WISCONSIN LEGISLATIVE COUNCIL

IssueBrief

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Court Decisions on 2011 Wisconsin Act 10

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2011 Wisconsin Act 10 was a budget adjustment act that included significant changes to public employee collective bargaining rights. Various aspects of those provisions have been challenged in state and federal court, and, recently, the Dane County Circuit Court held that the act's distinction between general and public safety employees is unconstitutional.[1] This issue brief provides background information on the prior court decisions and highlights key findings from the Dane County Circuit Court decision.

PRIOR COURT DECISIONS

In addition to other claims, plaintiffs in the following cases argued that 2011 Act 10 violated equal protection rights under the Wisconsin or U.S. Constitution. Generally, except when a case is brought by certain protected classes of people, equal protection requires governments to justify treating groups of people differently by showing a "rational basis," which requires a law to be rationally related to a legitimate government interest. Courts applied rational basis review in the following three cases.

In ***WEAC v. Walker***, WEAC argued that the distinction between public safety employees and general employees in 2011 Act 10 was irrational, and thus violated the equal protection rights under the Fourteenth Amendment to the U.S. Constitution, because the public safety employee classification did not include certain law enforcement officers. The U.S. Court of Appeals for the Seventh Circuit identified two legitimate government interests rationally related to the provisions of Act 10: (1) providing flexibility to state and local governments in budgeting by allowing more leverage in negotiating with general employees; and (2) maintaining labor peace among public safety employees.

In ***Laborers Local 236, AFL-CIO v. Walker*** and ***MTI v. Walker***, the Seventh Circuit and the Wisconsin Supreme Court, respectively, considered whether 2011 Act 10's distinction between employees represented by labor unions and non-represented employees violated equal protection rights.[2] Both courts held the distinction was rationally related to providing budgeting flexibility to state and local governments by allowing more leverage in negotiating with general employees.

2024 DANE COUNTY CIRCUIT COURT DECISIONS

In ***Abbotsford Education Association v. WERC***, the plaintiffs argued that the act's distinction between general and public safety employees violates the equal protection guarantee under Article I, Section 1, of the Wisconsin Constitution.

The circuit court's July 3, 2024 decision, which denied motions to dismiss the case, held that while the Legislature may classify and treat different groups of public employees differently from each other, the division in 2011 Act 10 lacked a rational basis. In particular, the court concluded that the act categorized certain law enforcement officers as "public safety" employees but excluded other officers who also have law enforcement authority.[3] The circuit court concluded that there is a rational distinction between public safety and general employees, but the exclusion of certain law enforcement officers from the public safety classification is irrational and violates the right to equal protection of the laws.

The circuit court found that the earlier decisions did not bar the case from proceeding. In part, the circuit court stated that *WEAC* addressed employee classification under federal law without applying a state law analysis, and *MTI* addressed a different aspect of classifications.

The circuit court's December 2, 2024 decision, granting judgment for the plaintiffs, held that the court must strike the unconstitutional collective bargaining provisions of 2011 Act 10 and related laws. Specifically, the court held that the definition of "public safety employee" cannot alone be severed from

the rest of the act, because the separate category would remain in place, but would be undefined, inappropriately requiring agencies and the courts to define which employees are in the "public safety employee" group.

The circuit court identified the following provisions of 2011 Act 10 and related laws that it must strike:[4]

Topic	2011 Act 10	Reverts to Pre-2011 Act 10
Mandatory subjects of collective bargaining	Public safety employees may bargain on wages, hours, and conditions of employment General employees may bargain on wages, limited to the increase in the Consumer Price Index	State and local public employees may collectively bargain on wages, hours, and conditions of employment[5] A school district must bargain on additional school-related topics
Fair-share agreement	Public safety employees may bargain to include a fair share agreement General employees may not bargain for a fair-share agreement	All employees may be required to pay union dues under a fair-share agreement[6]
Union election	A general employee union is chosen by a majority of all employees in the unit and must annually recertify 2015 Act 55: a public safety employee union is chosen by a majority of voting employees	A union is chosen by a majority of voting employees and remains in place unless decertified
Collection of union dues	Public safety employees may pay union dues through paycheck deduction General employees may not pay union dues through paycheck deduction	Employees may pay union dues through pay check deduction
Length of agreement	A collective bargaining agreement for general employees may not exceed 1 year	A collective bargaining agreement may be in place for 2 to 3 years for municipal employees, or 4 years for school employees
Dispute resolution	General employees retain only the mediation and grievance arbitration procedures	General employees have a number of dispute resolution procedures
Strikes	Strikes are prohibited	Strikes are prohibited except in identified circumstances

Current Status

Plaintiffs submitted a proposed judgment for the circuit court's consideration and an appeal is pending.

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[1] See *Wis. Educ. Ass'n Council (WEAC) v. Walker*, 705 F.3d 640 (7th Cir. 2013); *Laborers Local 236, AFL-CIO v. Walker*, 749 F.3d 628 (7th Cir. 2014); *Madison Teachers, Inc. (MTI) v. Walker*, 2014 WI 99; and *Abbotsford Educ. Ass'n v. Wis. Employment Relations Comm'n (WERC)*, Dane County Circuit Court Case No. 2023CV3152, Appeal No. 2024AP2429.

[2] In *Laborers Local 236, AFL-CIO v. Walker*, plaintiffs' equal protection claim relied on the Fourteenth Amendment to the U.S. Constitution. In *MTI v. Walker*, plaintiffs' claim relied on Article I, Section 1, of the Wisconsin Constitution.

[3] The circuit court stated that 2011 Act 10 excluded Capitol police, University of Wisconsin police, and conservation wardens, who have the same authority and do the same work as law enforcement officers and state patrol troopers and inspectors who are "public safety" employees under the act. The court also noted that under the act's rationale of the threat to public safety, state correctional officers would also be included in the category of public safety employees.

[4] The circuit court did not strike revisions to 2011 Act 10 that were made in 2011 Wisconsin Act 32. 2011 Act 32 repealed and recreated a number of provisions to add emergency medical service providers to the public safety classification, and to treat public transit employees similarly to public safety employees. 2011 Act 32 also prohibited collective bargaining on who pays the employee share of Wisconsin Retirement System (WRS) contributions for new public safety employees, and prohibited collective bargaining with local public safety employees on health insurance design and selection.

[5] Collective bargaining on wages, hours, and conditions of employment has the effect of allowing collective bargaining on who pays the employee share of WRS contributions (other than for public safety employees hired on or after July 1, 2011). [s. 40.05 (1) (b), Stats.] Similarly, it has the effect of allowing collective bargaining on the percentage amount that an employer must pay for employee health insurance premiums. [ss. 40.05 (4) (ag) and 40.51 (7) (a), Stats.]

[6] However, a U.S. Supreme Court decision has held that a public employee who is not a member of the union cannot be required to pay union dues. [*Janus v. Am. Fed. of State, County, and Mun. Employees*, 585 U.S. 878 (2018).]