



Enjoining of Provisions of Wisconsin Act 10 by Federal Court Significantly Impacts Wisconsin Public Sector Employers

Summary of Decision

The Western District of Wisconsin recently issued a decision which significantly impacts the recently passed Wisconsin Act 10 and certain provisions which apply to public sector employers in Wisconsin. The court declared as unconstitutional the provisions of Wisconsin Act 10 which required a simple majority for annual recertification of general municipal employee bargaining units and the provisions which prohibited public sector employers from collecting union dues from general municipal employee's pay checks.

Plaintiffs challenged the constitutionality of three specific provisions of Act 10. First, on equal protection grounds, the plaintiffs challenged the elimination of mandatory dues and fair share fees and the stripping of collective bargaining rights for general municipal employees. Second, the plaintiffs also challenged on equal protection grounds the annual recertification requirement and its absolute majority requirement. Third, on first amendment grounds, the plaintiffs challenged the prohibition on the withholding of union dues from a general municipal employee's paycheck.

The court rejected plaintiffs' equal protection argument as to the stripping of collective bargaining rights. The court found that there was no dispute that a state may bar its public employees from engaging in any form of collective bargaining. Rather, the issue was whether a state may restrict such rights of certain categories of employees while allowing such rights to another category. The court found that the same was permissible as the classifications which exist, and the differential treatment of general municipal employees versus public safety employees, did not involve a suspect class and a rational basis existed for the state's classifications.

However, the court agreed with plaintiffs that the annual recertification requirement violated the equal protection clause as the state had failed to articulate how an annual absolute majority vote rationally advanced a

reasonable purpose. In addition, the court agreed with plaintiffs that the prohibition on the withholding of union dues violated the first amendment as, in effect, the government selectively subsidized political speech. The court thus immediately enjoined the enforcement of Wisconsin Act 10's annual recertification requirements and the prohibition on deduction of dues from employee's paychecks. The court ordered that voluntary deductions be facilitated on or before May 31, 2012.

Impact

First, it must be noted what the decision **does not** effect. The decision does not reinstate collective bargaining rights for general municipal employees and such employees are still restricted to bargaining solely over total base wages. The decision also does not affect the curtailing of the ability of public safety employees to bargain over health insurance plans or WRS contributions. Rather, the **only** two provisions which are affected by the decision are the annual mandatory recertification and the prohibition on deducting union dues from employee's paychecks.

Second, it must also be noted that the decision by the Western District will almost certainly be the subject of additional legal challenges. While the Western District has immediately enjoined these particular provisions, it is almost certain that a legal challenge will be raised which may reinstate all of the provisions of Wisconsin Act 10. However, at least for the time being, public sector employers must be cognizant of these changes and make any appropriate changes.

While no particular action is required by public sector employers concerning the recertification changes, they should certainly be cognizant of the change. Given that the court declared section 242 of Wisconsin Act 10 null and void, the recertification process should revert to the process which existed previously for general municipal employees. Wis. Stat. §111.70(4)(d)(1) states that "A representative chosen for the purposes of collective bargaining by a majority of the municipal employees voting in a collective bargaining unit shall be the exclusive representative of all employees in the unit for the purpose of collective bargaining..." Thus, as long as the majority of general municipal employees **who actually vote** are in favor of a particular representative, the representative becomes the exclusive representative of the bargaining unit.

It is also important to note that the requirement for annual recertification and the specific yearly deadlines has also been declared null and void. In other words, school district employees are not required to recertify by December 1 of any particular year and all other general municipal employees are not required to recertify by May 1 of any particular year. Rather, just like previous to Wisconsin Act 10, there is no regular interval at which a bargaining unit must vote to recertify and there are no calendar dates set as deadlines to vote.

As to the deduction of dues from employee paychecks, the court gave public sector employers until May 31, 2012 to arrange for the voluntary deduction of

dues from employee paychecks. This means each and every public sector employer who employs general municipal employees must make arrangements for employees to be able to voluntarily deduct union dues from their paychecks for the first pay period which includes May 31, 2012. Hopefully, given Wisconsin Act 10 was recently put into place, most public employers can revert to such a system with little overhaul of their current systems.

For more information or questions, please contact:

Ronald S. Stadler - ronald_stadler@gshllp.com or

Aaron J. Graf - aaron_graf@gshllp.com

This is a publication of Gonzalez Saggio & Harlan LLP and is intended to provide general information regarding legal issues and developments to our clients and other friends. It should not be construed as legal advice or a legal opinion on any specific facts or situations. For further information on your own situation, we encourage you to contact the author of the article or any other member of the firm. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer.

www.gshllp.com



Copyright 2012 Gonzalez Saggio & Harlan LLP. All rights reserved.