GONZALEZ SAGGIO HARLAN

GSH Client Update

October 23, 2012

Wisconsin Act 10: Status Update

In our last update regarding Wisconsin Act 10 ("Act 10") we summarized the recent decision by Dane County circuit court judge Juan Colas in which he held various provisions of Act 10 unconstitutional. Shortly thereafter, the state sought a stay from Judge Colas regarding the decision while the state pursued an appeal. On October 22, 2012 Judge Colas denied the state's motion to stay the decision pending appeal. Thus, for the time being at least, the provisions of Act 10 remain unconstitutional.

Presently, the record has been sent to the court of appeals and the appellate briefing process is schedule to begin. Presumably the state will seek a stay of the decision from the court of appeals. The court of appeals should issue a decision regarding the presumptive motion to stay in the coming weeks. In the meantime, our guidance remains the same: take a wait and see approach but begin making preparations in the event a stay is not issued. This includes the following:

- First, evaluate under what conditions your current collective bargaining agreement was entered into (i.e. - pre- or post- Act 10) and what the provisions of any such agreement are. When Act 10 went into effect, some employers had collective bargaining agreements in place that are still in effect today. Other employers have since entered into collective bargaining agreements where the only provision bargained over was the total base wages while certain changes were instituted regarding benefits, conditions of employment, and the like.
- If you still have a full collective bargaining agreement in place, the decision has little immediate impact on you as you should still be

in full compliance with the pre-Act 10 state of the law. In addition, if a stay is eventually issued, Act 10 will remain in effect and you will be able to only negotiate over total base wages in your next agreement.

- If you are operating under an agreement that was entered into after the passage of Act 10 - and only total base wages were negotiable - your situation is more unclear. For example, it is unclear whether agreements entered into under a now unconstitutional law are still valid and enforceable. Our initial analysis suggests that the agreements are still valid and enforceable but such a question is likely to be unresolved prior to a court ruling regarding the same.
- In the meantime, under either scenario, if a bargaining unit approaches you about negotiating, it would seem to be in the best interest of both sides to hold off on taking any action for a few weeks to see whether a stay is issued and what effect the stay will have. If the bargaining unit is willing to be reasonable, it would seem to be in everyone's best interest to conserve time and resources and simply wait a few weeks to see what the state of the law will be.
- If the bargaining unit demands to return to the table, and the employer would otherwise be obligated to do so under pre-Act 10 law, it would appear that the employer is obligated to do so prior to the issuance of a stay or other legal decision which relieves the employer of such an obligation. Refusing to return to the bargaining table could subject the employer to possible liability. Accordingly, do not outright refuse to return to the table. Nevertheless, you do have a right to be prepared for any negotiations and you can tell the union that you need at least three to four weeks to prepare for returning to the table. If you have made such preparations at this time you can return to the bargaining table in good faith and participate in the process until a decision on a stay is issued by the court of appeals in the coming weeks.

Should you have any questions or concerns about how these recent developments impact your specific situation, please contact Ronald Stadler or Aaron Graf.

For more information or questions, please contact:
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