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On Power and the Use of Coercion

Is Collective Bargaining a Constitutional Right? And Other Issues by Mutual Agreement

by John Hendrickson

Governor Terry Branstad (R-IA) signed the historic collective-bargaining reform legislation that provides public employee contract negotiations to be "limited only to base wages...."[1] The reform measure does limit collective bargaining, but it does not end the ability for public-employee unions to bargain for wages.

Supporters of the reform measure argue that public employees need to pay more for their health benefits to make it more equitable with those in the private sector. In addition, the reform measure will save Iowa taxpayers money, just as a similar reform measure, Act 10, in Wisconsin saved $5 billion.

The debate over collective bargaining will most likely shift to the Iowa courts as labor leaders argue the law is unjust and violates the so-called constitutional right to collective bargaining. *The Des Moines Register* reported that AFSCME leader Danny Homan stated the union will "continue to fight this" and that the law is unfair.[2] Under the law, public safety officers such as police officers and firefighters are exempt. This is one aspect, in addition to the "right" to collective bargaining, that opponents of the law are hoping to argue violates the law.

The legal challenge to the law is expected to be filed in the Polk County District Court.[3] Matthew Glasson, "a former attorney and labor educator at the University of Iowa Labor Center," noted in the *Register* that the union could "argue in its lawsuit that the legislation violates the Equal Protection Clause of the U.S. Constitution [14th Amendment] and a similar clause in the Iowa Constitution [Article 1, Section 1]."[4]

Act 10, the collective-bargaining and budget-reform measure signed by Governor Scott Walker (R-WI), was also challenged in the courts by labor unions, and they also argued collective bargaining was a fundamental right. The legal challenges to Act 10 in Wisconsin started when Democrats "alleged that the law was invalid because the Senate had not given 48 hours' notice for the conference committee under the state's open meetings law."[5] A Wisconsin judge agreed and declared Act 10 "not in effect."[6] The case was then appealed to the Wisconsin Supreme Court, which overruled the district court and reinstated Act 10.[7]

In *Madison Teachers, Inc. v. Scott Walker*, the Wisconisn Supreme Court considered the following constitutional questions in regard to Act 10:

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> (1) whether Act 10 impermissibly infringes on the associational rights of general employees; (2) whether Act 10 impermissibly infringes on the equal protection rights of represented general employees when compared to non-represented general employees...[8]

This essay will examine these aspects of the Court's opinion. The Court found that Act 10 did not violate the United States Constitution or the Wisconsin Constitution. Further, the Court ruled that "collective bargaining over a contract with an employer is not a fundamental right for public employees...."[9]

In the majority opinion of the Court, Justice Michael Gableman wrote in regard to associational rights:

> First, we hold that the plaintiffs' associational rights argument is without merit. We reject the plaintiffs' argument that several provisions of Act 10, which delineate the rights, obligations, and procedures of collective bargaining, somehow infringe upon general employees' constitutional right to freedom of association. No matter the limitations or "burdens" a legislative enactment places on the collective-bargaining process, collective bargaining remains a creation of legislative grace and not constitutional obligation. The First Amendment cannot be used as a vehicle to expand the parameters of a benefit that it does not itself protect.[10]

In regard to Act 10's alleged infringement on equal protection of rights, Justice Gableman wrote:

> Second, we reject the plaintiffs' equal-protection claim under a rational basis standard of review. We apply rational basis review to the plaintiffs' argument that the collective bargaining framework established by Act 10 violates the constitutional rights of general employees through disparate treatment of those who choose to collectively bargain and those who do not.[11]

Justice Gableman argued that Act 10's "prohibition on deducting labor organization dues" did not violate the equal protection of the law.[12] "This provision of Act 10 does not prohibit general employees from paying labor organization dues; it merely requires that employees show the initiative to pay them on their own," wrote Justice Gableman.[13]

Overall, the Court upheld Act 10 and concluded that in the end "public employees still had the right to form unions to influence their employers, but government officials aren't obligated to listen to them."[14]

Act 10 also faced a legal challenge in the federal courts. In *Wisconsin Education Association Council, et al. v. Walker, et al.,* "a three-judge panel for the U.S. Court of Appeals for the Seventh Circuit upheld Act 10's restrictions on collective bargaining."[15] Judge Joel Flaum issued the opinion of the Court, which stated that "Act 10's payroll deduction prohibitions do not violate the First Amendment."[16] As Judge Flaum wrote:

> The Bill of Rights enshrines negative liberties. It directs what government may not do to its citizens, rather than what it must do for them... While the First Amendment prohibits 'plac[ing] obstacles in the path' of speech, Regan, 461 U.S. at 549 (citation omitted), nothing requires government to 'assist others in funding the expression of particular ideas, including political ones,' *Ysursa*, 555 U.S. at 358; see also *Harris v. McRae*, 448 U.S. 297, 318 (1980) (noting that the Constitution does not confer an entitlement to such funds as may be necessary to realize all the advantages of' a constitutional right). Thus, even though 'publicly administered payroll deductions for political purposes can enhance the unions' exercise of First Amendment rights, [states are] under no obligation to aid the unions in their political activities.'[17]

In regard to the argument that Act 10 discriminated or treated different groups of public-employee unions unfairly because of the exemption of public safety officers, Judge Flaum wrote:

> Wisconsin is correct that the collective-bargaining limitations constitutionally promote flexibility in state and local government budgets by providing public employers more leverage in negotiations. This alone, however, is not enough to save the provision because the differential treatment of public safety and general employee unions must also be rational. On this point, the district court upheld the classifications because Wisconsin could rationally believe that Act 10's passage would result in widespread labor unrest, but also conclude that the state could not withstand that unrest with respect to public safety employees. We agree that Wisconsin reasonably concluded that the public safety employees filled too critical a role to risk such a stoppage. Not only has the Supreme Court previously held labor peace in certain instances is a legitimate state interest, the Court found the interest weighty enough to justify some impingement on the free speech rights of employees who do not belong to a union.[18]

In other words, public safety officers serve a unique role in protecting society, and having them strike would not serve the public interest. Historically, this is the argument President Ronald Reagan used when he ordered the air traffic controllers back to work and when Governor Calvin Coolidge settled the Boston police strike, stating that there was no right to strike against public safety.

Act 10 survived another federal court challenge in the Seventh Circuit in *Laborers Local 236, AFL-CIO, et al. v. Scott Walker*. Once again the court upheld the law as constitutional.[19] Governor Scott Walker wrote that the unions did not appeal their case to the United States Supreme Court, and he argued that the unions "did not want to have the Supreme Court affirm Judge Flaum's findings that collective-bargaining is not a constitutional right."[20]

The reform to Iowa's Chapter 20 collective bargaining law may not be a carbon copy of Wisconsin's Act 10, but the legal questions that arise will be the same. It is clear based on the opinion of the Wisconsin State Supreme Court and the Seventh Circuit Court of Appeals that not only was Act 10 constitutional, but collective bargaining is not a fundamental right. In addition it does not violate the Equal Protection Clause, and it can exempt public safety officers because of the public service they provide.

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Endnotes:

[1]Brianne Pfannenstiel and Grant Rodgers, "AFSME Iowa leader promises lawsuit challenging collective bargaining changes," *The Des Moines Register*, February 16, 2017, <http://www.desmoinesregister.com/story/news/politics/2017/02/16/afscme-iowa-leader-promises-lawsuit-challenging-collective-bargaining-changes/98016832/> accessed on February 28, 2017.
[2]Ibid.
[3]Ibid.
[4]Ibid.
[5]Scott Walker, *Unintimidated: A Governor's Story and a Nation's Challenge*, Sentinel, New York, 2014, p. 124.
[6]Ibid.
[7]Ibid., pp. 127-128.
[8]*Madison Teachers, Inc., Peggy Coyne, Public Employees Local 61, AFL-CIO, and John Weigman, Plaintiffs-Respondents v. Scott Walker, James R. Scott, Judith Neumann, and Rodney G. Pasch, Defendants-Appellants*, <https://wicourts.gov/sc/opinion/DisplayDocument.pdf?content=pdf&seqNo=118669> accessed on February 28, 2017.
[9]Jason Stein, "Supreme Court upholds Scott Walker's Act 10 union law," *Milwaukee Journal Sentinel*, August 1, 2014, <http://archive.jsonline.com/news/statepolitics/supreme-court-to-rule-thursday-on-union-law-voter-id-b99321110z1-269292661.html> accessed on February 28, 2017.
[10]*Madison Teachers, Inc. v. Scott Walker.*
[11]Ibid.
[12]Ibid.
[13]Ibid.
[14]Stein.
[15]Joe Forward, "Act 10: Federal Appeals Court rules on budget repair bill, downs challenge by unions," *State Bar of Wisconsin*, January 23, 2013, <http://www.wisbar.org/newspublications/pages/general-article.aspx?articleid=10515> accessed on February 28, 2017.
[16]*WISCONSIN EDUCATION ASSOCIATION COUNCIL, et al., Plaintiffs-Appellees, Cross-Appellants, v. SCOTT WALKER, Governor of Wisconsin, et al., Defendants-Appellants, Cross-Appellees*, <http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2013/D01-18/C:12-1854:J:Flaum:aut:T:fnOp:N:1068392:S:0> accessed on February 28, 2017.
[17]Ibid.
[18]Ibid.
[19]Joe Forward, "Unions lose another Act 10 challenge, Federal Appeals Court upholds the law," *State Bar of Wisconsin*, April 21, 2014, <http://www.wisbar.org/newspublications/pages/general-article.aspx?articleid=11508> accessed on February 28, 2017.
[20]Walker, p. 131.

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