

Wisconsin judge strikes down Act 10, the law behind mass 2011 protests

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On December 2, a Wisconsin judge ruled parts of the state's Act 10 unconstitutional. The law, enacted in 2011, attacked pensions and health care, stripped public sector employees of their collective bargaining rights and decimated public education.

Under its terms employees affected could bargain only over wages, and even then, only for increases up to the inflation rate. It prohibited bargaining for improved safety, benefits, and working conditions.

Significantly, Wisconsin public employee unions were willing at the time to drop opposition to the attacks on workers' pensions and healthcare contained in the bill as long as the legislature dropped the restrictions on collective bargaining, which helped undergird the flow of worker dues into the union bureaucracies' treasuries.

The law applied not only to state government employees but to local government employees as well. Teachers' unions across the state, for example, saw membership plummet. Overall, the percentage of public employees who are members of unions fell from 50 percent in 2011 to 20 percent in 2023. By 2022, the median teacher salary had declined by 19 percent as well.

The promotion of the law by Republican Governor Scott Walker was massively unpopular, sparking demonstrations in the state's capital of up to 150,000 people. To push through the measure, Republicans had to resort to legislative sleight of hand, stripping the bill of spending provisions in order to bypass the state senate's quorum requirements. Democratic senators left the state to prevent a quorum from being reached in a token show of opposition aimed at diffusing public anger.

Democratic legislators boasted that they had made the deepest cuts in state history, including public employee furloughs and other concessions, under Walker's Democratic predecessor, Governor Jim Doyle, but had avoided a social explosion by "working with the unions."

In his decision earlier this month, Dane County Circuit Court Judge Jacob Frost struck down the portions of the law relating to collective bargaining on the basis that they violated the state constitution's equal protection guarantees. The law created two categories of public employees: "public safety" and "general" employees. In the public safety category were police and firefighter unions, which were exempted from the law's severe restrictions on collective bargaining.

The plaintiffs in the suit argued that the distinction between "public safety" and "general" employees served no rational state

purpose, was political in nature, and therefore violated equal protection. For example, while state and local government police unions were unaffected, the University of Wisconsin's police and the state's prison wardens were classified as "general" and thus lost collective bargaining rights.

Judge Frost agreed with the plaintiffs, finding in July that the law violated the state constitution.

"Act 10 as written by the Legislature specifically and narrowly defines 'public safety employee,'" Frost wrote. "It is that definition which is unconstitutional."

Since July, the parties litigated the remaining issue of how to remedy the violation. In his most recent ruling, the judge struck down over 60 sections of the law that relied on the unconstitutional definition.

Another state law, Act 55, subsequently modified several provisions of Act 10. The judge consequently also struck down the sections of Act 55 that modified the invalidated sections of Act 10.

Since the defendants in the case did not request a stay of the judge's order upon appeal, the decision took effect immediately. However, the state legislature, a defendant in the case and still controlled by Republicans, has vowed to appeal the decision.

Unless the plaintiffs request that the case go directly to the Wisconsin Supreme Court—and the court agrees to hear it—the appeal will first be heard in a state court of appeals.

It is noteworthy that, prior to this ruling, Act 10 had already survived several appeals at the state and federal levels. The Wisconsin Supreme Court upheld the law in 2014, and a federal appeals court upheld it twice.

However, the legal issue brought by plaintiffs this time is novel and had not previously been addressed by the courts. In other words, no court had previously ruled on whether the definitions of "general" and "public safety" employees violate the state's equal protection clause.

Wisconsin Supreme Court

The law has also been the focus of battles in state politics, especially concerning the balance of power on the state's supreme court. Wisconsin Supreme Court judges are directly elected by voters to 10-year terms, rather than being appointed by the

governor and confirmed by the state senate.

In 2014, the Wisconsin Supreme Court had a conservative majority when it upheld Act 10. That majority lasted until 2023, when “liberal” candidate Janet Protasiewicz won an election for an open seat, defeating her opponent by 55-44 percent. This gave the so-called liberals a 4-3 majority on the court. The election was widely seen as a referendum on abortion rights following the US Supreme Court’s Dobbs ruling.

Since then, liberal Justice Ann Walsh Bradley, the court’s longest-serving current member with 30 years on the bench, announced her intention to retire. This sets up an April 1 election next year for a term beginning August 1. The outcome of this election will determine the court’s balance, as the remaining members are split 3-3.

Democrats in the state have been taking advantage of the new majority on the court. For example, they successfully challenged the state legislature’s district maps this year. In the 2024 election, based on the new district maps—and despite Donald Trump winning the state’s ten electoral votes—Democrats gained 10 seats in the state house and four seats in the state senate (though neither gain was enough to flip control of the chambers).

It was in this context that a coalition of seven trade unions brought a new challenge to Act 10. They filed their suit in November 2023, just seven months after the supreme court election, hoping that a more favorable court majority would ultimately strike down Act 10.

Although they could ask the court to “fast-track” the state legislature’s appeal, there is no guarantee the court will agree or that it will rule in time.

For the upcoming election, Democrats and their allies in the union bureaucracies will once again urge workers to support them to supposedly oppose the right wing. They will attempt to pin workers’ hopes for better wages and working conditions on the outcome of the Wisconsin Supreme Court election.

Indeed, Democratic politicians and trade union leaders are already fostering the illusion that the judge’s ruling on Act 10 represents genuine progress for workers.

Democratic Governor Tony Evers posted on Bluesky and Twitter/X: “This is great news. I’ve always believed workers should have a seat at the table in decisions that affect their daily lives and livelihoods. It’s about treating workers with dignity and respect and making sure no worker is treated differently because of their profession.”

Bob Gruber, one of the plaintiffs and a conservation warden for Wisconsin, stated through the Wisconsin Education Association Council (WEAC): “... having full collective bargaining rights means we will again have a voice on the job to improve our workplace and make sure that Wisconsin is a safe place for everyone...”

Workers must resist these lies. The public sector unions have “seats at the table” in neighboring Illinois and other states where they have collaborated in the destruction of public education and other social rights. On the national levels, the Biden-Harris administration’s relentless warmongering and attacks on workers and immigrants paved the way for the election of the fascist president Trump.

Workers, moreover, should recall the betrayals of Democrats and trade unions during the passage of Act 10. As documented by the WSWS at the time, Democrats and union leaders prioritized their own interests and refused to employ effective tactics to defeat it.

As the WSWS noted: “their [the trade unions’] entire strategy was to avoid the passage of its attack on union dues requirements by agreeing to all of its demands for financial concessions from workers. In other words, the unions sought to keep the legal fiction of collective bargaining—and thus their financial sustenance—by abandoning it in practice.”

It continued: “In the immediate aftermath of its passage in the senate on Wednesday night, the leaders of Wisconsin’s two largest public sector unions, Mary Bell of the Wisconsin Education Association Council and Marty Beil of the Wisconsin State Employees Union, indicated their acceptance of the bill and told workers not to strike.”

Instead of workers using their independent power by collectively withholding their labor, the union bureaucrats advanced the bankrupt strategy of a recall campaign to replace Republican state senators with Democrats. The primary goal of this policy, which predictably failed miserably, was to diffuse workers’ militancy and preserve the control of the union apparatus.

The partial overturning of Act 10 in Wisconsin represents a certain tactical shift on the part of factions of the ruling class, not a genuine victory for workers. It is aimed primarily at strengthening the Democratic Party and the trade union apparatus, which the Democrats see as a critical instrument to suppress the class struggle.

Workers must adopt their own political strategy, independent of Democrats, trade unions, and pseudo-left groups like the Democratic Socialists of America. To wage a fight to reverse the attacks on pensions, healthcare, jobs and wages Wisconsin public employees must form rank-and-file committees and join forces with private-sector workers to organize the broadest struggle possible.



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