

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 THIRD JUDICIAL DISTRICT AT ANCHORAGE

3
4 ALASKA STATE EMPLOYEES)
5 ASSOCIATION, LOCAL 52,)

6 Plaintiff,)

7 vs.)

8 STATE OF ALASKA;)
9 DEPARTMENT OF HEALTH &)
10 SOCIAL SERVICES; DEPARTMENT)
11 OF ADMINISTRATION; OFFICE of)
12 GOVERNOR MICHAEL J. DUNLEAVY,)

13 Defendants.)

14 Case No. 3AN-19- 06327 CI

COPY
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Clerk of the Trial Courts

15 COMPLAINT

16 The Alaska State Employees Association, Local 52 alleges as
17 follows:

18 PARTIES & OTHER AGENCIES AND ENTITIES

19 1. The Alaska State Employees Association, Local 52
20 ("Union" or "ASEA") is a union that protects pay, working
21 conditions, worker rights and member benefits for its members,
22 which include at least 211 employees of the State of Alaska who
23 work at the Alaska Psychiatric Institute ("API"). The Union has
24 a Collective Bargaining Agreement ("CBA") with the State of
25 Alaska that expires on June 30, 2019 related to its General

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1 Government Unit. The Union and the State of Alaska ratified and
2 approved a new CBA ("Ratified CBA"), which currently awaits
3 funding by the Alaska Legislature, and which will span from July
4 1, 2019 to June 30, 2022.

5
6 2. The Department of Health and Social Services ("State of
7 Alaska" or "DHSS") is an administrative agency of the State of
8 Alaska with statutory responsibility to operate API which
9 provides emergency and court-ordered inpatient psychiatric
10 services.

11 3. Department of Administration, Division of General
12 Services ("DOA" or the "State of Alaska"), is an administrative
13 agency of the State of Alaska with statutory responsibility to
14 approve the procurement of state funds for state contracts,
15 including those that are awarded as single source, limited
16 competition and emergency alternative procurements under
17 AS 36.30.

18
19 4. The Office of the Governor of Michael J. Dunleavy
20 ("Governor's Office" or the "State of Alaska") is an
21 administrative agency within the State of Alaska.

22
23 5. Wellpath Recovery Solutions ("Wellpath") is an entity
24 that describes itself as "the newly combined Correct Care
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1 Solutions and Correctional Medical Group Companies,"¹ and is
2 currently under contract with the State of Alaska related to API.

3 **JURISDICTION AND VENUE**

4 6. This Court has subject matter jurisdiction under
5 AS 22.10.020(a) and (g).

6 7. Venue is proper in this Court under AS 22.10.030 and
7 Alaska Rule of Civil Procedure 3(c).

8 **NATURE OF THE CASE**

9 8. This action seeks a judicial declaration that the State
10 of Alaska violated the law by awarding a single-source contract
11 to Wellpath. The State of Alaska cannot establish, by written
12 evidence or otherwise, that: (a) it was impracticable to award
13 the contract provided to Wellpath by competitive sealed bidding,
14 competitive sealed proposals, or limited competition, (b) that
15 the Wellpath contract is in the State of Alaska's best interest,
16 and (c) that there were no vendors that could have provided the
17 same services to API as Wellpath.

18 9. This action also seeks damages and other relief,
19 including injunctive relief, for claims by the Union against the
20 State of Alaska for breach of contract, anticipatory breach of
21 contract, breach of the covenant of good faith and fair dealing,
22
23
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25 ¹ See <https://wellpathcare.com/>.

1 promissory estoppel, and for a violation of the contract clause
2 in the Alaska Constitution.

3 WELLPATH'S CONTRACT WITH THE STATE OF ALASKA

4 10. On February 8, 2019, DHSS Commissioner Adam Crum
5 announced that he had "invoked his authority under state law to
6 immediately assume management of [API]."²

7
8 11. One day prior, on February 7, 2019, the State of
9 Alaska, through its DOA and Chief Procurement Officer Jason Soza,
10 approved a single-source contract under its procurement code,
11 allowing Wellpath to take over the management of API ("Wellpath
12 Contract").³ The Wellpath Contract is divided into two phases,
13 including a "Startup" phase ("Phase 1") from February 8, 2019
14 through June 30, 2019, and an "Ongoing Operations" phase ("Phase
15 2"), from July 1, 2019 (called the "Operation Date") through June
16 30, 2024.⁴ The terms and conditions applicable to Phase 2 will
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19 _____
20 ² See Press Release, Feb. 8, 2019, titled "Commissioner
21 assumes management of Alaska Psychiatric Institute; changes will
22 improve patient and staff safety," publicly available at
23 <http://dhss.alaska.gov/API/Pages/AdminChanges.aspx>.

24 ³ The Wellpath Contract, titled "Contract with Wellpath
25 Recovery Services for hospital administration services" is
26 available _____ publicly _____ at
[dhss.alaska.gov/API/Documents/AdminChanges/0619-
131_API_HospitalAdminServ_Contract_20190208.pdf](http://dhss.alaska.gov/API/Documents/AdminChanges/0619-131_API_HospitalAdminServ_Contract_20190208.pdf).

⁴ Wellpath Contract at 6.

1 be "negotiated and reflected in an amendment prior to June 30,
2 2019."⁵

3 12. Phase 1 includes several benchmarks, including API's
4 continued compliance with applicable licensing, accreditation and
5 regulatory requirements, a promise that API's 80 beds will be
6 "fully available for utilization," and that API be "staffed by
7 the necessary clinical and support staff."⁶ According to
8 contract documents, during Phase 1, "Wellpath is not responsible
9 for the operations of API,"⁷ but the contract "contemplates
10 Wellpath being prepared to assume such responsibility as of the
11 commencement of the Operation Date, on July 1, 2019."⁸

12 13. The Wellpath Contract also includes a term called
13 "Completion of Phase 1," which provides that on or before April
14 15, 2019, the State of Alaska will "engage in negotiations to
15 amend this agreement and outline the terms described in Phase 2:
16 Ongoing Operations."⁹

21 _____
22 ⁵ *Id.*

23 ⁶ *Id.*

24 ⁷ *Id.* at 7.

25 ⁸ *Id.*

26 ⁹ *Id.*

1 14. The Wellpath Contract states that current API employees
2 will "remain the financial responsibility of the State,"¹⁰ but
3 that effective on the "Operations Date, existing State employees
4 at API shall be eligible to apply for rehire with Wellpath and
5 have preference in that process."¹¹ The Wellpath Contract
6 further obligates Wellpath to
7

8 honor terms & conditions of existing contracts that API
9 is currently engaged in. Requests for termination or
10 adjustment to any contract must be presented to the
11 State, in writing, for approval, along with a proposal
12 for the amendment / termination that exhibits adherence
13 to the terms & conditions of these contracts. The
14 State will remain financially responsible for the costs
15 of services provided under these contracts during
16 Phase 1.¹²

17 15. At different times during the last eight weeks since
18 Wellpath engaged in the Startup phase of API, including the
19 Phase 1 obligations described above, the State of Alaska has:

- 20 • Informed Union members that following the Operations
21 Date Wellpath will continue the salaries of current
22 Union members for six months, and then will reevaluate
23 and possibly reduce salaries;
- 24 • At different town meetings, told Union members that no
25 one will lose their jobs, but then announced that no
26 one's job is certain or safe;

23 ¹⁰ *Id.*

24 ¹¹ *Id.*

25 ¹² *Id.*

- 1 • Modified schedules of current Union employees,
2 including demanding that certain employees return to
3 work on days off, refusing to make informational
4 meetings available via video, causing Union members to
5 return to work on days off to hear updates regarding
6 their jobs;
- 7 • Informed Union members that it would circulate
8 information about hiring on with Wellpath, including
9 human resources and benefits information, and then
10 failed to do so;
- 11 • Announced to Union members that the State of Alaska's
12 retirement and benefits would be onsite at API to
13 answer questions about tier status and retirement
14 between April 1 and April 4;
- 15 • Pushed back the timeline related to current Union
16 members' status as State of Alaska employees, including
17 most recently an announcement regarding the Operations
18 Date for the Wellpath Contract, changing the date from
19 July 1, 2019 to September 1, 2019;
- 20 • Modified the April 15, 2019 deadline in the Wellpath
21 Contract again in testimony before the Legislature,
22 identifying new dates and new deadlines for the
23 Operations Date.

16. The changes have left Union members in flux, not
knowing the status and security of their job and existing
benefits, including those articulated in the CBA and the Ratified
CBA.

THE REQUEST FOR ALTERNATIVE PROCUREMENT

17. The DHSS, through its deputy commissioner Albert Wall
and assistant commissioner, Sana Efird, signed a DHSS Authority

1 to Seek Professional Services on February 7, 2019 and submitted a
2 Request for Alternate Procurement ("RAP").¹³ The RAP eventually
3 sought authority for a single-source contract for Wellpath at an
4 estimated cost of \$84 million.¹⁴

5
6 18. Attachments to the RAP include an email from Dep. Comm.
7 Wall to DHSS Commissioner Adam Crum on January 22, 2019,
8 outlining a "basic draft of the compelling reasons to sole source
9 an emergent contract with API."¹⁵

10 19. In that January 22, 2019 email attached to the RAP,
11 Dep. Comm. Wall outlines a list of serious issues at API, and
12 states that if the "emergent issue is not immediately rectified"
13 the State of Alaska could face a loss of federal funding that
14 would then be paid by state funds; ongoing patient issues
15 (safety, personal rights); and the potential closure of API.¹⁶

16
17 20. Dep. Comm. Wall further noted that the Center for
18 Medicare & Medicaid Services ("CMS") planned to visit API between
19 January 23 and February 1, 2019 for a follow up inspection
20 related to a letter of correction, which suggested that API faced
21

22 ¹³ The RAP is available at [http://dhss.alaska.gov/API/Pages/
AdminChanges.aspx](http://dhss.alaska.gov/API/Pages/AdminChanges.aspx).

23 ¹⁴ RAP at 1.

24 ¹⁵ *Id.* at 6.

25 ¹⁶ *Id.* at 7, ¶ 6.

1 serious risk of losing certification if a plan of correction did
2 not establish improvements.

3 21. Dep. Comm. Wall further stated that the DHSS "executive
4 leadership" met with "two potential contractors concerning" the
5 issues at API and the desire to find a solution. According to
6 Dep. Comm. Wall, the contractors were Noel Rea, a former Wrangell
7 Medical Center CEO, now a consultant with NetworxHealth, a
8 Virginia Mason Medical Center consulting group, and Jeremy Barr,
9 affiliated with Wellpath.¹⁷

10
11 22. Dep. Comm. Wall stated that himself, Ms. Efird, and
12 Deputy Commissioner Donna Steward then decided to request
13 authority for Wellpath to contract with the State of Alaska for
14 an **"emergent procurement of single-source contract with the begin
15 date of no later than February 5, 2019 and the end date of no
16 earlier than June 30, 2019."**¹⁸

17
18 23. The RAP includes a copy of the February 5, 2019 letter
19 or press release from Commissioner Crum, stating that under
20 AS 47.32.140(d) and (e), the State of Alaska DHSS assumed
21 "management of" API as of February 5, 2019.¹⁹ Commissioner Crum
22

23 ¹⁷ See generally *Id.* at 8.

24 ¹⁸ *Id.* (emphasis in original).

25 ¹⁹ *Id.* at 10.

1 stated that the State of Alaska and DHSS intended to contract
2 with a nationally recognized organization to provide day-to-day
3 management and operations of the facility through the "end of the
4 fiscal year, with the expectation that this organization will
5 take over the full-time operations of the facility on or before
6 July 1, 2019."²⁰ Commissioner Crum's February 5, 2019 letter
7 includes several facts in Dep. Comm. Wall's email, identifying
8 serious issues at API. Commissioner Crum stated that he expected
9 a contractor to make the following immediate changes:

- 11 • Immediately provide staffing to administratively manage
12 API in a more efficient manner;
- 13 • Increase patient capacity;
- 14 • Achieve rapid compliance with regulatory and safety
15 requirements;
- 16 • Improve patient safety; and
- 17 • "eventually assume all hospital responsibilities
18 including patient services."

19 24. The RAP includes an evaluation of Noel Rea, but
20 inexplicably fails to mention that Mr. Rea works with a company
21 called NetworxHealth. The RAP materials indicate that Mr. Rea
22 provided his "CV only" and that he attended an onsite meeting,
23

24 _____
25 ²⁰ *Id.*

1 but declined to tour API.²¹ Those evaluating Mr. Rea gave him a
2 score of 32. Wellpath earned a score of 54.²² There is no
3 evidence that the State of Alaska properly vetted either company.

4 25. Before submitting the RAP for the single-source
5 procurement, the State of Alaska, through DHSS, submitted a
6 request for an emergency RAP. Mr. Soza, the chief procurement
7 officer who eventually approved the single-source procurement,
8 emailed Stacie Kraly, an attorney for the State of Alaska,
9 Department of Law, and noted that the DHSS had considered two
10 vendors (referenced above, in paragraph 24). The communications
11 establish that the State of Alaska debated early on whether to
12 request an emergency or single-source procurement, and then opted
13 for a single-source procurement even though other vendors were
14 considered and were available but did not receive notice or an
15 opportunity to submit a proposal.
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18 26. In fact, besides meeting with Wellpath and Mr. Rea, the
19 State of Alaska also contacted other vendors, including Liberty
20 Health Care Corporation and Providence Health and Services
21 ("Providence"). The RAP makes no mention of contacts with these
22 entities. In fact, it does not appear that DHSS informed
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24 ²¹ *Id.* at 55.

25 ²² *Id.*

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1 Mr. Soza about its communications with Providence. In response
2 to inquiries from legislators, Providence, through its Chief
3 Executive Preston Simmons, provided a letter that established it
4 offered to help with the issues at API and informed Dep. Comm.
5 Wall of as much in a February 1, 2019 phone call.²³ Mr. Simmons
6 then called chief medical officer Dr. Arpan Waghray for the
7 Providence St. Joseph Health Well Being Trust. Dr. Waghray
8 talked to Dep. Comm. Wall that same day, and discussed the "long-
9 term operations of [API]."²⁴ According to Providence, Dep. Comm.
10 Wall "stressed the urgent need for immediate stabilization, but
11 indicated a willingness to partner on acute, civil commitment,
12 and post-acute care to engage Providence and others in creating a
13 long-term strategy for API."²⁵

14
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16 27. On February 14, 2019, Mr. Simmons, who (at the time)
17 did not have an understanding of all the terms in the Wellpath
18 Contract, told Commissioner Crum that Providence remained
19 interested in a long-term solution for API, and "wanted to be
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23 ²³ Letter from Providence to Representatives Ivy Spohnholz and
Tiffany Zulkosky, March 6, 2019 at 2.

24 ²⁴ *Id.* at 2.

25 ²⁵ *Id.*

1 considered for any RFPs for the ongoing management of the
2 facility when that opportunity became available."²⁶

3 28. Despite interest expressed by Providence, and the
4 existence of other vendors, the State of Alaska has maintained
5 that there were no other vendors to step in and manage and
6 operate API on an emergency basis during Phase I and then for the
7 multiple-year contract term of Phase 2.

8 29. In reality, the State of Alaska always intended
9 Wellpath to take over API. Prior to approval of the RAP,
10 Wellpath individuals were present at API, and had been at API
11 during the month of January 2019. In fact, DHSS first contacted
12 Wellpath on December 20, 2018 based on information presented to
13 the Alaska Legislature. Starting in January 2019, Union members
14 report working around individuals who were first introduced as
15 consultants, but who turned out to be Wellpath employees.
16 Additionally, Wellpath prepared a 39-page document called
17 "Company Overview," dated January 21, 2019 and affixed with the
18 DHSS logo one day prior to Dep. Comm. Wall's first January 22,
19 2019 email to Commissioner Crum, outlining the various reasons
20 for privatizing API. That Wellpath proposal discusses
21 privatization in detail.
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25 ²⁶ *Id.*

1 30. The State of Alaska's decision to award the contract to
2 Wellpath does not satisfy AS 36.30.300. That statute requires
3 written evidence establishing that the competitive process (which
4 is at the heart of the procurement process under Alaska law) is
5 not practicable, and why the procedure and the award to the
6 identified vendor is in the State of Alaska's best interest,
7 including a finding that no other vendors are available for the
8 work. The RAP provides little if any information that rises to
9 the level of evidence or proof that justifies a single-source
10 contract.

11
12 31. A February 23, 2017 feasibility study on the
13 privatization of API, commissioned by Governor Bill Walker's
14 administration and designed to "determine whether privatization
15 has the potential to generate cost savings to the State without
16 diminishing the quality of care delivered by the hospital,"
17 concluded that state management, not privatization, offered the
18 greatest efficiencies and cost savings.²⁷ The study noted
19 exceptions for the communication center and facility and
20 materials management.²⁸ The study also determined that "staff
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23 ²⁷ [http://dhss.alaska.gov/HealthyAlaska/Documents/Initiatives/
API%20Privatization%20Feasibility%20Report Jan%202016%202017.pdf](http://dhss.alaska.gov/HealthyAlaska/Documents/Initiatives/API%20Privatization%20Feasibility%20Report%20Jan%202016%202017.pdf)
24 at 4.

25 ²⁸ *Id.*

1 reductions needed for budget neutrality would likely diminish
2 quality of service delivery," further endangering API's patients
3 and staff.²⁹

4 32. Moreover, prior to the State of Alaska's contract with
5 Wellpath, API made strides to improve its Quality Assurance &
6 Performance Improvement programs. In fact, API executives
7 announced that CMS approved the API Plan of Correction (submitted
8 without reference to Wellpath) on or about February 20, 2019. In
9 early April or late March, API received notice that The Joint
10 Commission recommended "deemed status," determining API has
11 standards and a survey process that meets or exceeds Medicare and
12 Medicaid requirements. API is now accredited by The Joint
13 Commission until December 15, 2021.

14
15
16 33. In testimony before the Legislature on April 2, 2019
17 Mr. Soza provided additional details regarding the RAP and his
18 decision to approve the single-source Wellpath contract. But
19 Mr. Soza's testimony did not provide the evidence that supports
20 the Wellpath single-source contract or that establishes the State
21 of Alaska complied with AS 36.30.300. In fact, it appears
22 Mr. Soza did not know and was not informed about lawsuits
23 involving Wellpath or its parent companies, including lawsuits
24

25 ²⁹ *Id.*

1 that establish a history of legal problems and safety issues.
2 Mr. Soza did not identify any outside experts or information that
3 he considered in reaching his decision.

4 **FACTS RELATED TO BREACH OF CONTRACT CLAIMS, INCLUDING THE**
5 **VIOLATION OF THE CONTRACT CLAUSE OF THE ALASKA CONSTITUTION**

6 34. The CBA is effective July 1, 2016 until June 30, 2019.
7 The CBA provides, among other things, for certain events if the
8 State of Alaska decides to privatize or contract out certain
9 services and jobs.³⁰ In Article 13 of the CBA, titled
10 "Contracting Out," the CBA provides several mandatory promises,
11 including the State of Alaska's obligation to provide a
12 feasibility study and the Union's right to submit an alternative
13 plan to the State of Alaska's decision to contract out or
14 privatize.³¹

15
16 35. At the time the State of Alaska contracted with
17 Wellpath, it had not commissioned or received a feasibility
18 study, as required by the CBA. Article 13.01(B) of the CBA
19 states:
20

21 Decisions to contract out shall be made only after
22 the affected agency has conducted a written
feasibility study determining the potential costs

23
24 ³⁰ A copy of the CBA is available at <http://doa.alaska.gov/dop/laborrelations/unioncontracts/>.

25 ³¹ *Id.* at Articles 13.01, 13.02 and 13.03.

1 and benefits that would result from contracting
2 out the work in question. The study shall include
3 all costs associated with contracting out the work
4 in question including, but not limited to, wages,
benefits, administrative costs, agency overhead,
program supervision, and audits.³²

5 The CBA further states, in Article 13.01(C):

- 6 (1) The Employer shall notify the Union of its final
7 decision regarding contracting out. A copy of the
study will be provided to the Union.
- 8 (2) If the Employer decides to contract out and such
9 contracting out will result in the displacement of
10 employees, the Employer shall provide the Union
with no less than thirty (30) calendar days'
11 notice that it intends to contract out bargaining
unit work. The notification by the Employer to
12 ASEA of the results of the feasibility study will
include all information on which it based its
13 decision to contract out the work, including the
total cost savings the Employer anticipates.
- 14 (3) The Union may then submit an alternate plan that
15 is to include potential costs and benefits.
During this thirty (30) day calendar period the
16 Employer shall not release any bids and ASEA shall
17 have the opportunity to submit an alternate plan
that will be given full consideration by Employer.
18 During this thirty (30) calendar day period, the
Union shall have the opportunity to discuss the
19 placement of affected employees.

20 36. The State of Alaska breached the provisions in the CBA
21 by contracting with Wellpath for the privatization of API, as
22 described in Phase 1 and Phase 2 of the Wellpath Contract. The
23

24 ³² [http://doa.alaska.gov/dop/fileadmin/LaborRelations/pdf/](http://doa.alaska.gov/dop/fileadmin/LaborRelations/pdf/contracts/GGU20162019Final.pdf)
25 [contracts/GGU20162019Final.pdf](http://doa.alaska.gov/dop/fileadmin/LaborRelations/pdf/contracts/GGU20162019Final.pdf) at 29.

1 State of Alaska's subsequent decision to delay the Operation Date
2 until September 1, 2019 in order to complete the feasibility
3 study required by the CBA is an admission that it failed to
4 provide the Union with the required feasibility study, as
5 required by the CBA.
6

7 37. Had the State of Alaska complied with the terms of the
8 CBA, and the Ratified CBA, the Union would have and could have
9 submitted a plan in accordance with Article 13, and, pursuant to
10 its rights, would have and could have submitted an alternative
11 plan to that described in the Wellpath Contract. In breaching
12 the CBA, the State of Alaska wrongly precluded the Union from
13 submitting a plan and failed to comply with the terms of the CBA
14

15 38. Additionally, the State of Alaska also breached the CBA
16 by including provisions in the Wellpath Contract that allow
17 Wellpath to hire individuals listed on the "Staffing Plan" that
18 include Union jobs. These new employees are filling bargaining
19 unit positions that should otherwise be filled by Union members.
20 The State of Alaska also breached the CBA by and through its
21 FY 2020 budget, released on February 13, 2019, which deletes
22 every single position at API, including at least 218 positions
23 occupied by Union members.
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1 39. The State of Alaska has also anticipatorily breached
2 the Ratified CBA, which contains a promise that the State of
3 Alaska and the Union will submit and support legislation
4 associated with funding the Ratified CBA. The Ratified CBA
5 contains the same feasibility requirement in the event the State
6 of Alaska endeavors to contract out positions available to the
7 Union. Further, even if the Alaska Legislature fails to fully
8 fund the Ratified CBA, the terms of the Ratified CBA, with the
9 exception of the funding associated with the legislative action,
10 remain binding.

11 40. Additionally, the poor service delivery that forms, in
12 part, the basis of the State of Alaska's and regulators' concerns
13 regarding staff and patient safety at API is directly the result
14 of the State of Alaska's systemic failure to manage API. This
15 chronic mismanagement stems from years of underfunding,
16 understaffing, and lack of consistency and directions at the
17 highest levels of government.

18 41. Governor Michael Dunleavy's decision to terminate the
19 API Chief Executive Officer, and two staff Psychiatrists
20 (including the Chief Psychiatrist) weeks into his administration
21 crippled API's ability to make changes necessary to ensure
22 patient and staff safety at the same time the State of Alaska
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1 worked with and negotiated the single source contract with
2 Wellpath. The unstable work environment has caused several
3 doctors and vital employees to leave API, leaving staff,
4 including Union members, in a worsening and unsafe environment,
5 and jeopardizing the operation of API and the safety of patients.
6 These actions constitute an unfair labor practice under Alaska
7 law.
8

9 **COUNT I: DECLARATORY JUDGMENT**

10 The Union incorporates paragraphs 1-41 as if fully set forth
11 herein, and alleges as follows:

12 42. An actual controversy has arisen and now exists between
13 the Union and the State of Alaska such that a judicial
14 determination is necessary and appropriate so that the parties
15 may ascertain their rights and obligations regarding the
16 operation of API.
17

18 43. The Union contends that the State of Alaska violated
19 AS 36.30.300, describing single source procurements, by wrongly
20 determining that it was not practicable to award a contract by
21 competitive sealed bidding under AS 36.30.100, by competitive
22 sealed proposal under AS 36.30.200, or by limited competition
23 under AS 26.30.305, and by failing to provide the evidence
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1 necessary to justify a single-source procurement, including the
2 absence of any other vendors.

3 44. The Union contends that by failing to satisfy
4 AS 36.30.300, the State of Alaska failed to establish that the
5 Wellpath Contract is in the State of Alaska's best interest, and
6 is not supported by appropriate written evidence or factual or
7 expert support.

8
9 45. The Union contends that the single source contract
10 violates AS 36.30.300 by providing terms that are not
11 advantageous to the State of Alaska, and because the terms
12 circumvent the procurement source selection procedures required
13 by Alaska law.

14 **COUNT II - BREACH OF CONTRACT**

15 The Union incorporates paragraphs 1-45 as set forth herein,
16 and further alleges as follows:

17
18 46. The Union and the State of Alaska entered into the CBA
19 as described above.

20 47. The State of Alaska breached the terms of the CBA by
21 failing to follow the promises made to the State of Alaska in
22 Article 13 of the CBA, and by failing to perform as agreed.
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1 48. By virtue of the State of Alaska's breach of the CBA,
2 the Union has suffered damages in excess of \$100,000, the precise
3 amount to be proven at trial.

4 **COUNT III - ANTICIPATORY BREACH OF CONTRACT**

5 The Union incorporates paragraphs 1-48 as set forth herein,
6 and further alleges as follows:
7

8 49. The Union and the State of Alaska entered into a
9 Ratified CBA as described above.

10 50. The State of Alaska anticipatorily breached the terms
11 of the Ratified CBA by failing to follow the promises made to the
12 State of Alaska in Article 13 of the CBA, and by failing to
13 perform as agreed.
14

15 51. The State of Alaska's anticipatory breach includes its
16 intent to award the single source contract to Wellpath as
17 described above, in violation of the CBA and Alaska law, all
18 while knowing that it is obligated to perform under the terms of
19 the Ratified CBA starting July 1, 2019.

20 52. By virtue of the State of Alaska's anticipatory breach
21 of the Ratified CBA, the Union has suffered damages in excess of
22 \$100,000, the precise amount to be proven at trial.
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**COUNT IV - BREACH OF THE
COVENANT OF GOOD FAITH AND FAIR DEALING**

The Union incorporates paragraphs 1-52 as set forth herein,
and further alleges as follows:

53. Under Alaska law, every contract, including the CBA and
the Ratified CBA, includes an implied covenant of good faith and
fair dealing.

54. The State of Alaska, by awarding a contract to Wellpath
as described above, has breached the covenant of good faith and
fair dealing in various ways, including, but not limited to,
failing to satisfy certain terms of the CBA and by anticipatorily
failing to satisfy terms of the Ratified CBA. This includes the
requirements described in Article 13 of the CBA and provisions in
the Ratified CBA. The State of Alaska has also breached the
covenant of good faith and fair dealing by failing to treat the
Union fairly, including by failing to properly staff and fund
API, leaving Union members working at API without the necessary
resources to perform their jobs, ensure safety, and by
essentially setting API up to fail.

55. As a result of the State of Alaska's breach of the
covenant of good faith and fair dealing, the Union suffered

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1 damages in excess of \$100,000, the precise amount to be
2 determined at trial.

3 **COUNT V - PROMISSORY ESTOPPEL**

4 The Union incorporates paragraphs 1-55 as if fully set forth
5 herein and further alleges, as follows:

6
7 56. The State of Alaska and the Union agreed to the terms
8 of the CBA and the Ratified CBA, in which the parties made
9 promises to the other regarding the terms and conditions of the
10 Union members' employment.

11 57. As a result of the State of Alaska's promises, the
12 Union approved the CBA and the Ratified CBA in reasonable and
13 justified reliance on the State of Alaska's promises, including
14 the promises in Article 13 of the CBA and provisions of the
15 Ratified CBA.

16
17 58. The State of Alaska subsequently breached the CBA and
18 anticipatorily breached the Ratified CBA, and has benefited
19 financially by failing to provide the Union the rights agreed to
20 in the CBA and the Ratified CBA, entitling the Union to the legal
21 enforcement of the promises in the CBA and the Ratified CBA.
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COUNT VI - VIOLATION OF CONTRACT
CLAUSE OF THE ALASKA CONSTITUTION

The Union incorporates paragraphs 1-58 as if fully set forth herein and further alleges, as follows:

59. The Alaska Constitution, at Article 1, Section 15, describes "prohibited state action" to include a law that impairs the obligation of contracts.

60. The State of Alaska substantially impaired the Union's rights in the CBA and the Ratified CBA by acting unreasonably and unfairly without justifiable public purpose, and without reasonable alternatives, including by failing to fund and by deleting funding for the operations of API, and Union employee positions at API, including at least 211 positions occupied by Union members.

61. As a result of the State of Alaska's conduct, the Union suffered damages in excess of \$100,000, the precise amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, the Union prays for judgment as follows:

1. For a declaration that the contract between the State of Alaska violated AS 36.30.300 by awarding a single source contract to Wellpath;

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1 2. For injunctive relief, precluding the State of Alaska
2 from continuing to violate the CBA and the Ratified CBA, and
3 enforcing the terms of the CBA and the Ratified CBA;

4 3. For an award of all available damages;

5 4. That pre- and post-judgment be awarded, along with
6 attorney's fees, costs and expenses incurred by the Union in
7 bringing this lawsuit; and
8

9 5. For such other relief as the Court deems just.

10 DATED this 15th day of April 2019, at Anchorage, Alaska.

DILLON & FINDLEY, P.C.
Attorneys for Plaintiff

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12
13 By: Molly C. Brown
14 Molly C. Brown, ABA No. 0506057

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16 By: Margaret Simonian
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