

Federal Circuit Court upholds Wisconsin anti-worker law

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In a 2-to-1 decision handed down on Friday, a panel of judges at the US Seventh Circuit Court of Appeals in Chicago upheld the 2011 Wisconsin Budget Repair Bill (also known as Act 10) in its entirety. The introduction of Act 10 in 2011 sparked massive protests at the state capitol in Madison and throughout Wisconsin.

Act 10 was an emergency budget enacted by Walker, and contained \$2 billion in state budget cuts. These included a \$900 million reduction in state aid to public schools, a \$350 million reduction in state aid to local municipalities, \$500 million in cuts to Medicaid, and \$250 million in cuts to the University of Wisconsin system. Act 10 also severely curtailed the operations of many public sector unions in the state of Wisconsin.

The protests by tens of thousands of workers against the cuts and the curtailment of union rights threatened to erupt outside the control of the unions and Democratic Party. Faced with this upsurge of the working class, these organizations worked to channel the protests behind legal appeals and a series of futile recall campaigns. The results of these diversions were a series of defeats, including the failed appeal to the US Circuit Court last week and a failed effort to unseat Republican governor Scott Walker last June.

The defeat in Wisconsin laid the ground for further attacks on Wisconsin workers and signaled to big business politicians in other industrial states, like Ohio, Michigan and Indiana, that opposition to austerity policies demanded by the banks and corporations would be contained by the unions and Democratic Party-affiliated organizations.

It should come as no surprise that this law was upheld by the appeals court. It is an inevitable consequence of the political opposition to Walker remaining within the confines of the Democratic Party and trade unions, which worked dutifully to prevent the mass opposition

from having any effect on the political process.

Wisconsin's public sector unions, among them the Wisconsin Education Association Council (WEAC), the American Federation of State, County and Municipal Employees (AFSCME) and the Milwaukee Teachers and Educators Association (MTEA), did nothing to oppose the massive budget cuts contained in the bill. Instead, the unions openly offered their services in enacting cuts; all they asked for was "a seat at the table."

During the protest, Democrats openly boasted that they had enacted, with the assistance of the public sector unions, historic budget cuts under the previous administration of Democratic governor Jim Doyle.

After decades of the state of Wisconsin considering all public workers equally, Act 10 divided them into two separate categories: general employees and public safety employees. The unions representing those considered public safety employees, including local police officers, firefighters, state troopers, and state motor vehicle inspectors, were not subjected to any new restrictions. The Walker administration has argued in court proceedings that allowing these unions to keep their position intact was necessary to maintaining labor peace.

Unions representing general employees, including teachers, correctional officers, University of Wisconsin police officers, and capitol police officers, are subject to onerous restrictions. Act 10 limits general employee unions to bargaining over base wages. Previously, they could bargain over wages, benefits and working conditions.

In addition, under Act 10, general employee unions must submit to annual recertification votes and must obtain 51% of the eligible voters in the union to remain as the employees' bargaining unit. The law also

eliminated a provision that allowed for the automatic deduction of dues from workers' pay checks, and it eliminated "fair-share" agreements, which required employees who opted out of union membership to pay partial dues to the union.

The only opposition voiced by the unions is to sections of this draconian bill that curtail their institutional interests. The primary concern of the public employee unions in challenging Act 10 in state and federal courts is to maintain the dues check-off system and near-automatic recertification. They are not waging a struggle to defend workers' wages, benefits, or working conditions. It is on this unprincipled basis that WEAC and other unions are challenging Act 10 in the courts.

Seven public employee unions, including WEAC and the Wisconsin State Employees Union, filed suit in federal court challenging the provisions of Act 10 that limit collective bargaining to base wages only, enact burdensome recertification requirements, and prohibit the payroll deduction of dues by state and local government. The unions argued that these provisions violated the Equal Protections clause of the Fourteenth Amendment because of the differential treatment between general employees and public safety employees. They also challenged the limits on dues deductions based on the First Amendment, claiming that certain public unions were targeted because they failed to endorse Scott Walker for governor in 2010 or endorsed his Democratic opponent, Tom Barrett.

Judge Joel L. Flaum, a Ronald Reagan-era appointee, authored the decision with a concurrence from Gerald Ford appointee William J. Butler. In favor of the state of Wisconsin, Flaum ruled that portions of Act 10 limiting automatic dues check-offs and recertification for some public sector unions do not violate the First Amendment or the Equal Protection Clause of the Fourteenth Amendment.

Judge David F. Hamilton, a Clinton appointee, while largely concurring with the majority, offered a partial dissent in the case. In defense of the unions' institutional interests, Hamilton wrote that the provisions limiting automatic dues check-off and a recertification process that requires a majority vote from all eligible voters amount to viewpoint discrimination and violate the unions' First Amendment rights, since there is a "close correlation

between various unions' political endorsement in the 2010 Wisconsin governor's race and their ability to continue payroll deduction."

Hamilton also noted the undemocratic nature of requiring a majority of eligible voters, rather than a majority of those actually voting, for unions to gain recertification. If such rules were applied to a presidential election, considering current voting patterns in the United States, the leading candidate would only get about one third of the eligible votes.

The Seventh Circuit Court's decision overturns a ruling last year by US District Judge William M. Conley that upheld most of Act 10, while ruling against the prohibitions on the deduction of dues from payroll and requirements for yearly recertification of unions by a majority of eligible voters. Conley upheld the creation of two separate categories of public workers.

WEAC and the other public-sector unions now will either appeal the decision to a full panel of all seven members of the Seventh Circuit Court or appeal directly to the US Supreme Court.

A similar case is also making its way through Wisconsin state courts. Dane County judge Juan Colas overturned the anti-union portions of Act 10 last year; this decision is on appeal to the State Supreme Court. The State Supreme Court previously upheld Act 10 in a June 2011 decision, after the implementation of the law was briefly blocked by a ruling of Dane County judge Maryann Sumi that the process by which Act 10 was passed violated state open meetings laws.



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