

SEVERAL PROVISIONS OF ACT 10 FOUND UNCONSTITUTIONAL
BY DANE COUNTY CIRCUIT COURT. APPEAL PROMISED.

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Several provisions of 2011 Wisconsin Acts 10 and 32 ("the Acts") were found unconstitutional by Dane County Circuit Court Judge Juan Colas in a written decision issued September 14, 2012. Despite news reports to the contrary, all of Act 10 was not declared unconstitutional.

The only provisions which were found unconstitutional by the decision were:

- §66.0506 which requires a referendum for wage increases in excess of the certified CPI index;
- §111.70(1)(f) prohibiting "fair share" dues provisions except for public safety bargaining units;
- §111.70(3g) prohibiting voluntary dues deductions;
- §111.70(4)(mb) prohibiting bargaining on anything other than base wage rates; and,
- §111.70(4)(d)3 which requires annual certification elections.

Significantly, the following provisions of the Acts remain:

- The decision does not affect the change to the definition of "collective bargaining" found in §111.70(a) which establishes a mandatory duty to bargain only for "wages" and eliminated that duty as to "hours and conditions of employment." Under the initial view of the decision, a municipality only has a mandatory duty to bargain "wages" and a permissive ability to bargain "hours and conditions of employment." For example, a municipality would not be required to bargain grievance procedures ("just cause") and hiring/layoffs.
- The provisions in the Acts that change the resolution procedures if there is an impasse in bargaining are still in place. A municipality can still implement its final proposal rather than submitting it to binding arbitration assuming impasse exists and reasonable bargaining has taken place.

- The provisions in the Acts related to WRS contributions are still in place. Municipalities are prohibited from bargaining anything other than a fifty percent employee contribution.
- The mandate in the Acts for municipal grievances systems still exists.

The State Attorney General's Office has already said it will appeal the decision, and that a petition will be filed to stay the effect of Judge Colas' decision pending appeal. The ruling on these petitions will have significant impact on how matters proceed in the short-term. Since Judge Colas ruled that the provisions identified above were null and void from their inception, if a stay is not issued, unions could request immediate bargaining under the Acts without the unconstitutional provisions. A municipality will need to consult with its labor relations counsel to decide how to respond to such a request.