does not fall within any of the statute's exceptions to "employer." The Peace Act thus applies to UWHCA and its employees and their chosen representatives.[2] The Peace Act defines "employer," and identifies exceptions to that definition, in Wis. Stat. § 111.02(7)(a) & (b):

> **(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.

[1] WERC submitted the record in seven parts, as Record 6 through 12. (*See* R. 5)

[2] The Peace Act describes various rights and responsibilities of those who fall within the definition of "employer," as well as their employees and their chosen representatives, with respect to employment relations. In particular, the Peace Act regulates elections for selection of employee representatives (unions), collective bargaining between unions and employers, other protected concerted activities such as mutual aid among employees, and dispute resolution. *See, e.g.* Wis. Stat. §§ 111.04-.07.

> **2.** Any labor organization or anyone acting in behalf of such organization other than when it is acting as an employer in fact.

The Peace Act defines "person" in Wis. Stat. § 111.02(10) as follows:

> **(10)** The term "person" includes one or more individuals, partnerships, associations, corporations, limited liability companies, legal representatives, trustees or receivers.

Chapter 990 of the Wisconsin Statutes sets forth statutory rules of construction, including the meanings of various words and phrases which are to be observed "unless such construction would produce a result inconsistent with the manifest intent of the legislature." Wis. Stat. § 990.01. Under Wis. Stat. § 990.01(26) "person" includes "all partnerships, associations and bodies politic or corporate."

The definition of "person" in Chapter 990 adds to and does not conflict with the definition of "person" in the Peace Act, just as the Wisconsin Supreme Court found it added to and did not conflict with the definitions of "person" in Wisconsin's Fair Dealership Law, and in Wisconsin's Antitrust Act. *Benson v. City of Madison,* 2017 WI 65, ¶¶ 29-30, 376 Wis. 2d 35, 897 N.W.2d 16; *City of Madison v. Hyland, Hall & Co.,* 73 Wis. 2d 364, 369-371, 243 N.W.2d 422 (1976).

Finally, Chapter 233 of the Wisconsin Statutes is the chapter that created the UWHCA and where its organization, powers and duties are described. In relevant part, it states at Wis. Stat. § 233.02(1):

> There is created a public body corporate and politic to be known as the "University of Wisconsin Hospitals and Clinics Authority".

UWHCA is a corporation and a "public body corporate and politic" and therefore is an employer under the Peace Act. § 233.02(1). The Peace

Act defines "employer" broadly to mean "a person who engages the services of an employee." Wis. Stat. § 111.02(7)(a). UWHCA agreed in the Joint Petition to WERC that it engages the services of employees (including registered nurses). (R. 6, p. 3) "Person" in the Peace Act includes "corporations" and "bodies politic or corporate." Wis. Stat. §§ 111.02(1), 990.01(26). Because UWHCA is a corporation and "public body corporate and politic," it must be a person and therefore an employer, unless otherwise excluded from the Peace Act.

The only exclusions from the Peace Act's definition of "employer" are the State and its political subdivisions, as well as labor unions, but UWHCA does not claim and has never claimed to be any of these, nor does UWHCA meet the statutory definition of any of these entities which are excluded from the definition of employer.

As shown below, a plain language analysis of these statutory sections decides this case with a finding that the UWHCA and its employees and their representatives are governed by the Peace Act. The WERC reached a contrary conclusion—that UWHCA is not a Peace Act "employer"— because it committed an error of law with respect to statutory interpretation by ignoring the plain text of the existing statute, and instead ascribed meaning to it based on what it said was the statutory history. Under controlling Wisconsin Supreme Court precedent, the plain text of the statute governs, and an interpreting agency or court cannot use statutory history to create an exception that does not exist in the law's text. WERC violated that rule. Instead of applying the Peace Act's plain text, the Commission cited statutory history it said created an exclusion of UWHCA from the Act's coverage where none exists—it conflated what it saw as the legislative intent with statutory history to incorrectly conclude

that UWHCA was not an employer under the Peace Act. By following the proper path for statutory analysis, which must start with the plain language of the existing statute and then, optionally, reviewing prior versions of the Peace Act to confirm the plain text, the court will arrive at the conclusion that UWHCA and its employees and chosen representatives are governed by the Peace Act.

I. In construing a statute, Wisconsin begins with the plain text and may, but does not have to, confirm an unambiguous reading by reviewing prior versions of the statute.

Wisconsin courts have consistently required "that statutory interpretation focus primarily on the language of the statute. We assume that the legislature's intent is expressed in the statutory language." *Fleming v. Amateur Athletic Union of United States, Inc.*, 2023 WI 40, ¶ 14, 407 Wis. 2d 273, 990 N.W.2d 244. The Wisconsin Supreme Court has repeatedly held that "statutory interpretation begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry." *Id.*, quoting *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110. *See also Banuelos v. UWHCA*, 2023 WI 25, ¶ 16, 406 Wis. 2d 439, 988 N.W.2d 627. "It is the enacted law, not the unenacted intent, that is binding on the public." *Kalal*, 2004 WI 58, ¶ 44.

The Wisconsin Attorney General reiterated these principles in his June 2, 2022 Opinion addressing Peace Act coverage of UWHCA and its employees:

> "Statutory language is given its common, ordinary, and accepted meaning, except that technical or specifically-defined words or phrases are given their technical or special definitional meaning." *State ex rel. Kalal v. Cir. Ct. for Dane Cty.*, 2004 WI 58, ¶ 45, Wis. 2d 633. The statutory language is "interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or

> closely-related statutes; and reasonably, to avoid absurd or unreasonable results." *Id.* ¶ 46. If this textual analysis "yields a plain, clear statutory meaning, then there is no ambiguity," and the statute should be applied according to that plain meaning. *Id.* Courts may not "disregard the plain, clear words of the statute." *Id.* (quoting *State v. Pratt,* 36 Wis. 2d 312, 317, 153 N.W.2d 18 (1967). Similarly, a court cannot "read into the statute words the legislature did not see fit to write." *Dawson v. Town of Jackson,* 2011 WI 77, ¶ 42, 336 Wis. 2d 318, 801 N.W.2d 316.

Opinion of Wis. Att'y Gen. to Governor Tony Evers, OAG-01-22 (6/2/22), ¶ 3, https://www.doj.state.wi.us/opinions/ag-opinions (select link to OAG-01-22) (App-41-42).

In construing a statute, a "court is not at liberty to disregard the plain, clear words of the statute." *Banuelos*, 2023 WI 25, ¶ 16, *quoting Kalal,* 2004 WI 58, ¶ 46. While courts do not also have to review statutory history,[3] they can, as part of the plain meaning analysis. *Id.* ¶ 17. Central to any consideration of statutory history of a statute that is facially unambiguous is that statutory history cannot be used to inject ambiguity into an unambiguous text or to reach a result that is contrary to the plain text. Rather, such statutory history review is to "support" the plain meaning already identified from the text itself. *Fleming,* 2023 WI 40, ¶ 27.

The Supreme Court addressed this issue directly in *State ex rel. Girouard v. Jackson Cty. Cir. Ct.*, 155 Wis. 2d 148, 454 N.W.2d 792 (1990). The plain text of the relevant statute in that case authorized waiver of a certain cost for indigent litigants; an earlier version of the statute had not. The court of appeals used that statutory history to find ambiguity in the text, but the Supreme Court rejected that approach:

[3] "Statutory history" is simply "previously enacted versions of the statute which have subsequently been amended by the legislature." It is distinct from "legislative history," which is "extrinsic evidence of a law's meaning and becomes relevant only to confirm plain meaning or when a statute remains ambiguous even after the primary intrinsic analysis has been exhausted." *Banuelos*, 2023 WI 25, ¶ 25, ¶ 25 n.9 (internal citation omitted). No party has claimed any statute at issue is ambiguous.

> **[A] court cannot resort to statutory history for the purpose of rendering an otherwise clear statute ambiguous**…That is what the court of appeals did in this case. It looked to the prior statute and concluded that, under that statute, there could be no waiver of the requirement that payment for reporter's transcripts be paid for by the litigant. It then looked to the newly amended statute and reasoned, given its conclusion in respect to the prior statute, that the statutory changes were not sufficient to compel a different conclusion. This approach to statutory meaning reversed the appropriate order of reasoning. The court…proceeded to construe the earlier statute that was not at issue and then applied that construction to the presently relevant statute.
>
> In the absence of an ambiguity in the present statute, there can be no recourse to statutory history. Only the plain meaning of words in the normal sense, as used in the context of the statute, can be looked to.

Girouard, 155 Wis. 2d at 156 (emphasis added) (internal citation omitted).

The Court addressed the issue again the following year and emphasized that when a statute is unambiguous, statutory history may be consulted only to "reinforce" a plain-text reading. The Court said: "While legislative history cannot be used to demonstrate that a statute unambiguous on its face is ambiguous, there is no converse rule that statutory history cannot be used to reinforce and demonstrate that a statute plain on its face, when viewed historically, is indeed unambiguous." *State v. Martin*, 162 Wis. 2d 883, 896, n.5, 470 N.W.2d 900 (1991). The Court reaffirmed this rule in 2000, quoting *Martin:* "Although the [plain meaning rule] canon prevents courts from tapping legislative history to show that an unambiguous statute is ambiguous, 'there is no converse rule that statutory history cannot be used to reinforce and demonstrate that a statute plain on its face, when viewed historically, is indeed unambiguous.'" *Seider v. O'Connell*, 2000 WI 76, ¶ 51, 236 Wis. 2d

211, 612 N.W.2d 659.[4] More recently, the Court explained this rule as follows: "If we go beyond unambiguous text and inquire into legislative history, our investigation should serve the purpose of showing how the legislative history supports our interpretation of a statute that is clear on its face." *Hamilton v. Hamilton*, 2003 WI 50, ¶ 37, 261 Wis. 2d 458, 661 N.W.2d 832 (citation omitted). Thus, a court is limited to the use of statutory history to confirm the unambiguous text it is interpreting, not to create ambiguity or reach a conclusion contrary to a plain-text reading.

II. The plain text of the statutes encompasses UWHCA within the Peace Act's definition of "employer."

A. UWHCA is a "corporation" and therefore a "person" and thus an "employer" as defined by the Peace Act.

The Peace Act defines "employer" broadly to include any "person who engages the services of an employee," including those acting on behalf of such a person. Wis. Stat. § 111.02(7)(a). The Act defines "person" to include "one or more individuals, partnerships, associations, **corporations**, limited liability companies, legal representatives, trustees or receivers," Wis. Stat. § 111.02(10) (emphasis added). UHWCA, in turn, is a "political corporation." *Rouse v. Theda Clark Med. Ctr., Inc.*, 2007 WI 87, ¶ 2, 302 Wis. 2d 358, 735 N.W.2d 30. In short, under this plain language, as a corporation UHWCA is a "person" who "engages the services of … employee[s]" and is therefore an "employer" under the Peace Act. Since

[4] This portion of *Seider* was cited with approval in *Kalal. Kalal,* 2004 WI 58, ¶ 43. *Seider* continues to be cited for this proposition. *See, e.g., Kilian v. Mercedes-Benz USA, LLC,* 2011 WI 65, ¶ 31, n.13, 335 N.W.2d 566, 799 N.W.2d 815; *Chippewa Cnty. Dep't of Hum. Servs. v. Bush,* 2007 WI App 184, ¶ 18, n.11, 305 Wis. 2d 181, 738 N.W.2d 562.

UWHCA does not meet any exception to this definition of "employer" it and its employees and their representatives are governed by the Peace Act.

This conclusion is required by the controlling law announced in two Wisconsin Supreme Court decisions also addressing whether certain entities are "corporations" and therefore "persons" governed by other Wisconsin laws. First, in *City of Madison v. Hyland, Hall & Co.,* 73 Wis. 2d 364, 243 N.W.2d 422 (1976), the Court addressed whether a city and county were "persons" for purposes of the Wisconsin Antitrust Act. Like the Peace Act, that Act defines "persons" to include "corporations." *Hyland*, 73 Wis. 2d at 369. The Court recognized that it "has repeatedly held that a city is a municipal corporation" and that [a county] is a 'quasi-municipal corporation.'" *Id.* at 370. The Court held therefore that "cities and counties are 'corporations' within the meaning of sec. 133.04" and thus are "persons" under the Wisconsin Antitrust Act. *Id.* at 371.

Second, in *Benson v. City of Madison,* 2017 WI 65, 376 Wis. 2d 35, 897 N.W.2d 16, the Court addressed whether the City of Madison was a "corporation" within the meaning of the Wisconsin Fair Dealership Law (WFDL), and thus a "person" under that law. Like the Peace Act and the Antitrust Act, the WFDL defined "person" to include "corporation." *Benson*, 2017 WI 65, ¶ 24. Recognizing prior Court holdings that "a city is a municipal corporation," the Court held that it was, explaining, "The WFDL applies by its terms to "corporation[s]," and the City is a municipal corporation." *Id.* The Court noted that this interpretation comported the rule to give statutory language "its common, ordinary, and accepted meaning" and that absent "some indication to the contrary, general words…are to be accorded their full and fair scope. They are not to be arbitrarily limited." It thus announced the following rule of statutory

interpretation: "The general term 'corporation' thus presumptively should be read to include more specific types of corporations." *Id.* at ¶ 25. Applied here, that rule dictates that UWHCA, a "political corporation," is a "corporation" and therefore a "person" under the Peace Act, and thus it and its employees and their representatives are governed by that Act.

B. UHWCA is a "public body corporate and politic" and therefore a "person" and thus an "employer" as defined by the Peace Act.

In addition to being a corporation, UWHCA is a "public body corporate and politic." Wis. Stat. § 233.02(1). As such, it is also a "person" under Wis. Stat. § 990.01(26), which defines "person" to include "bodies politic or corporate." This definition does not conflict with the definition of "person" in the Peace Act; rather, it adds to that definition, just as the Supreme Court found in *Hyland* and *Benson* the definition of "person" in Wis. Stat. § 990.01(26) added to the definitions of "person" in the Antitrust Act and WFDL. The *Hyland* and *Benson* decisions are controlling on this point as well.

Like UWHCA, cities and counties are "bodies corporate and politic." *Hyland,* 73 Wis. 2d at 371. Wis. Stat. § 990.01(26) defined "person" to include "bodies politic and corporate." *Id.* Recognizing that the definition of "person" in the Antitrust Act would control over any inconsistent definition found elsewhere in the statutes, and that statutes on the same subject matter are to be harmonized if possible, *Hyland,* 73 Wis. 2d at 370, the Court found "no contradiction" between the two definitions. The Court therefore concluded that as "bodies corporate and politic," the City of Madison and Dane County were "persons" within the meaning of the Antitrust Act. *Id.* at 371.

The Court reached the same conclusion with respect to the WFDL in *Benson,* 2017 WI 65. There, the Wisconsin Supreme Court held that the City of Madison, a "public body corporate and politic" was a "person" subject to the WFDL because the word "person" in the WFDL includes "bodies politic or corporate,"[5] consistent with the reasoning in *Hyland*. *Id.*, 2017 WI 65, ¶¶ 54-55. By this same reasoning, *Hyland* and *Benson* dictate that the word "person" in the Peace Act must include "bodies politic or corporate." Therefore, just like the City of Madison, the UWHCA, as a body both "corporate" and "politic," Wis. Stat. § 233.02(1), is governed by the Peace Act, as well as its employees and their representatives.

C. UWHCA is not excepted from "employer" under the Peace Act because it is not any of the exceptions, including a political subdivision of the state.

Under the Peace Act, an employer is defined as "a person who engages the services of an employee" unless that person is a labor organization or the "state or any political subdivision thereof." Wis. Stat. § 111.02(7). UWHCA is plainly not a labor organization. Nor is it the state. *See OAG-01-22*, ¶¶ 10-12 (App-43-44) (discussing multiple reasons why UWHCA cannot be considered the state). Is UWHCA a political subdivision of the state of Wisconsin as defined by Wisconsin law? It is not. While the term "political subdivision" is undefined in the Peace Act, a plain meaning analysis of the term makes clear that it is restricted to entities that are locally-bounded and either are divisions of the state or receive state funding. UWHCA meets none of those criteria.

[5] By the time the *Benson* case arose, the definition of "person" in Wis. Stat. § 990.01(26) had been "expanded" to its current language, to include "bodies politic or corporate." *Benson,* 2017 WI 65, ¶ 29, n.10 (emphasis in original).

1. UWHCA does not fit the dictionary definition of "political subdivision" of the state.

Where a term is undefined in a statute, it is given its "common, ordinary, and accepted meaning, except that technical or specially defined words or phrases are given their technical or special definitional meaning." *Kalal,* 2004 WI 58, ¶ 45 (citation omitted). For legal terms, courts may consult legal dictionaries. *See State v. Schaefer*, 2008 WI 25, ¶¶29–31, 308 Wis. 2d 279, 746 N.W.2d 457 (consulting Black's Law Dictionary to determine the meaning of "discovery").

Black's Law Dictionary defines political subdivision as "a division of a state that exists primarily to discharge some function of local government." BLACK'S LAW DICTIONARY 11th Ed. (2019). UWHCA does not fit within this definition: it is not a division of the state and it does not discharge a function of local government. Instead, it operates a system of hospitals and clinics in Wisconsin and Illinois. It has a subsidiary or "division," SwedishAmerican Health System Corporation, a non-profit organization. As detailed in the Facts section, since at least 1996, it has essentially operated as any private hospital or health system.

Further, although there is no clear definition of what exactly makes an entity a division of the state, UWHCA lacks the indicia that one would expect to find in an entity that is a division of the state. UWHCA is an independent market participant in the healthcare industry and since 1996 operates independently of Regent, Legislative Branch, or Executive Branch control with respect to its operations, including its employees. Wis. Stat. §§ 233.03 (1995); 233.10(1) & (2) (1995). It does not receive funding from the state. C*ompare* Wis. Stat. § 36.09(1)(j) (1993) *with* § 233.20-.23. Unlike

government agencies and municipalities, UWHCA does not enjoy sovereign immunity. *See Rouse*, 2007 WI 87, ¶ 9.

UWHCA also does not discharge a function of *local* government, because it has no regional limitation on its functions by statute. In fact, by statute, UWHCA is designed to function on a statewide basis and beyond, even into other states. One of its purposes is "[a]ssisting health programs and personnel *throughout the state and region* in the delivery of health care." Wis. Stat. § 233.04 (3)(b)(a)(4) (emphasis added). It also has a duty to "administer a *statewide* poison control program" in certain situations. Wis. Stat. § 233.04(10). And UWHCA not only treats patients from across the state and region, but it also owns an Illinois company as a subsidiary and operates hospitals and clinics in Illinois. UWHCA, therefore, does not fall under the dictionary definition of "political subdivision."

2. The legislature's consistent use of the term "political subdivision" does not include entities like UWHCA.

Courts in Wisconsin should consider the "context in which [a term] is used," *Kalal*, 2004 WI 58, ¶ 46, with a "presumption of consistent usage" across statutes. *CED Properties, LLC v. City of Oshkosh*, 2018 WI 24, ¶ 24 n.12, 380 Wis. 2d 399, 909 N.W.2d 136 (quoting Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Text 172-73 (2012)).

The legislature has provided a consistent, uniform definition given to "political subdivision" in other statutes. At the very least, the term is limited to local, geographically-bound entities which receive state funding. The vast majority of Wisconsin statutes that define "political subdivision" define it as a city, village, town, or county. Wis. Stat. §§ 16.99(3d),

23.175(1)(a), 29.038(1)(b), 44.31(6), 49.49(7)(a)3, 66.0137(1)(c),[6] 66.0143(1)(a), 66.0416(1)(a), 84.06(12)(a)3, 84.185(1)(cm), 85.26(1)(c), 85.193(1)(d), 86.31(1)(d), 86.50(1)(c), 86.51(1)(c), 91.01(24), 93.73(1m)(f), 93.90(1m)(f), 94.701(2), 101.14(4m)(a)5, 101.178(1), 101.648(1)(c), 106.50(1m)(om), 114.105(1)(b), 165.65(1)(e), 173.01(3), 175.46(1)(e), 182.0175(1)(bw), 196.378(4g)(a)3, 196.504(1)(ae), 196.5045(1), 200.35(14)(a)1, 229.821(11), 252.03(2j), 283.33(1m)(b), 299.50(1)(d), 301.08(3)(a), 321.01(10), 349.01(2)(m), 700.28(1), 895.444(1)(c). *See also OAG-01-22*, ¶ 13 (App-45).

In all other instances where "political subdivision" is defined by statute–four in total–the legislature's definition includes city, village, town, or county and adds other geographically-bounded, local entities that receive state funding. These include lake sanitary districts, public inland lake protection and rehabilitation districts, transit commissions, town sanitary districts, technical college districts, and boards of appeals or boards of adjustment. Wis. Stat. §§ 23.094(1), 85.064(1)(b), 165.85(2)(d), 781.10(1)(b). None of these other instances, however, include UWHCA or a similar entity.

Other statutes that do not define "political subdivision" nonetheless support this definition. MERA, a companion statute also regulating labor relations, is most important. *See Kalal,* 2004 WI 58, ¶ 46 (Statutory language is interpreted "in relation to the language of surrounding or closely-related statutes"). MERA defines "municipal employer" to include "any city, county, village, town, metropolitan sewerage district, school district, long-term care district, local cultural arts district … or ***any other*** political

[6] Wis. Stat. § 66.0137(1) defines "political subdivision" as "any municipality or county" and then defines municipality as "any city, village, or town."

subdivision of the state." Wis. Stat. § 111.70(1)(j) (emphasis added). "Political subdivision" under a closely-related statute, then, includes geographically-bounded, local entities that receive state funding like school districts and local cultural arts districts. Even if "political subdivision" could theoretically have a broader definition elsewhere, it must be limited to these kinds of geographically-bounded, local entities, in the realm of labor relations. *See Stroede v. Soc'y Ins.*, 2021 WI 43, ¶ 14, 397 Wis. 2d 17, 959 N.W.2d 305 (the canon *noscitur a sociis* "instructs us that words are known from their associates.") (quotation omitted).

UWHCA is neither geographically-bounded and local nor does it receive state funding. As described above, UWHCA operates on a statewide and multi-state regional basis, making it very different than the kinds of entities the legislature considers to be "political subdivisions." Therefore, UWHCA cannot be considered a "political subdivision" of the state of Wisconsin.

III. Statutory history confirms the plain text analysis above.

As shown in Section II above, the plain text of the Peace Act encompasses UWHCA, its employees, and their chosen representatives as governed by the Act. The court's analysis could, and should, end there. As discussed in Section I above, however, the court may at its option look beyond the statute's current text to earlier versions to ***confirm or verify*** its plain text reading. Should the court choose to do so, it will find that the statutory history supports the conclusion that UWHCA is a Peace Act "employer."

A. WERC erred in its use of statutory history.

WERC concluded that UWHCA is not a Peace Act "employer" because it erred in its approach to statutory interpretation. Rather than begin with the Peace Act's plain text, which as shown in Section II easily encompasses UWHCA within its definition of "employer," WERC used statutory history to create an exception to the definition of "employer" that does not exist. In particular, WERC ignored the existing statutory text, and instead focused on Act 10's 2011 amendment of the Peace Act--misconstruing presumed legislative intent for statutory history—which deleted the explicit references to UWHCA from the Peace Act. It then allowed an incorrect interpretation of that statutory history to override the plain text of the existing statute. (App-03; R. 12, pp. 36-40) That approach is inconsistent with Wisconsin law.

Numerous decisions demonstrate and articulate that in the statutory interpretation process, statutory history may be considered only after an analysis of the plain text has been conducted. The universal conclusion is that while a review of statutory can be ***part*** of the process, in no case should a court (or agency) ***start*** interpreting the statute by reviewing its history or exclude consideration of the plain language of the current statute, which is precisely what WERC did. The Wisconsin Supreme Court has explicitly rejected looking first at the prior statute and then the current statute to identify what is different to discern its meaning: "This approach to statutory meaning reverse[s] the appropriate order of reasoning." *Girouard,* 155 Wis. 2d at 156.

Every case decided after *Girouard* has used the correct order of reasoning with unambiguous statutes: (1) current language plain meaning;

(2) permissive confirmation using statutory history; (3) permissive verification using legislative history. For example, in a 2015 "concurring" opinion joined by a majority of the Supreme Court, Justice Ziegler wrote that a reviewing court may "***verify a plain-meaning interpretation*** by consulting statutory history, that is, prior enacted and repealed versions of the statute under review." *Anderson v. Aul,* 2015 WI 19, ¶ 109, 361 Wis. 2d 63, 862 N.W.2d 304 (J. Ziegler, concurring and joined by J. Crooks, J. Roggensack, J. Gableman) (emphasis added). Although the lead opinion used multiple sources to determine legislative intent, the concurring opinion "clarif[ied] that a majority of the court concluded that the statutes at issue are not ambiguous and that their plain meaning dictates the outcome in this case." *Id.* at ¶ 106. Justice Ziegler and the other three concurring Justices added:

> The lead opinion's analysis [of the statutory history] should not be construed as a determination that such analysis is necessary because of any ambiguity in the statutes. To the contrary, analysis of statutory history is part of a plain-meaning analysis and **can be used to confirm a statute's plain-meaning**. *Heritage Farms, Inc. v. Markel Ins. Co.*, 2009 WI 27, ¶ 15, 316 Wis. 2d 47, 762 N.W.2d 652 (relying on statutory history to confirm a statute's plain meaning); *Cnty. of Dane*, 315 Wis. 2d 293, ¶ 27, 759 N.W.2d 571 (explaining that statutory history is part of a plain-meaning analysis)….
>
> After analyzing statutory history, the lead opinion briefly considers legislative history….Because the statutes are unambiguous, the opinion's reason for consulting legislative history **also must be to confirm** the plain meaning of those statutes.

Id. at ¶¶ 111-112.

Indeed, the Wisconsin Supreme Court has again and again instructed that statutory interpretation begins with the plain text. If the language is clear, an interpreting agency's or court's work is ordinarily done. A review of statutory history may be undertaken *but only to* ***confirm***

*or **verify*** a plain text reading. *In Crown Castle USA, Inc. v. Orion Const. Grp., LLC,* the Court, interpreting Wisconsin's supplemental proceeding statute, stated, "we recognize statutory rights only where the legislature has, through the legislative process, specifically acted to create them." *Crown Castle USA, Inc. v. Orion Const. Grp., LLC*, 2012 WI 29, ¶ 16, 339 Wis. 2d 252, 811 N.W.2d 332 (internal citation omitted). The Court continued, noting that, "When interpreting statutory rights, we have previously declined to undertake '[a]d hoc judicial discovery of implied statutory rights,' because such an approach would impinge on the purview of the legislature." *Id.* at ¶ 17 (citing *Harvot v. Solo Cup Co.,* 2009 WI 85, ¶ 50, 320 Wis.2d 1, 768 N.W.2d 176.). It then embarked on a review of the language of the statute itself, *id.*, ¶¶ 19-26, considered surrounding provisions to confirm its interpretation, *id.,* ¶¶27-31, and finally turned to the statutory history to support the plain text construction. *Id.,* ¶ 32. *See also, e.g., Legue v. City of Racine,* 2014 WI 92, ¶ 71, 357 Wis. 2d 250, 849 N.W.2d 837; *White v. City of Watertown*, 2019 WI 9, ¶ 25, 385 Wis. 2d 320, 922 N.W.2d 61; *James v. Heinrich,* 2021 WI 58, ¶ 26, 397 Wis. 2d 517, 960 N.W.2d 350; *Fabick v. Evers,* 2021 WI 28, ¶ 30, 396 Wis. 2d 231, 956 N.W.2d 856; *State ex rel. Nudo Holdings, LLC v. Bd. of Rev. for City of Kenosha,* 2022 WI 17, ¶ 23, 401 Wis. 2d 27, 972 N.W.2d 544; *State v. Green,* 2022 WI 30, ¶ 44, 401 Wis. 2d 542, 973 N.W.2d 770; *Becker v. Dane County,* 2022 WI 63, ¶ 15, 403 Wis. 2d 424, 977 N.W.2d 390; *Fleming v. Amateur Athletic Union of United States, Inc.,* 2023 WI 40, ¶¶ 14, 16, 21, 27, 33, 407 Wis. 2d 273, 990 N.W.2d 244; *Banuelos v. UWHCA,* 2023 WI 25, ¶ 15, 406 Wis. 2d 439, 988 N.W.2d 627.

B. If the court chooses to consider statutory history, it merely confirms a plain-text reading.

As discussed previously and in more detail below, the statutory history of the Peace Act simply shows that at one point UWHCA was explicitly listed under the definition of "employer" and later the reference was removed. The history of the statutes governing the UWHCA and the UWHC Board, and the employees of those two separate entities, demonstrates a clear rationale as to why both sets of revisions to the Peace Act occurred. None of this history changes the plain meaning of the current Peace Act definition of "employer" and that UWHCA falls within that definition. Rather, it reinforces the meaning of the plain text of the current statute as described in Section II.

1. An analysis of labor relations statutes in Wisconsin supports a finding that UWHCA is covered by the Peace Act.

Although a lengthy discussion of labor law is not necessary, a brief explanation of the various statutory schemes may provide helpful context. Workers in Wisconsin who are employed by the State are governed by the State Employment Labor Relations Act, Wis. Stat. § 111.81, *et seq.* (SELRA). Workers in Wisconsin who are employed by a municipality or other political subdivision of the state are governed by the Municipal Employment Relations Act, Wis. Stat. § 111.70, *et seq.* (MERA). Labor relations involving many private-sector employees—but not all—are governed by the federal National Labor Relations Act, 29 U.S.C. § 151 *et seq.* (NLRA). Wisconsin's Peace Act, in turn, governs labor relations with respect to those remaining Wisconsin employees who do not fall within the scope of one of the other statutes (i.e., SELRA, MERA, or the NLRA)—

unless one of the Peace Act's narrow exceptions applies, which is the source of the parties' disagreement here.[7] *OAG-01-22*, ¶ 7 (App-43). In this way, the Peace Act protects against a large, legal "no-man's land" that would leave some workplaces ungoverned by any labor-relations law and leave workers who want to organize with no option but to "resort…to strikes and picketing." *See Wisconsin Empl. Rel. Comm. v. Atlantic Richfield Co.*, 52 Wis. 2d 126, 135, 187 N.W.2d 805 (1971).

2. UWHCA was created through Act 27 and the Peace Act was amended to explicitly include UWHCA as an "employer," ensuring that WERC would have jurisdiction over labor relations with workers at the hospitals and clinics.

UWHCA was created "a public body corporate and politic" as part of the 1995-1997 biennial budget. 1995 Wis. Act 27, § 6301 (App-61); Wis. Stat. § 233.02(1). (*see also* R. 6, p. 2) There are several sections of Act 27, i.e., earlier versions of the Peace Act and Chapter 233, which created and defines the UWHCA, pertinent to the question before the court:

[7] SEIU has previously argued in other proceedings that the UWHCA nurses are protected by the NLRA. UWHCA has always disagreed, and the National Labor Relations Board ("NLRB") has so far declined to exercise jurisdiction over these workers. If the NLRA does not apply (as both the UWHCA and NLRB have so far maintained), then it is SEIU's position that the Peace Act applies because, as discussed throughout this brief, UWHCA falls within the Peace Act's definition of "employer."

Further, based on the circuit court's ruling that UWHCA is a "subdivision of the state" (App-26; R. 42, p. 19), and that MERA governs "subdivision[s] of the state," Wis. Stat. § 111.70(1)(j), SEIU filed an election petition with WERC pursuant to MERA. SEIU did so to protect its members' interests and rights in the highly unlikely event that this court determines that the Peace Act does not govern these parties and that rather, the circuit court is correct that MERA does. That petition is currently being held in abeyance.

- Act 27, § 6301 created Wisconsin Chapter 233, establishing the University of Wisconsin Hospitals and Clinics Authority. (App-61)

- Act 27, § 224m created Wis. Stat. § 15.96, establishing the UWHC Board. (App-53)

- Act 27, § 9159(4)(c) made all workers at the hospitals and clinics, all State employees, into UWHC Board employees—a State Board, separate from the University of Wisconsin, but which maintained those employees' status as State employees. (App-71)

- Act 27, § 9159(4)(a) carved out certain hospitals and clinics employees from being UWHC Board employees and made them UWHCA employees. The affected positions included professional employees (including nurses and allied health professionals), nonprofessional supervisory employees, management employees, and confidential employees. (App-71)

- Act 27, § 3782g amended the definition of "employer" in the Peace Act, Wis. Stat. § 111.02(7), to expressly include UWHCA as an employer under the Act. (App-55)

As discussed in the Facts section above, prior to Act 27, 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 Regents, Legislative Branch, and Executive Branch oversight. The restructuring peeled away the operational control of the hospital and clinics from the University and placed that control in the hands of two distinct entities: the newly created UWHC Board, and the newly created UWHCA.

With these changes in place, UWHCA became an "independent nonprofit entity." *Takle v. University of Wisconsin Hospital and Clinics*

Authority, 402 F.3d 768, 770 (7th Cir. 2005). Rather than an arm of the State, the Seventh Circuit described UWHCA as having the nature of an "independent, nonprofit entity" which "Wisconsin's own courts would classify…as private" because of its "financial autonomy and the authority to sue and be sued in its own name." *Id.* That court further described UWHCA as "a state's creation of a private entity, with the state using its leverage as the creator of the entity to insist that it serve the state's interests as well as its own." *Id.* at 771.

With respect to unionized workers at the hospitals and clinics in particular, which included the registered nurses and other allied professionals, under Act 27, employees of UWHCA would no longer be State employees and therefore no longer subject to SELRA (enforced by WERC). Instead, they would be governed by another labor law—perhaps the federal NLRA, perhaps the state's Peace Act. Act 27 provided that UWHCA and its employees would be covered by the Peace Act, thus keeping all employees working in the hospitals and clinics under the same enforcing agency, WERC. Act 27, § 3782g (App-55). In other words, the Peace Act's past explicit reference to UWHCA made sense at the time of Act 27's enactment as an effort to make clear that UWHCA workers would be governed by the Peace Act—not the federal NLRA or SELRA, the latter of which continued to govern employees of the UWHC Board.

Act 27 included several other UWHCA-specific provisions amending the Peace Act as well. These provisions provided continuity in transition from State employment to UWHCA employment for unionized employees already organized into specific bargaining units with existing collective bargaining agreements that had previously been governed by SELRA. *See, e.g.,* Act 27, §§ 3782L; 3820; 3820(b); 3823; 3823b; 3824m; 3829m

(App-55, 58, 59, 60). As State employees governed by SELRA, the hospitals and clinics workers' right to engage in strikes had been restricted, and those restrictions were carried over when the labor relationships were brought under the Peace Act. *See* 1995 Wis. Act 27 § 3789bc (App-57), *compare to* Wis. Stat. § 111.89 (2009-2010).[8] Thus, these provisions provided clarity and ensured continuity and labor peace at a time of transition.

C. Act 10 removed the explicit reference to UWHCA from the Peace Act but did not exempt it from the Act.

In 2011, Act 10 removed explicit references to UWHCA provisions from the Peace Act. These deletions do not mean that UWHCA was removed from the Peace Act's coverage since it continues to fall within the clear definition of "employer" under the Act.

There could be many possible motivations for the deletions, though Wisconsin courts are to "assume that the legislature's intent is expressed in the statutory language," not look elsewhere for it or speculate about it. *See Kalal*, 2004 WI 58, ¶ 44. The Wisconsin Attorney General offered one possible explanation derived from the statutory history: with Act 10, all hospitals and clinics workers, previously employed by two different entities, were now unified under a single employer. This "meant that the language clarifying whether the Authority fell under the Peace Act was no longer needed." *OAG-01-22*, ¶ 19 (App-46). Likewise, the transition period

[8] It should also be remembered that like UWHCA, the newly-formed UWHC Board also inherited an already-existing unionized workforce who would retain their State employee status and SELRA coverage. All of these employees, of UWHCA and UWHC Board alike, would continue to work together at the hospitals and clinics, as they had in the past, albeit with different formal employers. From a practical standpoint, the more the regulation of those labor relations across the two employers in the same facilities could be made identical, the simpler the various relationships would be to administer.

when some hospitals and clinics workers were moved from a SELRA-regulated labor relations relationship to a Peace Act labor relations relationship had passed, making the "Authority-specific provisions" of the Peace Act that were intended to aid with that transition no longer necessary. Thus, the statutory history suggests that Act 10's deletion of the Peace Act's specific references to the UWHCA could have been to remove no-longer-necessary terms, not to remove UWHCA from Peace Act coverage itself. But the reason the Legislature removed the reference is irrelevant.

If the Legislature that enacted Act 10 intended to exempt UWHCA from the Peace Act, it could easily have done so; it did not. As the Wisconsin Attorney General observed, "If the Legislature meant to do more—for the Authority to be uniquely exempt from coverage under the Peace Act—one would expect the text of the statute to say so." *OAG-01-22* ¶ 19 (App-46). The Legislature had previously demonstrated its ability to specifically exempt certain employers from Peace Act coverage. Wis. Stat. § 111.02(7)(b) is a list of such employers, and it would have taken virtually no effort to add "the University of Wisconsin Hospitals and Clinics Authority" to that list. The Legislature did not do so, however, and we "must respect the text" as written. *Milwaukee J. Sentinel v. City of Milwaukee*, 2012 WI 65, ¶¶ 36-37, 341 Wis. 2d 607, 815 N.W.2d 367; *see also United Am., LLC v. DOT*, 2021 WI 44, ¶¶ 15-16, 397 Wis. 2d 42, 959 N.W.2d 317.

State v. Yakich, 2022 WI 8, ¶ 35, 400 Wis. 2d 549, 970 N.W.2d 12, further undermines UWHCA's claim to a special, unwritten exemption. In that case, the court held that removal of a cross-reference to another statute that applies independently does not eliminate the application of that statute. As in *Yakich*, "[w]hen the explicit cross reference was

removed…the legislature could have accompanied [those] changes with an express statement" that the Peace Act no longer governed UWHCA. *See id.* The Legislature did not add such an "express statement" and WERC erred by reading one in.

CONCLUSION

For the reasons above, Service Employees International Union Healthcare Wisconsin respectfully requests that the court reverse the Wisconsin Employment Relations Commission's declaratory ruling and remand it to the agency for specific further proceedings.

Respectfully submitted this 10th day of June 2024.

PINES BACH LLP

Electronically signed by Tamara B. Packard
Tamara B. Packard, SBN 1023111
122 West Washington Avenue
Suite 900
Madison, Wisconsin 53703
(608) 251-0101 (telephone)
tpackard@pinesbach.com

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm), and (c) for a brief produced with a proportional serif font. The length of this brief is 8,674 words.

Dated this 10th day of June 2024.

Electronically signed by Tamara B. Packard
Tamara B. Packard, SBN 1023111