

Judge Orders Stay On Act 10 Decision

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This is a further update to the Act 10 litigation. The Circuit Court Judge was considering a Motion to Stay which asked the Judge to stop his Act 10 decision from taking effect until an appellate court could rule on the issue. The Judge considered briefs filed by the parties (interestingly, the Plaintiffs did not oppose the Motion, although they did file a brief raising other issues).

The Judge decided that “the present situation strikes the court as a textbook example of when a circuit court should stay its decision pending appeal.” In particular, the Judge stated the following regarding the comparative harm to the parties should he not issue the stay:

“Compared to that, though, is the extremely high risk of utter chaos if I do not stay my decision. The status quo of the past decade plus is the Act 10 statute. All public employers and employees have operated under it for many years. If I do not stay my decision, public employers and employees will begin to engage in negotiations under the laws as existed prior to Act 10. This will involve time, energy and expense on all involved – employers and employee groups alike. These public employers and employees might be in the middle of negotiations or have reached agreements by the time the Court of Appeals issues its eventual decision. If the Court of Appeals reverses this Court’s decision, all that time, effort

and expense engaging in collective bargaining will have been a waste. Chaos will again ensue as the newly negotiated terms may no longer be valid, but the employment terms used under Act 10 may now be dated or ineffective until renewed by the employers. The hope public employees put on these negotiations and compromises reached will be dashed. The case likely then will proceed to the Wisconsin Supreme Court, which could just as easily agree with this Court and reverse the Court of Appeals, again turning the tables upside down (or right-side up, depending on your perspective).

This is the exact sort of chaos and uncertainty that a stay pending appeal can avoid while the State awaits a final pronouncement from the highest court on the important issues in this lawsuit."

So, until a further court decision, the provisions of Act 10 remain in effect, and parties can operate as they have under Act 10 for the last approximately 15 years.

In a different development in the Act 10 litigation, the Plaintiffs have asked the Wisconsin Supreme Court to hear the case on appeal directly. The case is presently pending in the Court of Appeals. The Supreme Court has discretion on whether it would hear the case before the Court of Appeals issued a decision. Most observers believe it is likely the case will eventually be heard by the Wisconsin Supreme Court, it is just a matter of when, and whether it will allow the Court of Appeal to weigh in first.

If you have any questions regarding this matter, please feel free to reach out to a [Boardman Clark School Law attorney](#).

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