CHARGE

Michigan Department of Labor and Economic Opportunity
Employment Relations Commission (MERC)
Labor Relations Division
313-456-3510

Authority: P.A. 380 of 1965, as amended.

INSTRUCTIONS: File an original and 4 copies of this charge (including attachments) with the Employment Relations Commission at: Cadillac Place, 3026 W. Grand Boulevard, Suite 2-750, PO Box 02988, Detroit MI 48202-2988 or 503 W. Allegan, Mason Building, Garden Level, PO Box 30015, Lansing, MI 48909. The Charging Party must serve the Charge on the opposing side within the applicable statute of limitations, and must file a statement of service with MERC. ***(Refer to the "How to File a Charge" document under the "Forms" link at www.michigan.gov/merc.)***

Complete Section 1 if you are filing charges against an employer and/or its agents and representatives. —or—
Complete Section 2 if you are filing charges against a labor organization and/or its agents and representatives.

1. EMPLOYER AGAINST WHICH THE CHARGE IS BROUGHT Check appropriate box: ☐ Private ☑ Governmental

Name and Address:
University of Michigan
North Campus Administrative Complex
2901 Hubbard Rd. Ste. 1100-SP2435
Ann Arbor, MI 48109

2. LABOR ORGANIZATION AGAINST WHICH THE CHARGE IS BROUGHT

Name and Address:

3. CHARGE

Pursuant to the [redacted] Public Employment Relations Act (PERA) *(cross out one)*, the undersigned charges that the above-named party has engaged in or is engaging in unfair labor practices within the meaning of the Act.

On an attached sheet you must provide a clear and concise statement of the facts which allege a violation of the LMA or PERA, including the date of occurrence of each particular act and the names of the agents of the charged party who engaged in the complained of conduct. The charge should describe who did what and when they did it, and **briefly** explain why such actions constitute a violation of the LMA or PERA.

The Commission may reject a charge for failure to include the required information. However, it is not necessary to present your case in full at this time. Documentary material and exhibits ordinarily **should not** be submitted with this charge form.

4. Name and Address of Party Filing Charge (Charging Party) (if labor organization, give full name, including local name and number)	Telephone Number:
Michigan Nurses Association and its University of Michigan Professional Nurse Council	(517) 515-3885

5. List ALL related MERC case(s) (if any): _____
(Name of parties)

Case No.: _____ Judge: _____

Case No.: _____ Judge: _____

I have read this charge and it is true to the best of my knowledge and belief.

Andrew Smith
Signature of Representative/Person Filing Charge

Email: andrew.smith@minurses.org

Telephone/Cell No.: 517-515-3885

Print Name and Title: Andrew Smith, Michigan Nurses Association - General Counsel

Fax No.:

Street Address:	City:	State:	Zip Code:
2310 Jolly Oak Road	Okemos	MI	48864

The Department of Labor and Economic Opportunity will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability, or political beliefs. If you need assistance with reading, writing, hearing, etc., under the Americans with Disabilities Act, you may make your needs known to this agency.

BER____ (5/27)

DESCRIPTION OF UNFAIR LABOR PRACTICE

Respondent employer has violated Section 10(1)(e) and (a) of the Public Employment Relations Act, MCL 423.210(1)(e) and (a), as set forth below.

1. The Michigan Nurses Association and its University of Michigan Professional Nurse Council (hereafter "the Association") are the exclusive collective bargaining representative of professional nurses employed by the University of Michigan and were parties to a collective bargaining agreement with the Regents of the University of Michigan ("the Employer") effective from July 1, 2021, to June 30, 2022. The collective bargaining agreement contained provisions regulating the workload of the nurse, as it related to patient-to-nurse assignments, and under what processes it could be changed during the term of the agreement.

2. On March 15, 2022, the Association and Employer began collective bargaining for a successor agreement. In the course of bargaining for a successor agreement, the Association proposed to expand the current workload protections for nurses in the collective bargaining agreement.

3. On May 9, 2022, the Employer's agent, Michelle Sullivan, Director of Labor Relations, emailed Association representatives, Michael Nicholson and Renee Curtis, and demanded that they withdraw the Association's workload proposals and any references to them in other proposals. Sullivan wrote in part:

> *As follow up to our hallway conversation a short while ago, in this transition into daily bargaining sessions for the next two weeks, the University will continue to provide counterproposals on various proposals the union has presented in the prior weeks. However, before the University provides these counterproposals, please consider this correspondence to be a formal request of MNA/UMPNC to withdraw its proposals that pertain to non-mandatory and illegal subjects of bargaining. These proposals include the following:*
>
> *Mandatory Staffing Ratio Proposal dated March 29, 2022, and any corresponding references in proposals for any other proposal to mandatory staffing ratios. In order to be a mandatory subject of bargaining under PERA, staffing ratios must be inextricably intertwined with the safety of employees. Your mandatory staffing ratio proposal has no relationship to employee safety, and as such, is a non-mandatory subject of bargaining.*

4. On May 9, 2022, the same day, Nicholson responded to Sullivan's email explaining that the Association's proposal related to the working conditions of nurses. The response stated in part as follows:

> *On April, 21, 2022, during a bargaining session with the University's bargaining/executive team, MNA-UMPNC presented testimony from nurses who work in units throughout the Michigan Medicine. These nurses presented powerful evidence of the persistence of understaffing at Michigan Medicine, and how that understaffing means nurses daily fear making patient care errors, resulting in loss of their jobs, their nursing licenses, and their sense of well-being and worth as caregivers. Such fears are driven by Michigan Medicine's understaffing in the units on which these nurses work.*
>
> *.....*
>
> *Persistent nurse understaffing and the failure by Michigan Medicine to maintain an adequate ratio of nurse to patients does – in the view of the MNA-UMPNC nurses your team heard from on April 21 – risk patient safety. But as those nurses also testified to your bargaining team on April 21, the staffing failures of Michigan Medicine also jeopardizes the job security and professional licenses of MNA-UMPNC members.*

5. Instead of bargaining over the proposal on its merits, on July 11, 2022, Sullivan again emailed the Association and demanded that it withdraw its workload proposal as an alleged non-mandatory subject of bargaining. In the email Sullivan also stated the Employer's desire to bargain only over workload proposals containing non-binding language. The email stated in part:

> *This correspondence will serve as a continued formal request of the Association to withdraw proposals that pertain to non-mandatory subjects of bargaining, most specifically, the workload ratio proposal originally passed on May 18, 2022…*
>
> *....*
>
> *The Association's mandatory staffing ratio proposal has no relationship to employee safety, and as such is a non-mandatory subject of bargaining. In making this request for withdrawal of the proposal, the University has also accounted for the Association's connection of staffing ratios to Article 3 (Professional Nursing) and protection of a nurse's license, and the University maintains that the Association's mandatory staffing ratio proposal is not inextricably intertwined with employee safety.*
>
> *...*
>
> *As has been the case throughout these negotiations, the University remains willing to negotiate over non-mandatory staffing guidelines.*

6. On July 12, 2022, the Nicholson responded again that the proposal was a mandatory subject of bargaining which related to workload and nurse safety. The Association's response stated in part:

> *Your message continues to argue that employee "safety" is the only justification for employee workload ratios being a mandatory subject (as opposed to employer hiring decisions, which have not been the subject of the MNA-UMPNC bargaining proposals, given that hiring is not a mandatory bargaining subject). This is simply wrong with respect to the bargaining subject of employee workloads, as countless NLRB and court decisions have held over the years…"*
> *….*
> *Finally, your message and position ignore the fact that making nurses cover excessive numbers of patients has a direct effect not only on safety (both of nurses and patients) but also on the very protection of a nurse's continuing employment and licensure, matters which are perforce within the realm of mandatory bargaining.*

7. In July the Association modified its workload proposals to only require that the Employer "use best efforts" to avoid assigning more patients per shift at one time to a direct care registered nurse pursuant to proposed workload ratios by the Association.

8. On August 1, 2022, Sullivan again emailed Association representatives to demand that they withdraw their workload proposal. The email stated in part:

> *…I am compelled to once again go on record regarding the University's position regarding certain Association proposals that constitute non-mandatory and illegal subjects of bargaining with a formal request of the Association to withdraw each of these proposals." In the email the Employer identified the Association's proposal on workload and safety as, "…a classic example of a non-mandatory subject of bargaining." The Employer ended the email by succinctly directing the Association to, "[p]lease notify us in writing of the Association's withdrawal of these proposals."*

9. On August 3, 2022, Nicholson again responded to the Employer's email and reiterated the Association's position that its proposal was a mandatory subject of bargaining. The email stated in part:

> *"Questions of employee workload are mandatory bargaining subjects under MCL 423.210 and 423.211, since questions of employee workload are perforce questions as "rates of pay, wages, hours of employment or other conditions of employment." … Hiring decisions remain a matter of*

employer discretion, and the existence of mandatory subject workload ratios in a contract do not take away the employer's sole right to decide whether to hire additional staff."

....

Finally, the University's claim ignores the fact that making nurses cover excessive numbers of patients has a direct effect not only on safety (both of nurses and patients) but also on the very protection of a nurse's continuing employment and licensure, matters which are perforce within the realm of mandatory bargaining. Simply put, when a nurse has an excessive patient workload, s/he is more likely to commit medical or other errors, which can lead to discipline, discharge from employment, as well as loss of licensure.

10. To date, the parties have had approximately fifty-five bargaining sessions and there is no agreement on the issue of workload or agreement on a successor collective bargaining agreement.

11. The Association's workload proposal is a mandatory subject of bargaining which impacts their terms and conditions of work. As confirmed by published studies and research, the proposal relates not only to a nurse's reasonable workload but to their health and safety, their ability to meet their professional requirements under their license, and the well-being of their patients.

12. Through its continuing demand that the Association withdraw its proposal on workload, on the incorrect basis that is not a mandatory subject of bargaining, the Employer has failed to bargain in good faith and has violated sections 10(1)(a) and 10(1)(e) of the Public Employment Relations Act.

RELIEF REQUESTED

13. The Association respectfully requests that the following relief should be ordered of the Employer.

A. Cease and desist from:

1. Failing to bargain in good faith over the proposals of the Association relating to nurse workloads (patient-to-nurse);
2. Demanding that the Association withdraw its proposals relating to nurse workloads;
3. Otherwise delaying and obstructing the collective bargaining negotiations between the parties through said failure to bargain in good faith.

B. Affirmative action:

1. Engage in good faith bargaining, at reasonable times and places, over proposals relating to nurse workloads;
2. Post appropriate notice in conspicuous places on the Employer's premises including all places where notices to members in Association's bargaining unit are customarily posted, and via email to all bargaining unit members;
3. Repayment of bargaining unit employees' lost wages to the extent that MERC finds that the Employer's refusal to bargain caused or materially contributed to a delay in reaching a new collective bargaining agreement, and thus caused or materially contributed to a denial of wage increases by operation of MCL 423.215(b).

C. Any other make-whole relief deemed appropriate based on the record in this unfair labor practice charge.

CERTIFICATE OF SERVICE

On the 15th day of August, 2022, I hereby certify that a copy of the attached unfair labor practice charge filed by the Michigan Nurses Association and its University of Michigan Professional Nurse Council, and any attachments thereto, was served upon:

Mr. David Masson
Senior Associate General Counsel/Chief Litigation Counsel
University of Michigan
dmasson@umich.edu

Via email service.

MICHIGAN NURSES ASSOCIATION

By: /s/ Andrew Smith
ANDREW SMITH

Approved, SCAO

Original - Court
1st copy - Defendant

2nd copy - Plaintiff
3rd copy - Return

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	COURT OF CLAIMS **SUMMONS**	**CASE NO.**

Court address
925 W. OTTAWA STREET, LANSING, MI 48909

Court telephone no.
517-373-2252

Plaintiff's name(s), address(es), and telephone no(s).		Defendant's name(s), address(es), and telephone no(s).
Michigan Nurses Association 2310 Jolly Oak Road Okemos, MI 48864	v	University of Michigan 503 Thompson Street Ann Arbor, MI 48106
Plaintiff's attorney, bar no., address, and telephone no. Andrew Nickelhoff (P37990) & Marshall J. Widick (P53942 333 W. Fort Street, Suite 1400 Detroit, Michigan 48226 (313) 496-9525 anickelhoff@michlabor.legal / mwidick@michlabor.legal		

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

☐ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (form MC 21) listing those cases.

☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.

☐ MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).

☑ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in ☐ this court, ☐ _____ Court, where it was given case number _____ and assigned to Judge _____.

The action ☐ remains ☐ is no longer pending.

Summons section completed by court clerk.

SUMMONS

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date	Expiration date*	Court clerk

*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

SUMMONS
Case No.

PROOF OF SERVICE

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

☐ OFFICER CERTIFICATE	OR	☑ AFFIDAVIT OF PROCESS SERVER
I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)		Being first duly sworn, I state that I am a legally competent adult, and I am not a party or an officer of a corporate party (MCR 2.103[A]), and that: (notarization required)

☐ I served personally a copy of the summons and complaint,
☑ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with _____
List all documents served with the summons and complaint

_____ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time
University of Michigan c/o Timothy G. Lynch, General Counsel	503 Thompson Street, Room 5010 Ann Arbor, Michigan 48109-1340	Monday, 8/15/22
email: timlynch@umich.edu		

☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
$		$	
Incorrect address fee	**Miles traveled**	**Fee**	**TOTAL FEE**
$		$	$

Andrew Nickelhoff
Signature

Andrew Nickelhoff
Name (type or print)

Attorney
Title

Subscribed and sworn to before me on August 15, 2022 (Date), Wayne County, Michigan.

My commission expires: 2/13/2026 (Date) Signature: _____
Deputy court clerk/Notary public

Notary public, State of Michigan, County of Wayne

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____
Attachments

_____ on _____
Day, date, time

_____ on behalf of _____.
Signature

STATE OF MICHIGAN

IN THE COURT OF CLAIMS

MICHIGAN NURSES ASSOCIATION and UNIVERSITY OF MICHIGAN PROFESSIONAL NURSE COUNCIL,

Plaintiffs, Case No.

v Hon.

UNIVERSITY OF MICHIGAN,

Defendant,
_____/

Andrew Smith (P75692)
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_____/

COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiffs Michigan Nurses Association and University of Michigan Professional Nurse Council, by their undersigned attorneys, file this Complaint for Injunctive Relief against the the University of Michigan, stating and averring as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Michigan Nurses Association ("MNA") is a labor organization and a Michigan non-profit corporation with headquarters in Okemos, Michigan. MNA represents approximately 13,000 registered nurses and healthcare professionals

throughout Michigan, including nurses and other healthcare professionals employed by Defendant.

2. Plaintiff University of Michigan Professional Nurse Council ("UMPNC") is a local bargaining unit of MNA established pursuant to MNA's Constitutional Bylaws. UMPNC's membership consists of registered nurses and other healthcare professionals employed by Defendant.
3. Plaintiffs MNA and UMPNC are jointly referred to here as "the Association."
4. Defendant University of Michigan ("University") is a public university established under the Constitution and laws of Michigan.
5. This court has jurisdiction because Plaintiffs seek injunctive relief against an institution of the State of Michigan. MCL 600.6419(1)(a). institutequitable

BACKGROUND

6. This Complaint and the Motion for Immediate Injunctive Relief filed herewith are supported by the Affidavits of Renee Curtis, Jeremy Lapham, and Katherine A. Toth.
7. The Association is the exclusive collective bargaining representative certified by the Michigan Employment Relations Commission ("MERC") to represent a bargaining unit of registered professional nurses and other healthcare professionals employed by the University. MNA and UMPNC share responsibility for bargaining and administering collective bargaining agreements ("CBAs") establishing wages, hours and other working conditions for the bargaining unit employees.
8. The Association and the Board of Regents on behalf of the University have been signatories to a series of CBAs establishing wages, hours, and working conditions for bargaining unit employees.
9. Currently there is no CBA in effect. The Association and the University have been engaged in collective bargaining for a new CBA since March 15, 2022. (Curtis Aff. ¶ 12)

10. The most recent CBA was a one year agreement dated July 1, 2021 through June 30, 2022 ("the 2021-2022 Agreement"). (Curtis Aff. Exh. 1) With the exception of some specific provisions regarding wages, the 2021-2022 Agreement incorporated by reference and continued all of the provisions of the previous three year CBA dated October 10, 2018 through June 30, 2021 ("the 2018-2021 Agreement")(Curtis Aff. Exh. 2). The 2018-2021 CBA and the 2021-2022 CBA are together referred to herein as "the Expired CBA".

THE FACTS AND EVENTS GIVING RISE TO THIS REQUEST FOR IMMEDIATE INJUNCTIVE RELIEF

11. Significant elements of the Expired CBA (and of the CBA's preceding it) are provisions concerning the nurses' workloads and staffing. Articles 13 and 14 together with "Addendum E" of the Expired CBA address these matters in detail.
12. The Expired CBA provides for a "Staffing Model" which sets forth "staffing levels" for various hospital departments. The Staffing Model is expressed in a numerical patient-to-nurse ratio. (Exh. 2 Addendum E, pp 253-254)
13. Under the Expired CBA the Staffing Model functions as an aspiration, but not a requirement. The Expired Agreement permitted the University to deviate from the Staffing Model virtually at will. There was no mechanism for enforcing the Staffing Model.
14. Controlling workloads and staffing is a matter of great importance to the nurses represented by the Association. Nurses' mental and physical health and the quality of their work lives are affected significantly by the patient workloads they are assigned. Beyond that, and of equal concern to the nurses, the physical and mental welfare of patients and their families also is affected by the workloads placed on care-givers. The quality of care and the treatment outcome of a hospital patient depends greatly on the nursing staff, and a nurse's ability to deliver the best level of care is affected to a large extent by the patient workload that nurse is tasked with handling.
15. Recently the workload demand on many bargaining unit nurses has increased. This is especially the case in hospital departments providing critical or intensive

care, such as the Emergency Room ("ER") and the Pediatric Intensive Care Unit ("PICU").

16. In the current collective bargaining for a new CBA the nurses on the Association bargaining team have referred to this worsening situation as a "workload crisis." The nurses have provided the University's bargaining representatives with first-hand accounts of their experiences with under-staffing and its detrimental effects on nurses' mental and physical well-being as well as on the quality of patient care.

17. The Association has proposed changes in the CBA provisions to address the workload problem. These proposals include a "best efforts" provision obligating the University to take reasonable measures to conform workloads to the patient-to-nurse ratios in the Staffing Model, and a provision for enforcing this obligation through the CBA's multi-step grievance/arbitration provision that culminates with submission of an unresolved dispute to a neutral arbitrator for final and binding resolution.

18. On August 1, 2022, after weeks of bargaining and exchanging proposals and counter-proposals regarding nursing workload and staffing, the University's bargaining representative emailed the Association stating that the subject of workloads was a "non-mandatory and illegal subject[] of bargaining" and demanding that the Association withdraw its proposals.

19. Since then, the University has continued its refusal to negotiate regarding the subject of nursing workloads.

20. Under Section 15 of Michigan's Public Employment Relations Act (PERA), the University is required to "bargain collectively . . . with respect to wages, hours, and other terms and conditions of employment." MCL 423.215. An employer's failure or refusal to bargain regarding "mandatory" bargaining subjects is an unfair labor practice (ULP) under PERA Section 10(1)(e), MCL 423.210(1)(e).

21. Section 16 of PERA, MCL 423.216, provides that an employer (or union's) refusal to perform its obligation to bargain can be remedied by the filing of a ULP charge

with MERC. MERC is empowered to adjudicate such a charge and order a party to bargain. A bargaining order issued by MERC can be enforced in court.

22. Concurrent with the filing of this Complaint, the Association has filed a ULP charge with MERC, stating that the University is refusing to perform its statutory obligation to bargain with the Association regarding nursing workloads and staffing. The ULP seeks a bargaining order compelling the University to bargain.

THE GROUNDS FOR IMMEDIATE AND TEMPORARY INJUNCTIVE RELIEF PENDING A RULING BY MERC ON PLAINTIFFS' UNFAIR LABOR PRACTICE CHARGE.

23. This court has jurisdiction to issue an injunction compelling the University to continue negotiating regarding workloads and staffing while MERC adjudicates the Association's ULP charge. *Van Buren School District v Circuit Judge*, 61 Mich App 6 (1975), and PERA Section 16(h), MCL 423.216(h)(granting MERC or a charging party the right to petition for an injunction and giving the court "jurisdiction to grant to the commission or any charging party such temporary relief or restraining order as it deems just and proper.")

24. The Association is likely to prevail on its ULP charge contesting the University's refusal to continue bargaining and its demand that the Association cease making proposals to alleviate the "workload crisis." However, due to the inevitable delays in the administrative process, it will be impossible for Plaintiffs and their members to obtain a remedy from MERC any time in the near future.

25. In the absence of immediate injunctive relief, bargaining unit nurses will continue to suffer the harmful and irreparable physical and mental effects of understaffing and excessive workloads, with attendant effects on the quality of patient care, until MERC has adjudicated the ULP charge and ordered the University to resume collective bargaining. These injuries cannot be remedied by an eventual bargaining order from MERC, or by declaratory or monetary relief that may be granted by the court later.

26. A balancing of harms favors the Plaintiffs. Compared to the continued exposure of nurses and their patients to the deleterious and irreversible effects of understaffing, any harm the University might claim from being ordered to continue the bargaining it previously engaged is negligible.

27. The public interest strongly favors an injunction. The health and welfare of the frontline caregivers tending to sick and injured hospital patients and their families is and should be a matter of great public concern.

PRAYER FOR RELIEF

WHEREFORE, the Association requests that the Court:

(1) order Defendant to show cause, on the earliest possible date and at the time and place to be determined by the court, why a preliminary injunction should not issue ordering Defendant to cease its refusal to bargain with the Plaintiffs regarding the mandatory collective bargaining subject of nursing workloads, and order Defendant to resume collective bargaining regarding nurses' workloads and staffing, pending a decision and order by the Michigan Employment Relations Commission on the unfair labor practice charge that Plaintiffs have filed against the Defendant; and

(2) issue the preliminary injunction described herein; and

(3) order such other and further relief as the court deems appropriate.

Respectfully submitted,

BY: *Andrew Smith* (P75692)
General Counsel, Michigan Nurses Association
Attorney for Plaintiffs
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BY: *Marshall J. Widick* (P53942)
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Dated: August 15, 2022

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

MICHIGAN NURSES ASSOCIATION and UNIVERSITY OF MICHIGAN PROFESSIONAL NURSE COUNCIL,

Plaintiffs, Case No.

v Hon.

UNIVERSITY OF MICHIGAN,

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_____/

PLAINTIFFS' MOTION FOR AN ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE AND FOR A PRELIMINARY INJUNCTION

Plaintiffs Michigan Nurses Association and University of Michigan Professional Nurse Association, by their undersigned attorneys, and for the reasons set forth in the Brief in Support filed herewith, move pursuant to MCR 3.310 for an order to show cause why a preliminary injunction should not issue and for a preliminary injunction pending a decision by the Michigan Employment Relations Commission on Plaintiffs' unfair labor practice charge against Defendant University

of Michigan. Concurrence of counsel for the Defendant was requested and was not obtained prior to the filing of this action.

WHEREFORE, Plaintiffs request that the court: (1) Order Defendant to show cause, on the earliest possible date and at the time and place to be determined by the court, why a preliminary injunction should not issue ordering Defendant to cease its refusal to bargain with the Plaintiffs regarding the mandatory collective bargaining subject of nursing workloads, and order Defendant to resume collective bargaining regarding nurses' workloads and staffing, pending a decision and order by the Michigan Employment Relations Commission on the unfair labor practice charge that Plaintiffs have filed against the Defendant; and (2) issue the preliminary injunction described herein; and (3) order such other and further relief as the court deems appropriate.

Respectfully submitted,

BY: *Andrew Smith* (P75692)
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Attorney for Plaintiffs
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BY: *Marshall J. Widick* (P53942)
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anickelhoff@michlabor.legal
mwidick@michlabor.legal

Dated: August 15, 2022

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

MICHIGAN NURSES ASSOCIATION and UNIVERSITY OF MICHIGAN PROFESSIONAL NURSE COUNCIL,

Plaintiffs, **Case No.**

v **Hon.**

UNIVERSITY OF MICHIGAN,

Defendant,

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_____/

BRIEF IN SUPPORT OF MOTION FOR ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE AND FOR A PRELIMINARY INJUNCTION

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INTRODUCTION

Plaintiffs Michigan Nurses Association and University of Michigan Professional Nurse Association are engaged in collective bargaining with the University of Michigan for a new contract covering the University's registered nurses and other healthcare professionals. Plaintiffs seek this court's intervention to compel the University to continue bargaining regarding the critically important problem of excessive nurse workloads caused by understaffing, until the Michigan Employment Relations Commission (MERC) can process and remedy their unfair labor practice charge against the University.

Absent injunctive relief, nurses will continue to suffer the harmful effects of a workload crisis that imperils their mental and physical health and safety, and that may cost them their positions and possibly their professions. What Plaintiffs seek here is merely that the University continue what it has begun –negotiating over the Association's proposal that the University use its "best efforts" to meet agreed-upon nurse workload ratios and that any disputes be resolved consensually or by an arbitrator. The University has repeatedly made its own proposals on the same issue. Plaintiffs are confident that they ultimately will prevail at MERC on their unfair labor practice charge. But a bargaining order by MERC will be months away, and in the meantime nurses are experiencing crushing workloads that imperil their mental and physical health and that could cost them their employment and perhaps the profession to which they are dedicated.

STATEMENT OF FACTS

Plaintiff Michigan Nurses Association ("MNA") is a state-wide labor organization representing registered nurses ("RNs") and other healthcare professionals throughout Michigan. (Renee Curtis Aff. ¶ 3) MNA has established a local bargaining unit for the University's nurses, Plaintiff University of Michigan Professional Nurse Council ("UMPNC"). (*Id* ¶ 4) MNA and UMPNC are referred to collectively as "the Association." MNA and UMPNC share responsibility for bargaining and administering a collective bargaining agreement ("CBA") covering a bargaining unit of over 6,000 the nurses and healthcare professionals employed by Defendant University of Michigan in its healthcare system known as "Michigan Medicine." (*Id* ¶ 4) . (Curtis Aff. ¶ 4)[1]

The most recent collective bargaining agreement between the University and the Association, which has expired, consists of the October 10, 2018-June 30, 2021 Agreement Between the Regents of the University of Michigan and the Michigan Nurses Association and the University of Michigan Professional Nurse Council ("2018-2021 CBA") (*Id* Exh. 2) and a one year successor agreement dated July 1, 2021 through June 30, 2022. ("2021-2022 CBA")(*Id* Exh. 1) The 2021-2022 CBA incorporated by reference all of the provisions of the previous 2018-2021 CBA, with the exception of some specific provisions regarding wages that are not at issue here. The 2018-2021 CBA and the 2021-2022 CBA are together referred to herein as "the

[1] The parties to the CBA are identified therein as: "[t]he Regents of the University of Michigan, hereinafter called the 'University' or the 'Employer', and the Michigan Nurses Association and its University of Michigan Professional Nurse Council, hereinafter called 'Association' . . .."

Expired CBA". (*Id*. ¶¶ 6-7) There has not been a contract in effect since the beginning of July. The parties have been engaged in bargaining for a new contract since March 15, 2022. (*Id* ¶ 11)

Over decades of collective bargaining the University and the Association have negotiated specific contract terms concerning the matter of the nurses' workloads and staffing. Articles 13 and 14 together with "Addendum E" of the Expired CBA, address these matters in detail. (Curtis Affid. ¶ 8) The Expired CBA contains a "Staffing Model" which sets forth "staffing levels" for various hospital departments. The Staffing Model is expressed in a numerical patient-to-nurse ratio. (*Id* Exh. 2 Addendum E, pp 253-254) For example, the staffing ratio for the Pediatric Intensive Care Unit (PICU)(Affiant Katherine Toth's department), is indicated in the "Staffing Model" as: "1:1, noncritical ICU patients or stepdown status 2:1" (Curtis Aff. Exh. 2, p. 253) This indicates that one nurse would be assigned to care for one pediatric patient receiving intensive care, while a nurse assigned to cover non-critical patients requiring less urgent care will be assigned to cover two such patients. (Katherine Toth Affid. ¶¶6, 7) The CBA provides that these prescribe patient-to-nurse ratios may be adjusted based on "patient care needs/acuity changes." (Curtis Aff. Exh. 2, p. 254; Toth Affid. ¶ 7) "Acuity" is a technical term measuring the severity and stability of a patient's medical condition and the physiological and psychological needs of the patient and the patient's family. (Toth Affid.¶ 8)[2] The CBA provides that the

[2] The Staffing Model is developed jointly by a "Workload Review Committee" consisting of employer and Association representatives. (Exh. 1, pp. 28-33) The CBA contains extensive detail regarding the Committee's membership, operation, procedures, and access to information and data.

University must notify the Association in advance if it intends to make any "significant, long-term changes" to the staffing model. (Curtis Aff. ¶ 9, Exh. 2, p. 18)

As reflected in the detail and attention given to it in the CBA, and as explained in the Affidavits accompanying this filing, the matter of controlling workloads is of great significance to the nurses. The Affidavits filed herewith document the reasons why. Nurses' mental and physical health, the quality of their work lives, are greatly dependent on the workload they are assigned to carry. Beyond that, and of equal concern to the nurses, the physical and mental welfare of patients and their families also are affected by the workloads placed on their care-givers. This is particularly true because the nurses are patients' principal front-line care-givers. Nurses provide the principal person-to-person contact between patients and their families and the often frightening and bewildering medical institution they find themselves in.

The current collective bargaining history leading up to this action is detailed in paragraphs 11-32 of the Renee Curtis Affidavit. The "workload crisis" facing University nurses has been a chief bargaining priority for the Association. For several months the months the University and the Association have been exchanging proposals on workload. The nurses have provided the University's bargaining representatives with first-hand accounts of their experiences with under-staffing and its detrimental effects on nurses' mental and physical well-being as well as on the quality of patient care. The Association has proposed changes in the CBA provisions to address the workload problem. The recent proposals included a "best efforts" provision obligating the University to take reasonable measures to conform

workloads to the patient-to-nurse ratios in the Staffing Model, and a provision for enforcing this obligation through the CBA's multi-step grievance/arbitration provision that culminates with submission of an unresolved dispute to a neutral arbitrator for final and binding resolution. (Curtis Affid. ¶23) Thereafter the parties continued to exchange proposals and counter-proposals. (*Id* ¶¶ 24-29)

On August 1, 2022, after weeks of bargaining and exchanging proposals and counter-proposals regarding nursing workload and staffing, the University's bargaining representative emailed the Association stating that the subject of workloads was a "non-mandatory and illegal subject[] of bargaining" and demanded that the Association withdraw its proposals. (Curtis Affid. ¶ 30) Since then, the University has continued its adamant refusal to negotiate regarding the subject of nursing workloads.

Simultaneously with filing this action, the Association filed an unfair labor practice charge with MERC regarding the University's refusal to continue negotiating. (Attached to the Complaint as Exh. A)

ARGUMENT

A. Michigan's Public Employment Relations Act and Legal Precedent Provide for the Temporary Injunctive Relief Sought Here.

The court's authority to grant the injunctive relief requested here is well established. The Michigan Public Employment Relations Act ("PERA"), MCL 423. 201 *et seq*., imposes the legal obligation on the employer and the union to bargain in good faith regarding the important terms and conditions classified as mandatory bargaining subjects. An employer's (or a union's) violation of its obligation to bargain

can be remedied through the filing of an unfair labor practice charge (ULP) with MERC.

In situations where the inevitable delay in obtaining an administrative ruling and order from MERC may expose a party to injury or harm that would be difficult to remedy after the fact, the court has the authority to issue temporary injunctive relief. In *Van Buren School Dist v Circuit Judge*, 61 Mich App 6 (1975)("*Van Buren*"), the Court of Appeals affirmed issuance of an injunction to restrain the layoff of school bus drivers and the subcontracting of their work pending disposition by MERC of an unfair labor practice ("ULP") charge alleging the employer's refusal to bargain. While acknowledging MERC's exclusive jurisdiction to decide the ULP charge, *Id* at 24, the court affirmed the trial court's exercise of its equitable powers to preserve the parties' ability to bargain meaningfully *in aid to*, not in opposition to, the authority of the administrative agency . . .. " *Id* at 14-15.

Michigan courts have followed and applied *Van Buren*. For example, in *City of Detroit v Salaried Physicians Professional Ass'n, UAW*, 165 Mich App 142 (1987), the Court of Appeals again affirmed issuance of a "*Van Buren* injunction" pending final disposition of a union's ULP charges contesting the employer's decision to subcontract bargaining unit work and terminate staff physicians' employment.

Van Buren has been codified in PERA Section 16(h), MCL 423.216(h), which provides as follows:

> The commission or any charging party shall have power, upon issuance of a [ULP] complaint as provided in subdivision (a) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any circuit court within any circuit where the unfair labor practice in question is alleged to have occurred or where such person resides or exercises or may exercise its governmental authority, for appropriate temporary relief or restraining order, in accordance with the general court rules, and the court shall have jurisdiction to grant to the commission or any charging party such temporary relief or restraining order as it deems just and proper.

Note that the Legislature stated a court's broad authority to issue interim injunctive relief is limited only by what the court "deems just and proper."

B. Courts Apply The Four Traditional Factors in Determining Whether To Issue a "*Van Buren* Injunction".

In *Salaried Physicians Professional Ass'n*, the Court of Appeals set out the factors to be analyzed and balanced deciding whether to issue a preliminary injunction ancillary to the unfair practice remedy available before a labor board:

> Whether a preliminary injunction should issue is determined by a four-factor analysis: [1] harm to the public interest if an injunction issues; [2] whether harm to the applicant in the absence of a stay outweighs the harm to the opposing party if a stay is granted; [3] the strength of the applicant's demonstration that the applicant is likely to prevail on the merits; and [4] demonstration that the applicant will suffer irreparable injury if a preliminary injunction is not granted.

Id at 150-51, *quoting MSEA v Department of Mental Health*, 421 Mich 152, 157-58 (1984). The court stressed that these four factors are to be "balanced," 165 Mich App at 142, i.e., they need *not* all be satisfied in order for a preliminary injunction to issue, and the strength of one factor, such as irreparable harm or the likelihood of prevailing

on the merits, may compensate for weakness in the other factors and permit a preliminary injunction to issue. All that is required is that on balance, after considering the four factors, a preliminary injunction is indicated.

C. The Considerations For Temporary Injunctive Relief Are Satisfied Here.

1. The Association Is Likely To Prevail on Its ULP Charge.

This Court need not – indeed should not – decide the ultimate merits of the Association's unfair labor practice charge. That, of course, is the province of MERC. All that is needed is a likelihood that the Charge will be successful.

The Association's unfair labor practice charge against the University is attached to the Complaint as Exhibit A. PERA requires the University to "bargain collectively . . . with respect to wages, hours, and other terms and conditions of employment." PERA Section 15, MCL 423.215; *Central Michigan Univ Faculty Ass'n v Central Michigan Univ*, 404 Mich 268, 276-77 (1978) (holding that universities are bound by PERA and must bargain in good faith until genuine impasse is reached). PERA provides that an employer's failure or refusal to bargain constitutes an unfair labor practice: "It shall be unlawful for a public employer or an officer or agent of a public employer . . . to refuse to bargain collectively with the representatives of its public employees . . . ." PERA Section 10, MCL 423210(1)(e); *Central Michigan Univ*, 404 Mich at 277-78. This essential element of Michigan's public employee labor relations law, imposing liability on an employer that fails refuses to bargain in good faith over mandatory bargaining subjects, has prevailed for decades.

The Association's ULP Charge alleges that the University violated Section 15 of PERA by refusing to perform its statutory obligation under to bargain in good faith regarding the critically important matter of nurses' workloads and adequate staffing. The Association's ULP charge contests the University's failure to meet its statutory bargaining obligation by slamming the door shut on the ongoing negotiations over the critical issue of patient-to-nurse ratios. The University not only refused to continue negotiations on this issue but also demanded that the Association withdraw its bargaining proposals.

The negotiations regarding nurse workloads that the University has now roadblocked is a mandatory subject of bargaining – that is, it a working condition of sufficient importance that parties are obligated to bargain about it in good faith. *See, e.g., Reading Community Schools*, 1989 MERC Lab Op 1069 (finding that a school district's failure to bargain about proposals relating to teacher workloads violated PERA) (attached hereto). The proposition that the amount of work assigned to an employee is a mandatory bargaining subject has been a foundational element of labor law. See, e.g., *Beacon Piece Dyeing and Finishing*, 42 LRRM 1489 (1958) (employer must bargain over workload proposal concerning how many machines a factory worker is assigned to operate). In his oft-quoted concurring opinion in *Fiberboard Paper Products v NLRB*, 379 US 203 (1964), Supreme Court Justice Potter Stewart declared: "In common parlance, the conditions of a person's employment are most obviously the various physical dimensions of his working environment. What one's hours are to be, what amount of work is expected during those hours…" *Id* at 222.

Accord, Gallenkamp Stores v NLRB, 402 F2d 525, 529 n 4 (CA 9, 1968) ("employee workloads are a mandatory subject of bargaining"). [3]

Employee workload is closely connected to the issue of "staffing" – hence the references to "staffing" in the title and body of Article 13 and Addendum E of the Expired Agreement. The Michigan Court of Appeals has held that staffing decisions that affect the safety, health and welfare of employees are a mandatory bargaining subject, inasmuch as they significantly affect "terms and conditions of employment" that are of critical importance to employees. The Court of Appeals has explained: "It is well established that where a staffing issue is related or inextricably intertwined with the safety of the [bargaining] unit members, the issue is subject to mandatory bargaining." *City of Detroit v Detroit Fire Fighters Ass'n*, 204 Mich App 541, 552-558 (1994) (citing cases and concluding that minimum-staffing of firefighters was a mandatory subject of bargaining because it was shown related to or inextricably intertwined with safety); *see also*, *City of Trenton v Trenton Fire Fighters Union*, 166 Mich App 285 (1998).

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[3] The National Labor Relations Board, the federal analogue of MERC, has specifically posited that nursing workload is a mandatory subject of bargaining. *E.g.*, *Good Samaritan Hospital*, 335 NLRB 901 (2001) (the decision to implement nurse staffing "matrices" and the effects of that decision on the nurses were mandatory subjects as to which the employer was required to bargain). Such precedent is persuasive as MERC and the Michigan courts have been guided by the constructions placed on analogous provisions of the National Labor Relations Act which established this bargaining framework. *Detroit Police Officers Ass'n v City of Detroit*, 391 Mich 44, 53 (1974) (both PERA and the NLRA "use almost identical language in describing the duty to bargain"); *St Clair Int School Dist v Intermediate Ed Ass'n*, 458 Mich 540 (1988); *Central Michigan Univ*, *supra*, 404 Mich at 276.

As we discuss below, the close causal connection between nurses' workloads and their safety and well-being establishes workload and staffing as a mandatory bargaining subject – and it is why an injunction is needed here to forestall foreseeable irreparable harm.

2. The Nurses and the Association Are Threatened With Irreparable Harm Absent an Injunction.

Due to recent chronic and excessive understaffing, which the nurses have repeatedly identified to the University as a "staffing crisis", the harmful effects of understaffing and excessive workloads have become a much more urgent issue for the nurses. In a bargaining session held on April 21, 2022, recounted in Renee Curtis's Affidavit, ¶¶14-22), twenty-nine nurses described in detail for the University's negotiators their personal experiences demonstrating the urgent problem of excessive workloads and their harmful effects on nurses and on patient care.

The Affidavits of nurses filed in support of this Motion demonstrate why immediate injunctive relief is appropriate here.[4] These affidavits demonstrate the factual basis for the nurses' widespread perception that there is a "staffing crisis" in the University's hospital and health care system, and why they are so concerned about it. The Affidavits show that on a frequent and regular basis, too many patients are assigned to nurses to allow them to perform their nursing care responsibilities safely and with maximum effectiveness for the patient's health. They attest to the

[4] Plaintiffs have asked that Nurse Toth's Affidavit be placed under seal, due to the sensitive patient-related information it contains. While patient and nurses' identities are not disclosed, the descriptions of specific incidents therein should not be publicly disseminated.

fact that the staffing crisis can endanger the physical and mental health of nurses, and that it can imperil their professional licensure and job security.

UMPNC President and ER nurse Renee Curtis states in her Affidavit:

> As UMPNC President, I receive reports from nurses every day about the staffing crisis at Michigan Medicine. On a day-to-day basis, RN workload is too heavy. RNs are too frequently called upon to care for more patients than is advisable. The burden on RNs from excess workloads harms nurses physically and mentally, puts them at risk of making a career-ending patient error, and leaves them demoralized, in good part because Michigan Medicine nurses want to provide the professional patient care that led them to our profession and Michigan Medicine in the first place. [Curtis Affid. ¶ 19]

Curtis provides factual detail about the severe and chronic understaffing in her ER department. (Curtis Affid. ¶¶ 34-37) She recounts how patient volume in the ER began to surge as the COVID pandemic wore on. (*Id* ¶ 35) She attests to the result at length and in detail: the lack of nursing capacity to handle the patient load, the overcrowding with high acuity patients needing urgent attention crammed into hallways; the distraught patients and families waiting for medical attention. (*Id* ¶¶ 35-36)

The severity of the workload crisis faced by ER nurses is reflected in the University's August 5, 2022 written admission that in the Adult Emergency Room "only 38% of open [RN] hours [are] being covered (or 62% of hours remaining open)." (Curtis Affid. ¶ 37, Exh. 18). To put this in plainer language: in the ER, 62% of the open, unassigned nursing hours remained unstaffed, even after the University had offered double time pay to nurses who would volunteer to fill those hours, in addition to their already assigned shifts. The extent of the staffing crisis is indicated by the

"Assignment Despite Objection" ("ADO") forms that nurses have submitted to the Association to document workplace problems and issues. (See, e.g., Curtis Aff. Exh. 4) Renee Curtis states that nurses have filed over 500 ADO forms expressing concerns over inadequate nurse to patient ratios since the beginning of this year. (*Id* ¶ 16 at p. 18)

Nurse Curtis describes the emotional toll this understaffing situation takes on her fellow ER nurses who must work under such conditions, on their regular shifts and when they volunteer to work extra hours. (*Id* ¶¶ 38-40) She states: "Watching sick people in our waiting rooms and not having the ability to manage the situation due to understaffing has caused a great sense of moral trauma." (*Id* ¶ 39, at p. 19) Nurses are "overcome with anger, frustration, and exhaustion as they share their lived experiences . . .. (*Id* ¶ 39, at p. 20) Curtis states that "Not being able to take care of patients in the way we as nurses know that is proper results in harm to nurses: ***it is personally*** devastating." (*Id* ¶ 40, at p. 20) Curtis describes one of the results of the staffing crisis: ". . .the emotional, mental and physical trauma from working day in and day out has taken its toll on the nursing staff, with the result being the loss of many of the top one third of our highest senior nurses who leave the department for safer, more controllable work and greater personal safety and security." (*Id* ¶ 36, at p. 18)

The fact that open shifts in the ER are not fully staffed does not stop emergency patients from coming through the doors. Patient levels do not decline when there are not enough nurses on the job; instead, the nurses on duty are forced to handle too

many patients. This creates an unsafe situation for the nurses (as documented in the academic research discussed below) and for the patients. As Renee Curtis testifies, nurses on a daily basis question whether they have "even met the required standard of care given the limited services we were able perform because we are so short staffed." (Curtis Affid. ¶ 40, pp. 20-21)

The nexus between patient workloads and nurses' health and safety is widely recognized in the academic and research literature. Jeremy Lapham, an RN with advanced degrees and teaching experience in nursing, describes in his Affidavit some of the numerous studies attesting to the fact that excessive nurse workloads – in the form of excessive patient-to-nurse ratios – have an adverse impact not only on patient care, but also on the nurses themselves in the form of "chronic fatigue, poor sleep patterns, absenteeism, and job dissatisfaction." (Lapham Aff. ¶ 9) (citing and quoting Martin, *The Effects of Nurse Staffing on Quality of Care*, MedSurg Nursing Journal, Vol 24, Issue 2 (2015)). Job dissatisfaction due to excessive workloads is also known as "burnout" – the symptoms of which for nurses include fatigue, headaches, and general health problems. (Lapham Aff. ¶ 14). High workloads, exacerbated by low staffing, have been found contribute to musculoskeletal diseases among nurses, including low back problems ("LBP"). (*Id* ¶ 10) (citing and quoting Shieh, *Increased Low Back Pain in Nurses with High Workload for Patient Care: A Questionnaire Survey*, Taiwanese Journal of Obstetrics and Gynecology, Vol 55, Issue 4 (2016), for the conclusion that "[m]usculoskeletal diseases remain the main cause of injury

among hospital workforces, whereas LBP has been the major reason of absence in nursing staff").

Excessive patient workloads are correlated with "higher probabilities of likely needlestick injuries which correlate with occupational exposure to contagious diseases such as HIV." (Lapham Affidavit ¶ 11) (citing and quoting Clarke, Sloane, and Aiken, *Effects of Hospital Staffing and Organizational Climate on Needlestick Injuries to Nurses*, American Journal of Public Health, Vol 92). These threats to nurses' personal health and safety cannot be remedied after-the-fact with compensation.

Finally, in addition to the harm to the nurses, the Association as an organization and its status as the nurses' collective bargaining representative is harmed by the University's unsupportable refusal to comply with its bargaining obligation. The issue is one of *process* – the collective bargaining process. *Van Buren, supra*, 61 Mich App at 18 (granting an injunction "to make certain there would be something to bargain about"). In *Van Buren* the court recognized the reality that once the employer takes an intractable position the deadlock can become irremediable by the time the Commission finally issues an order months in the future. Here the fundamental mechanism by which the Association deals with the University and represents its members – the collective bargaining process – will be rendered meaningless by the University's inexplicable refusal to participate. It is impossible to calculate the damage, in monetary terms, resulting from the Association's impaired bargaining position.

The harm caused by the University's blatant unlawful bargaining behavior is immediate and it is irreparable. Every day that goes by is a day that the University and the Association are not negotiating on a level playing field over the crucial issue of nurse workload ratios. Every such day is another lost opportunity for the parties to mutually address the University's nurse staffing crisis – to the detriment of the nurses, their patients, and the University.

3. The Remaining Factors Support Immediate Injunctive Relief Are Present.

A balancing of harms supports granting the injunctive relief sought here. If an injunction issues, the University will merely be required to maintain the *status quo* and continue bargaining. The University cannot claim to be harmed by complying with the collective bargaining process it has been lawfully engaging in for months. What Plaintiffs seek is simply that the University continue to bargain in good faith regarding the Association's proposals on a subject that is of urgent importance to both parties. The University's interests are protect by PERA, which provides in clear terms that the PERA duty to bargain in good faith "does not compel either party to agree to a proposal or make a concession." MCL 423.215.

Finally, the public interest clearly will be served by the issuance of an injunction which will preserve collective bargaining as the preferred method for reaching agreement on safer patient-to-nurse ratios for optimal health care. As the Michigan legislature has stated: "It is hereby declared as the public policy of this state that the best interests of the people of this state are served by the prevention or prompt settlement of labor disputes . . . ." MCL 423.1. An injunction would foster

labor peace through the collective bargaining process, which is consistent with Michigan's law and public policy, as well as in the public interest.

CONCLUSION

For the above reasons, Plaintiffs request that the court grant their Motion for Order to Show Cause Why a Preliminary Injunction Should Not Issue and for a Preliminary Injunction, and following such hearing as the court may direct, that the court issue a preliminary injunction as requested in the Complaint.

Respectfully submitted,

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Dated: August 15, 2022