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Litigation

Wisconsin Supreme Court Upholds Wisconsin Public Sector Collective Bargaining Reforms

Today the Wisconsin Supreme Court by a vote of 5-2 upheld Wisconsin's public sector collective bargaining reforms applicable to general public employees. Today's decision ends three and half years of contentious litigation over the enforceability of the reforms, which were implemented by the adoption of 2011 Wisconsin Acts 10 and 32.

The Court's decision was premised on the fact that public sector employees do not have a constitutional right to collectively bargain with their employers. Justice Crooks stated succinctly in his concurring opinion, "Under the proper application of the correct legal standard and the relevant precedent, this is not a close call. Therefore the plaintiffs' challenge must fail."

While the decision leaves in place the flexibility granted by Act 10 to public employers, employers still need to take care when communicating with their employees. The decision makes clear that employees, as do all citizens, have a constitutionally protected right to associate for the purpose of petitioning the government on a host of issues. Such petitions from public employees may include employment related topics. How a public employer responds to such petitions from employees are complex and nuanced questions that should not be made without consulting with counsel. Act 10 prohibits employers from bargaining over certain topics and therefore employers must be careful that any response to a communication from employees or engaging employees in discussions in these prohibited areas does not constitute bargaining.

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