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# Wisconsin Legislative Council



Anne Sappenfield  
Director

TO: SENATOR MELISSA AGARD

FROM: Margit Kelley, Senior Staff Attorney

RE: 2011 Wisconsin Act 10 and Union Negotiations With University of Wisconsin Hospitals and Clinics Authority

DATE: May 20, 2021

This memorandum, prepared at your request, briefly describes the effect of 2011 Wisconsin Act 10 (2011 Act 10) on union negotiations with the University of Wisconsin Hospitals and Clinics Authority (UWHCA). Very briefly, under state law, UWHCA employees do not have a right to negotiate on subjects of collective bargaining. A union representative of employees may, however, seek to meet and consult, informally, with UWHCA.

## **COLLECTIVE BARGAINING STATUS OF UWHCA EMPLOYEES**

UWHCA is statutorily identified as a public body. Although not subject to all statutory provisions that apply to state agencies, as a public entity its employees are public employees, subject to state law. [ss. 233.02 (1) and 233.10, Stats.]

Prior to the enactment of 2011 Act 10, University of Wisconsin Hospitals and Clinics were governed by both a Board and an Authority, and collective bargaining in contract negotiations for the respective employees was governed by separate provisions of state law. 2011 Act 10 eliminated the Board and transferred all employees to the Authority.

2011 Act 10 also removed collective bargaining for all UWHCA employees, but specified that any collective bargaining agreements that had been in place with either entity were to remain in force until their expiration. The act required UWHCA to establish the compensation and benefits of all employees from that point forward. [s. 233.10 (2), Stats.]

As 2011 Act 10 removed the authority for UWHCA to recognize a union as an exclusive bargaining representative for employees, a union for UWHCA employees would have no formally recognized powers to negotiate on subjects of collective bargaining, and UWHCA does not have the authority to accord that status.<sup>1</sup>

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<sup>1</sup> By contrast, in some cases an employer may “voluntarily recognize” a union to represent employees. Generally, this means that an employer would agree to accept the union’s proof that the employees have agreed to the representation, without needing a union election. This type of voluntary recognition is not allowed for general public employees in Wisconsin who are required to have an annual certification election. [ss. 111.70 (4) (d) 3. b. and 111.83 (3) (b), Stats.]

## ALTERNATIVE TO COLLECTIVE BARGAINING

Although UWHCA may not formally recognize a union, UWHCA may acknowledge an employee union and allow it to participate in discussions on wages, hours, and working conditions. A union would not have the power to negotiate or enforce any rights on behalf of union members, but could actively seek to take part in discussions on those matters of interest to its members.

As an example, it has been reported that an automaker in Tennessee allows any union to meet with senior management at the plant to discuss salaries, benefits, and other working conditions, if union membership reaches certain threshold numbers. Without formal recognition as the exclusive bargaining representative, no action may be taken by a union to enforce the subjects of those discussions, but the union may be acknowledged and have a role in advancing the goals of its members.<sup>2</sup> [DePillis, Lydia, [\*The Strange Case of the Anti-Union Union at Volkswagen's Plant in Tennessee\*](#), The Washington Post (Nov. 19, 2014).]

Representatives of UWHCA employees could similarly engage with management on the topics of wages, hours, and working conditions, to the extent permitted by UWHCA management. A request to “meet and consult” in this manner would not invoke the process of collective bargaining that is prohibited for UWHCA and its employees under current law.<sup>3</sup> Discussions may help inform management decisions, but the discussions may not create any duties or rights.

## SUMMARY

In summary, UWHCA may not formally or voluntarily recognize a union for purposes of collective bargaining on wages, hours, and conditions of employment, but a union representing employees may seek to “meet and consult” with UWHCA to discuss those topics.

Please let me know if I can provide any further assistance.

MSK:jal

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<sup>2</sup> The employees in this example were allowed to be formally recognized for purposes of collective bargaining, but the workers had voted against certifying the union as the exclusive bargaining representative. Accordingly, the reason why the union could not be formally recognized differs from the statutory reason that applies to UWHCA employees, but the effect is the same, that in neither case may the union be formally recognized for purposes of collective bargaining.

<sup>3</sup> By contrast, a request to “meet and **confer**” could cause some confusion. In the collective bargaining process, the bargaining occurs when the union representatives and management “meet and confer in good faith” on the subjects of collective bargaining. Compare, for example, the definition of “collective bargaining” for state employees, which means the performance of the mutual **obligation** for the parties to meet and confer at reasonable times, in good faith, with respect to the permissible subjects of bargaining. [s. 111.81 (1), Stats.] In other words, the phrase “meet and confer” carries a certain legal weight that invokes formal recognition and statutory obligations. In the context of UWHCA, it would be more accurate to say that an employees’ union may seek to “meet and consult” with management.