Fight over Future of Collective Bargaining Laws Has Just Begun

By Tim Anderson [1]
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From the moment changes to Wisconsin’s collective bargaining law were introduced, it became clear to legislators that state politics and policy—and their own jobs—were never going to be the same.

In the office of Sen. Chris Larson, the phone went from ringing “here and there” to ringing “every five minutes, nonstop.”

“It’s only recently slowed down,” he said.

Larson has received several thousand phone calls, more than 20,000 emails and hundreds of letters about Assembly Bill 11, which restricts collective bargaining for public workers, changes union certification rules and prohibits union dues from being deducted from employees’ paychecks.

Republican Gov. Scott Walker signed the measure into law in March.

But the fight over the bill—and its impact on the Wisconsin legislature, state government and politics—has just begun.

“Right now, I feel like we’re in the second inning on this,” said Larson, noting the court challenge to the law and the likelihood of many sitting Democratic and Republican lawmakers facing recall elections as just two examples.

“We are at a tilt right now, and I think people are looking at Wisconsin as a symbol for what’s going to happen in the rest of the country.”

The eyes of the nation have also been on Ohio, another state that made significant changes to the laws governing collective bargaining and public employee unions in 2011.

Sen. Kevin Bacon said he received 25,000 emails on Ohio Senate Bill 5 before it was signed into law.

Public interest and debate will only intensify in the coming months, Bacon said, because there will almost certainly be a statewide referendum on Senate Bill 5 this November.

Bacon, a Republican, helped shepherd the measure through the legislature as chair of the Senate
Insurance, Commerce & Labor Committee. During the process, Bacon had three endorsements revoked, had a protester show up at his home and had a dinner interrupted by opponents of the measure.

But Bacon believes a “silent majority” of Ohioans support the changes, and that local governments will need them in order navigate through a coming fiscal storm.

“They are going to be facing cuts (in state aid) and changes in tax policy that will affect their bottom lines,” said Bacon, a former local township trustee.

“They can handle the changes if they have the flexibility.”

State lawmakers in Ohio and Wisconsin, meanwhile, are dealing with a new political reality, one in which debate over collective bargaining and public employee unions will likely dominate public discussions over the next few months—and possibly for years to come.

**Historical Overview of State Laws**

Larson was one of the 14 Senate Democrats who left Wisconsin earlier this year to delay a vote on the collective bargaining proposal.

In doing so, Larson said, he and his colleagues were fighting to preserve what they view as a fundamental right of workers: “a group of people that would separately be weak is given strength by having the ability to join a union and collectively bargain.”

A look back at the history of collective bargaining shows that Wisconsin has long been at the forefront of these laws for public employee unions.

Under the National Labor Relations Act of 1935, private workers were given the rights to strike and collectively bargain. State and local employees were not covered under this federal act, however, at least in part due to constitutional concerns about state sovereignty, University of Toledo law professor Joseph Slater said.

In addition, there has always been recognition that the public and private sectors are not the same, and shouldn’t be treated as such, said William Powell Jones, a professor of history at the University of Wisconsin.

“In the private sector, you have two parties: employer and employee. In the public sector, you have three: employer, employee and the public, both the taxpayers and the people who use the services,” Jones said. “Laws at the state level reflect those differences.”

But for two decades after the National Labor Relations Act was passed, no state laws existed.

Slater said police, that delay was caused by wariness of public employee unions and by fears of strikes by police, firefighters and other workers. Those concerns gradually subsided. Meanwhile, with the federal law on the books, disparities in the earnings for public and private workers widened, Jones said.

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“That led people to argue it wasn’t fair, that public workers deserved similar rights,” he adds.
In 1959, Wisconsin became the first U.S. state to pass a collective bargaining law for public workers.

“It was a watershed law, and not just because it was the first of its kind,” Slater said.

“It alleviated concerns about strikes (in the public sector). It addressed what happens if there is an impasse in negotiations. What can be done? That Wisconsin law worked out things you still see today: mediation, fact-finding and some forms of binding arbitration.”

Limiting or prohibiting strikes is one way most laws governing public employees differ from those that relate to private workers. Another is that pension plans are generally not part of collective bargaining negotiations; instead, Slater, says, they are set by statute.

Over the next few decades, most states in the Midwest and across the country followed Wisconsin’s lead, and a majority of U.S. states now have laws that guarantee collective bargaining rights for at least some public workers. A handful of states prohibit collective bargaining by employees.

Rise in Public Employee Unions

What has been the effect of this half-century trend toward collective bargaining for public employees? Jones and Slater say compensation levels have been raised and that the gap in pay among public and private workers has narrowed.

According to University of Wisconsin-Milwaukee economics professor Keith Bender, the “union premium” in the public sector—the difference that unionization makes in compensation levels—is between 5 and 8 percent. (He said the union premium in the private sector has been measured as high as 20 percent.)

Lower skilled, less educated workers have been helped most by collective bargaining, Jones said.

Most studies show these public sector workers make more than their counterparts in the private sector. In contrast, higher skilled, better educated public employees tend to earn less than their equivalents in the private sector, Bender said.

Jones believes Wisconsin’s 1959 law ushered in a “fairly successful experimentation in collective bargaining,” in which all three sides have benefited. Along with improved wages for workers, he said, the state laws and formal mediation processes have generally created stable labor relations in the public sector.

Slater said giving a voice to employees over worker conditions and rules adds value to the process.

“Some of the ideas of the workers are good and some are bad, but not every idea of middle managers is good either,” he said.

Today, one of the central questions for lawmakers is the extent to which collective bargaining and the unionization of public employees is contributing—if at all—to states’ current fiscal problems.

According to Steve Kreisberg of the American Federation of State, County and Municipal Employees, a state-by-state analysis of U.S. Census Bureau data shows collective bargaining states spend less on salaries, wages and benefits than states that don’t extend this right to workers (16.4 percent of total spending vs. 18.4 percent of total spending).

However, a recent analysis by George Washington University professor John Sides showed some correlation between unionization and budget deficits.
“A 5 percentage point increase in public-sector union membership is associated with a 1 percentage point increase in the 2011 (fiscal year) deficits as a percent of the budget,” he found.

A similar review of total state and local government spending and unionization found no correlation, unless three outliers—Alaska, Wyoming and the District of Columbia—are excluded from the data.

Chris Edwards, the director of tax policy studies at the Cato Institute, said his studies on the issue have found links between lower rates of unionization and better-managed state governments and lower state and local government debt levels. He did not find much of a correlation between unionization in the public sector and the fiscal health of state pension systems.

To measure the true costs, Edwards said, states must also look beyond salaries, pensions and health benefits.

“It’s not just the wages that raise the costs,” he said. “You have resistance by the unions to cost-cutting reforms, and these unions have excessive leverage over the policymaking process.”

The “two bites of the apple problem” (one bite from being politically active, the other from being able to bargain) has long been a concern about public employee unions, one that states have tried to address by placing limits on bargaining, Slater said.

However, a majority of lawmakers in Ohio and Wisconsin decided that more limits were needed.

**Details on Wisconsin, Ohio Laws**

Under the Wisconsin law, collective bargaining is limited to wages only, and salary increases cannot exceed the consumer price index without approval from voters. (Police officers and firefighters are exempt from these and other provisions of the law.)

The wages-only provision was essential to controlling “other factors that have a fiscal impact when it comes to union negotiations,” Wisconsin Republican Rep. Joan Ballweg said.

She notes, for example, that local school districts will be given more flexibility when it comes to staffing and setting the school calendar, while all local governments will be better able to rein in the rising costs associated with employee health benefits.

Two other provisions in Assembly Bill 11 require public employee unions to recertify every year with affirmative votes by 51 percent of the full membership and prohibit the use of check-off programs, in which union dues are automatically deducted from the paychecks of members.

“There has never been anything like (those two provisions) in public-sector bargaining law or in the (National Labor Relations Law),” Slater said.

Larson cites those two provisions in particular as evidence that Assembly Bill 11 is not an effort to solve the state’s budget woes, but rather an attempt to crush public employee unions.

Ohio’s law has different provisions, but the underlying debate about its impact is the same.

Bacon said the most significant parts of Senate Bill 5 will give local government officials more tools to better manage their employees and finances. For example, issues such as hiring practices, shifts and purchasing are taken off the bargaining table. In addition, the law explicitly states that provisions in previous worker-employer agreements cannot be a mandatory subject of negotiations over a new contract.
Under Senate Bill 5, no public employees are allowed to strike. This ban previously applied only to public safety workers, who instead had the option of binding interest arbitration when an impasse in negotiations occurred. Binding interest arbitration has been eliminated for Ohio police officers and firefighters. Instead, for all public employees, the local governing body or voters will ultimately decide an impasse in negotiations.

For example, a city council or school board will have the chance to choose between the offer made by management or the union. If the governing body chooses the union offer, voters will then have to ratify the agreement if it would result in a tax increase.

Other provisions in Senate Bill 5 lower the threshold for union members to seek decertification, prohibit public employees from having to pay “fair share” dues and institute merit-based pay for teachers.

Among the various provisions, Bender says, perhaps the two most significant are removing public workers’ rights to strike and to binding arbitration.

“In the end, the employer can basically do what it wants to do,” he said.

Like Ohio, states such as Kansas and North Dakota also leave the final decisions on an agreement in the hands of management or a local or state governing body. In contrast, some states in the Midwest offer binding arbitration to public safety workers; Iowa extends it to all public employees governed by a collective bargaining agreement.

**Uncertain Future for New Laws**

Much remains uncertain about the future of the Ohio and Wisconsin laws.

In Ohio, the first obstacle for Senate Bill 5 proponents to overcome will be a statewide ballot measure in the fall seeking a repeal of the law. In Wisconsin, legal challenges and recall elections will be among the first tests of the staying power of Assembly Bill 11. In both states, future legislative and gubernatorial races may hinge on public opinion of the changes in labor laws.

Meanwhile, this stormy political period will only add to the pressures being felt by legislators in the two states.

“There are petitions out to recall half the state Senate—eight Democrats and eight Republicans—during what is our busiest time anyway because of work on the budget,” Larson says.

Ballweg notes that the work of various committees has been delayed and that the working relationship among legislators has been strained.

Their work, though, will go on, while the rest of the nation follows the history-making events in Ohio and Wisconsin over collective bargaining.

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