



The Status of Act 10 - Finally Some Guidance

As you know, on September 24, 2012 a Dane County Circuit Court Judge ruled that Act 10 is unconstitutional. The State of Wisconsin appealed the Dane county circuit court's decision and asked the Court of Appeals to stay the decision. On March 12, 2013 the Wisconsin Court of Appeals denied the State's motion to stay. However, the Court of Appeals also clarified that the effect of the ruling is that Act 10 is only unconstitutional in Dane County. As to the other 71 Wisconsin counties, Act 10 remains in full force and effect. Given how long this has been pending, a brief summary of the events leading to this point is warranted.

- In July 2011 Act 10 was implemented and effectively eliminated collective bargaining for all non-public safety employees.
- Opponents to Act 10, in addition to the protests in Madison, also filed several lawsuits at the state and federal level seeking to have Act 10 found unconstitutional.
- On March 30, 2012 the Western District of Wisconsin held certain provisions of Act 10 unconstitutional - namely the provisions concerning mandatory annual recertification and the prohibition on public employers collecting union dues. This decision was appealed to the Seventh Circuit.
- On September 24, 2012 Dane county circuit court judge Juan Colas held various provisions of Act 10 unconstitutional. The State appealed that decision to the Wisconsin Court of Appeals.
- On January 28, 2013 the Seventh Circuit reversed the Western District and upheld all provision of Act 10 as constitutional at the federal level.
- On March 12, 2013 the Wisconsin Court of Appeals denied the State's motion to stay but clarified that the Dane county circuit court decision holding Act 10 unconstitutional was restricted to Dane county.

To this point, for the most part, both unions and public employers alike have

been taking a wait and see approach, waiting for some guidance on what effect the Dane county circuit court decision has while the matter is on appeal. The State had asked the Wisconsin Court of Appeals to stay the decision which had held Act 10 unconstitutional so that unions and public employers could continue to operate under Act 10's provisions until the appellate process had played out. While the Court of Appeals denied the motion to stay, thus leaving in place the decision which found Act 10 to be unconstitutional, the Court of Appeals also clarified another significant point - the decision that Act 10 is unconstitutional only applies in Dane county where the decision was rendered.

This means that Act 10 is unconstitutional in Dane county but is constitutional, and in full force and effect, in the other 71 Wisconsin counties. This of course sets up a very interesting dynamic where Dane county will be acting under one set of rules - the pre-Act 10 rules - while everyone else in the State will be acting under Act 10's provisions. This will continue to be the state of the law until the Court of Appeals hands down its final ruling. At that point, the Court of Appeals decision will be binding on each and every county in Wisconsin thus bringing all counties under the same set of rules. Of course, no matter what that decision is, it is likely to be appealed to the Wisconsin Supreme Court.

If you were requested to return to the bargaining table by a union during the uncertainty of the prior six months, it is now clear, again, that collective bargaining is effectively eliminated for all non-public safety employees and that all of Act 10's provisions remain in full force and effect as long as you are not located in Dane County. Given the amount of time that has passed, you should ensure that you refresh your understanding of the provisions of Act 10 and make sure that you are in full compliance. Should you have any questions about the impact of the recent decision or how it may apply to your particular situation, please contact Ronald Stadler or Aaron Graf.

For more information or questions, please contact:

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