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Dane County Circuit Court Issues Long-Awaited 2011 Act 10 Decision

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Posted By: Kyle J. Gulya & Ryan P. Heiden & Hanna R. Kolberg & Steven R. Sorenson & Mark S. Kapocius

Practice Area: School Law & Government Law

On Monday, December 2, 2024, Dane County Circuit Court Judge Jacob Frost issued the long-awaited decision involving a November 2023 challenge to 2011 Act 10 by numerous unions and individual employees. On July 3, 2024, the Circuit Court previously indicated the Court would find specific provisions of Act 10 as unconstitutional. A summary of our Legal Update on that July decision from the Circuit Court can be found here.

In the December 2 decision, the Court identified nearly ninety specific Sections of 2011 Act 10 which the Court found unconstitutional and void based on the creation of the "public safety employee" classification. In doing so, the Court created a puzzle to be put together by striking certain Sections changing Wisconsin Statute Section 111.70 modified by Act 10, requiring reversion to the pre-Act 10 collective bargaining law as to those specific sections, but leaving in many other provisions altered by Act 10. Of note, the Court did not address any of the many amendments to Wisconsin Statute Section 111.70 added after Act 10.

Unfortunately, the Circuit Court's decision has been sensationalized by the media without acknowledging that the Circuit Court case is far from over. The Court still requires a judgment to be prepared and that process will take time and debate between the parties. Further, we expect there to be lengthy appeals in this case, and as of December 2, 2024, an appeal has already been filed by the Wisconsin State Legislature. We also expect a motion to stay the Circuit Court decision to be filed by an appellant.

So, at first glance, the following issues are apparent from this Circuit Court decision:

- **State health care plan health insurance contributions.** It appears from the decision that the decision has no effect on mandating municipal employee health insurance premium contributions for municipal employers participating in the state plan.
- **WRS contributions.** Likewise, it appears from the decision that it does not affect requirements requiring general municipal employees and public safety employees hired after July 1, 2011 to contribute the employee share of WRS contributions.
- **Wis. Stat. §66.0509 grievance procedures.** The decision does not alter the statutory grievance procedure process that requires municipal employers who do not have a civil service system to provide a grievance procedure for municipal employees to challenge work place safety, discipline, and employee termination issues.
- **Unintended consequences.** What is unclear from the Circuit Court's decision is the effect of striking specific sections of Act 10 and then reinstating provisions of the old collective bargaining law and how those actions coincide with the myriad changes to the collective bargaining law over the last thirteen years that were made following Act 10 and remain unaffected by this Circuit Court decision. Following 2011 Act 10, the Wisconsin State Legislature made multiple other changes to the collective bargaining law on different occasions, including addressing the prohibition of bargaining health care plan design and selection and the impact of health care plan design and selection. Quite interesting though are the consequences that may flow from the Circuit Court decision to strike certain Sections of Act 10 in light of other changes to the collective bargaining law over the previous thirteen years. For example, by striking Section 246 of Act 10 prohibiting public safety unions from bargaining over specific issues, has the Court now created a broad-based prohibition prohibiting any municipal employer from bargaining with any union—including transit unions—over the issue of health care plan design and selection and the impact of changes to the plan design and selection if public safety employees participate in the health care plan under Wis. Stat. 111.70(4)(mc)6? It remains to be determined whether that prohibition on bargaining has been expanded.

At this time, we encourage all local-government employers to maintain their resolve and continue to focus on providing an excellent work culture and competitive compensation and benefits package for employees. Employers can consider the following points as well:

- **Do Not React.** So far, the Dane County Circuit Court's decision has changed nothing in the law as a final order has not been reached. Until the Court provides clarity of its decision, any reaction by employers and employees is premature and imprudent.
- **Is Your Entity Even Affected?** This decision is by a Circuit Court in Dane County. While the breadth of the decision remains unclear, the jurisdiction of the court is clear as it is a court within one of seventy-two counties in Wisconsin. No municipal employers are defendants in the case. Defendants include the Wisconsin Employment Relations Commission, WERC Chairman James Daley, and the Wisconsin State Legislature along with State Departments and officers. The Legislature has already appealed.
- **Unintended Consequences?** Judicial actions of this nature require employers to be more methodical and deliberate in how they negotiate with existing public safety and transit unions. The decision may create opportunities that have not existed over the previous 13 years.
- **Many Employers Have Made Positive Changes over the Last Thirteen Years—Why Would Your Employees Want to Go Back?** Competitive compensation and benefits, addressing individual employee needs rather than placing individual employees secondary to the interests of a collective unit, and avoiding the pressure of contributing union dues all weigh on the minds of employees. Many employees may not even wish to wade into the quagmire of issues created by the Circuit Court decision including issues of union recognition, whether the compensation, benefits and working conditions status quo is what existed in 2011 or what exists today, or dealing with the ever-changing landscape of an appellate court reversing the Circuit Court and bringing Act 10 back to its original form. Employers may likewise elect to take a cautious status quo-oriented approach if employees approach the employer about formation or restoration of a union in consideration of the uncertainty created by this Circuit Court decision and anticipated lengthy appeal process.

Your von Briesen attorney can assist in addressing further questions your entity has about this evolving legal issue.

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