



Union dues ruling bodes well for Wisconsin's Act 10, experts say

By: M.D. Kittle
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The U.S. Supreme Court's ruling Monday that public-sector unions in Illinois cannot collect union dues from in-home health-care workers reaffirms Wisconsin's collective bargaining reform law, Gov. Scott Walker says.

"The Supreme Court's ruling (Monday) reinforces the Act 10 reforms eliminating the requirement for public employees to pay union dues," the Republican governor said in a statement.

The high court's 5-4 ruling is a major defeat for organized labor, which has benefited financially and in strength of numbers through representation of thousands of home-care workers and forcing automatic deduction of dues for that representation..

As Fox News reported, the ruling does not cover all private-sector unions. And it does not overturn the long-standing practice allowing public-sector unions to require union dues from nonmembers.

Supreme Court Justice Samuel Alito asserts that home-care workers "are different from full-fledged public employees" because they work primarily for their disabled or elderly customers and do not have most of the rights and benefits of state employees. Illinois effectively has labeled the private-sector class of employees as public-sector workers because they are paid from Medicaid funds.

Walker's Act 10, passed by the Republican-controlled Legislature in 2011, is the bane of the American Federation of State, County, Municipal Employees and organized labor in general. The bill sparked protests by thousands at the state Capitol, and became the focus of the left's failed recall drive in 2012 to remove Walker from office. He became the first governor in U.S. history to withstand a recall challenge.

Act 10 holds bargaining to wages, up to the rate of inflation. It requires Wisconsin's public employees contribute to their pension funds, and more to their health care costs. It also ends the practice of automatic union dues collections for individuals who do not wish to be in a union, and requires unions to hold annual recertification votes.

Emergency services employees, such as firefighters and police, are excluded from Act 10, meaning those unions may operate under pre-collective bargaining reform rules.

Constitutional law expert Rick Esenberg said Monday's Supreme Court ruling in no way settles the ongoing legal dispute over Act 10, but it does send a message to those challenging the law, which first went into effect on June 29, 2011.

The law has been the subject of several lawsuits. It has, with the exception of one ruling in Dane County, been upheld in state and federal courts. Now, the state Supreme Court is set to decide Act 10's fate.

"Act 10 is going to be settled by the Supreme Court of Wisconsin, and I expect that decision to come sometime in the next two weeks," said Esenberg, president and general counsel of the Wisconsin Institute for Law and Liberty, or WILL, a nonprofit, Milwaukee-based public interest law firm.

"If I were representing one of the parties in that case, I would probably send this opinion to the court to call their attention to it," Esenberg added. "I think there is language in (the U.S. Supreme Court ruling) that heaps more unlikelihood on the (Judge Juan) Colas ruling."

Colas is the Dane County judge who struck down portions of Act 10.

But Esenberg said the U.S. Supreme Court's ruling in the Illinois case isn't necessary for the state Supreme Court to reverse Colas' decision.

"Even if it had gone the other way, I don't think that would have helped the unions," he said. "Because it's one thing to argue that the state can provide for 'fair share' payments, it's another thing to say a state cannot not allow for payments."

Former teacher Kristi Lacroix, who has battled Wisconsin teachers unions for years and recently won a settlement with the Kenosha School Board, said the U.S. Supreme Court ruling is another win for the Constitution.

"I was paying over \$100 a month (in union dues) whether I liked it or not," she said. "I think this gives a voice to workers."

While the U.S. Supreme Court ruling is "not a watershed opinion that remakes labor law consistent with First Amendment principles, it does put an end to the forced unionization of home-based workers, a practice that has spread to nearly a dozen states and had provided a substantial number of new workers to the labor movement in recent years," states a blog for the libertarian Cato Institute by Washington, D.C.-based attorney Andrew Grossman.

Grossman's firm, Baker Hostetler LLP, was involved in the court case. The firm also represents conservative activist Eric O'Keefe and the Wisconsin Club for Growth in a civil rights lawsuit involving Wisconsin's politically charged John Doe investigation, another First Amendment case.

Bob Williams, president of the conservative State Budget Solutions, called the ruling a “big win” for employees in Illinois who have resisted union membership.

“State governments cannot force collective bargaining on any group, at the behest of union officials,” Williams said. “Now, employees in Illinois, and in states with similar public employee laws, are not forced into associating with a union just because a labor-backed politician desperately wants union dues spent on his or her future campaign.”

Labor unions are anxious, asserting that if Illinois is allowed to back out of its collective-bargaining agreement, it won’t be long before public workers everywhere feel the impact of lost wages and benefits.

AFSCME representatives did not return a call seeking comment.

The decision also could have far-reaching impacts on public-sector contracts that force union dues, should cases begin popping up in courtrooms across the country.

“No court case is going to stand in the way of home care workers coming together to have a strong voice for good jobs and quality home care,” SEIU President Mary Kay Henry said in a written statement following the ruling. “At a time when wages remain stagnant and income inequality is out of control, joining together in a union is the only proven way home care workers have of improving their lives and the lives of the people they care for.”