

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.

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

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.