

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

AFSCME COUNCIL 32, LOCAL 116,
and JOSEPH MILLER, Complainants

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent

Case ID: 2.0181
Case Type: COMP_PPS

DECISION NO. 41480

Appearances:

Robert Lindsay, Attorney, Sweet and Associates LLC, 2510 E. Capitol Drive, Milwaukee, Wisconsin, appearing on behalf of the Complainants.

William Ramsey, Deputy Legal Counsel, Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Health Services.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On May 21, 2025, AFSCME Council 32, Local 116 and Joseph Miller filed a Complaint with the Wisconsin Employment Relations Commission asserting that the State of Wisconsin Department of Health Services (DHS) had committed unfair labor practices within the meaning of the State Employment Labor Relations Act. On December 5, 2025, Respondent DHS filed an Answer denying that it had committed any unfair labor practices.

A hearing was held in Madison, Wisconsin on December 19, 2025, by Commission Chairman Peter G. Davis. The parties thereafter filed written argument on February 9, 2026. On March 24, 2026, Davis sought clarification as to the scope of the issues raised in the complaint and potentially sought additional written argument. On April 22, 2026, the Complainants provided the requested clarification and, based on that clarification, further argument was sought and received by May 27, 2026.

Being fully advised in the premises, the Commission makes and issues the following:

FINDINGS OF FACT

1. The State of Wisconsin Department of Health Services (DHS) is an employer.
2. AFSCME Council 32, Local 116 is a labor organization.
3. Joseph Miller is an employee of DHS and an officer of Local 116.
4. DHS has advised its supervisors and managers as follows:

If you receive a communication from an employee identifying themselves as a "union representative" communicating on behalf of an employee or group of employees, you are able to respond by letting the representative know that if an employee has a concern, they should speak to their manager or local HR staff who can help identify the ways they can appropriately address and/or elevate their concerns.

5. In April 2025, a DHS employee sent the following email to DHS management:

Hi All,

Can someone please help me to understand why Josie from Noc shift was mandated for the 3rd day in a row? There were 2 LPNs and 3 RCS's here. Why aren't we trying to work as a team? No one should be mandated 3 days in a row. If this is happening, it should be addressed so this doesn't happen again.

Shortly thereafter, DHS management responded by email as follows:

Thank you for expressing the concern about another RCT's schedule. I won't be able to respond to issues about other employees here at NWC. That said, if an employee has concerns about their mandates or schedule, they should be talking with the RCS or another supervisor. As you know from our meeting last week, we are working on a revised mandate process policy for NWC staff. Please feel free to talk to me in person as well on some of these things if you are able.

6. After a representative of AFSCME Council 32, Local 116 inadvertently included an individual who is not a DHS employee in a "reply all" email addressing a workplace accommodation issue, a representative of DHS sent the following email to the representative and certain DHS employees:

Just to be clear, looking back through this string, it appears Sean Daley is the person who added a Joe Miller to this conversation and therefore ostensibly shared personal health information. Since DHS did not, and appears to keep him off our emails, I will not be making this a HIPAA report. AFSCME might want to check with their legal counsel as to how to handle this breach of confidentiality and what laws may apply.

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

CONCLUSIONS OF LAW

1. Section 111.82 of the State Employment Labor Relations Act provides in pertinent part:

Employees have the right . . . to engage in . . . lawful, concerted activities for the purpose of . . . mutual aid or protection.

2. By refusing to engage with State employees who raise workplace issues of mutual concern on behalf of other employees, the State of Wisconsin Department of Health Services is interfering with the right of State employees to engage in lawful concerted activity for the purpose of mutual aid or protection.

3. By refusing to engage with State employees who wish to exercise their statutory right set forth in Section 111.82 of the State Employment Labor Relations Act, the State of Wisconsin Department of Health Services is interfering with, restraining and coercing employees who seek to exercise that statutory right and thereby is committing an unfair labor practice with the meaning of Section 111.84(1)(a) of the State Employment Labor Relations Act.

4. The email recited in Finding of Fact 6 did not have a reasonable tendency to interfere with, restrain or coerce employees of the State of Wisconsin Department of Health Services from exercising their Section 111.82 statutory rights. Therefore, by sending that email, the State of Wisconsin Department of Health Services did not commit an unfair labor practice within the meaning of Section 111.84(1)(a) of the State Employment Labor Relations Act.

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

ORDER

1. The State of Wisconsin Department of Health Services shall immediately cease and desist from refusing to engage with Department employees who are raising workplace issues of mutual concern on behalf of other employees and shall take the following affirmative action the Commission concludes will effectuate the purposes of the State Employment Labor Relations Act:

(a) Email the Notice attached to page 5 of this Order to all State of Wisconsin Department of Health Services employees.

2. The portion of the Complaint referenced in Finding of Fact 6 and Conclusion of Law 4 is dismissed.

Issued at Madison, Wisconsin, this 5th day of June 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Electronically signed by: Peter G. Davis

Peter G. Davis, Chairman

**NOTICE TO ALL EMPLOYEES OF THE STATE OF WISCONSIN
DEPARTMENT OF HEALTH SERVICES**

On June 8, 2026, pursuant to a Complaint filed by AFSCME Council 32, Local 116 and Joseph Miller, the Wisconsin Employment Relations Commission issued Findings of Fact, Conclusions of Law and Order which concluded that the State of Wisconsin Department of Health Services committed an unfair labor practice by refusing to engage with a Health Services employee who was raising a workplace issue of mutual concern on behalf of other Department of Health Services employees.

Pursuant to the Commission's Order in that matter, the State of Wisconsin Department of Health Services hereby provides notice to all of its employees that employees have a statutory right to raise workplace issues of mutual concern on behalf of other employees and that the State **will not** refuse to engage with employees who want to exercise that statutory right.

Dated:

Kirsten Johnson, Secretary
Wisconsin Department of Health Services

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

Section 111.82 of the State Employment Labor Relations Act (SELRA) provides in pertinent part:

Employees have the right . . . to engage in lawful, concerted activities for the purpose of . . . mutual aid or protection.

Section 111.84 (1)(a) of SELRA makes it an unfair labor practice for the State to interfere with a State employee's exercise of the right granted by Section 111.82.

As reflected in Finding of Fact 5, the State of Wisconsin Department of Health Services (DHS) would not engage with a DHS employee who raised a concern about a scheduling issue impacting another employee. Clearly the request to engage was "lawful" and also "concerted" in that one employee was acting on behalf of another employee. The request also had a purpose of "mutual concern or protection" in that the scheduling issue impacted multiple employees. Therefore, the Commission concludes that the State's refusal to engage with the DHS employee interfered with that employee's exercise of the Section 111.82 SELRA right and thereby constituted an unfair labor practice within the meaning of Section 111.84(1)(a) of SELRA.

To remedy this unfair labor practice, the State is ordered to cease and desist from the refusal to engage with employees who wish to raise workplace issues of mutual concern on behalf of other employees and to notify all DHS employees of their statutory right to engage in such activity.

The complaint filed in this matter also asserts that the email recited in Finding of Fact 6 interfered with SELRA rights by demeaning the AFSCME representative and thus making DHS employees less likely to be supportive of that labor organization. While the email is snotty and unnecessary, the Commission concludes that it did not constitute a SELRA unfair labor practice.

Issued at Madison, Wisconsin, this 5th day of June 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Electronically signed by: Peter G. Davis

Peter G. Davis, Chairman