SEPTEMBER 2024

WISCONSIN INSTITUTE FOR LAW & LIBERTY

WILL FLANDERS, PHD

BACK TO THE PAST:

The Fiscal Threat of Reversing Act 10 for Local Governments

Will Flanders, Ph.D.
RESEARCH DIRECTOR
Flanders@will-law.org

Executive Summary

Currently, a lawsuit threatens to overturn Wisconsin's 2011 Budget Repair Bill, better known as "Act 10." This law led to significant savings for local governments across the state of Wisconsin through several pathways including limitations on collective bargaining and requiring government employees to contribute to their health insurance and retirement. Previous WILL (Wisconsin Institute for Law & Liberty) research has examined what ending Act 10 would cost school districts. That report estimated more than $1.6 billion in new annual costs that would have to be funded by local taxpayers. While the numbers in this report are slightly more modest, collectively they add up to more than $480 million in new costs to local governments. These include:

- **$113 million** in new health insurance costs
- **$360 million** in new retirement benefit costs
- **$12.7 million** in new salary costs

WILL
WISCONSIN INSTITUTE
FOR LAW & LIBERTY

INTRODUCTION

In 2011, Wisconsin became a leader in public sector union reform with the passage of the Budget Repair Bill—better known nationally as "Act 10." Over the protests and anti-democratic actions of opponents who supported a continuation of the status quo, the law signed by Governor Scott Walker strongly limited the power of public sector unions to extract more and more money from state taxpayers.

Act 10 helped usher in a decade plus of union reform across the United States. A number of other states have passed substantive public sector union reforms. From 2011 to 2022, the percentage of public employees who were members of a union declined by 10.5%. This culminated with the Supreme Court ruling in *Janus v. AFSCME* that public employees cannot be forced to pay union dues. But now, the state where this revolution began sees its reforms under serious threat.

Likely based on recent changes in the composition of the Wisconsin Supreme Court that have seen liberals gain a majority, a lawsuit was recently filed that seeks to reverse the legislation. The lawsuit argues that by exempting certain public employees—like policemen and firefighters—from the law, it is in violation of the state constitution's Equal Protection Clause. But the substantiveness of the argument is somewhat a moot point here—it is one means to the end of overturning the law.

The impact of overturning Act 10 on Wisconsin would be quite dramatic. In education, the law has allowed for school districts to move away from a 'steps and ladders' pay system to systems where teachers can be rewarded for their impact on the academics of students. Academic research from a Yale economist has found that these systems have led to better student outcomes. An end of Act 10 would likely mean a restoration of the old system where quality played no role in teacher pay.

At the Wisconsin Institute for Law & Liberty, we undertook to measure the effect of ending Act 10 by comparing salary, health insurance, and retirement plan costs for municipal employees around the state. This study expands on another study from WILL earlier this year that estimated the effect on school districts if the labor reforms of Act 10 were ended.

At the time of Act 10's passage, the legislation saved Wisconsin from pending financial ruin. As the federal government pulled back funding provided in the Great Recession, the state faced a budget deficit of more than $3.6 billion—the equivalent of nearly $5 billion today. Act 10 fixed the fiscal hole, and state and local budgets adjusted to the 'new normal.' There is little doubt that going back on the law would be ruinous for all levels of government.

Of course, that the courts would even be considered as a vehicle to overturn a law duly enacted by the state legislature speaks to the importance of state Supreme Court elections, and the danger when elected members of the Court fail to exercise proper restraint. But it also shows how fleeting public sector union reform may be if voters and policymakers aren't vigilant. The fate of Act 10 in Wisconsin is unclear. But just

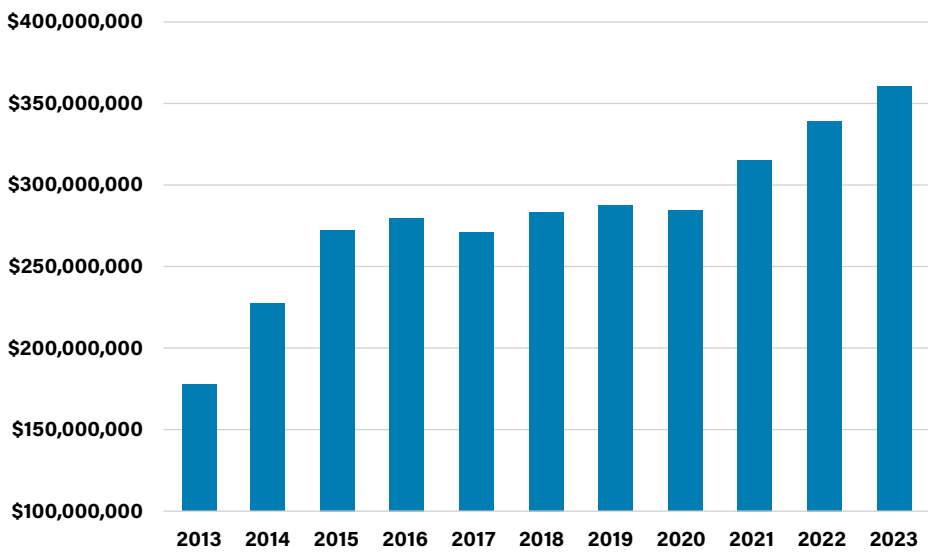
as the state ushered in a decade of union reform, perhaps Wisconsin can serve as a canary in the coal mine at the current time. Public employee unions have been weakened but can still fight back.

To the credit of the Department of Public Instruction, information on staff and their accompanying costs for our first study was readily available. However, this is not always the case for municipal data, leading to a bit more estimation here than was required in that paper. Nonetheless, we can say with confidence that an end to Act 10 would have dramatic consequences for municipal budgets around the state. When considering the merits of reversing course, these costs ought to be weighed heavily.

RETIREMENT COSTS

The cost of an end to Act 10 for retirement contributions of local employees is relatively straightforward to calculate. Every two years, the Wisconsin Legislative Fiscal Bureau produces an information paper on the Wisconsin Retirement System (WRS).[1] This report includes the amount of employee contributions annually to WRS from state and local employees. The contributions from these employees over the past decade are reproduced in Figure 1. The last two years of data are filled in via inflation-adjustment of the 2021 data.

Figure 1. WRS Contributions over Time: Local Employees



In 2023, local employees contributed more than $800,000,000 to their WRS accounts. However, this amount includes teachers, who were already studied in our previous Act 10 report. As teaching staff represent about 55.2% of all local government employees, we reduce the approximate cost reported here by that amount. For the rest of local government, therefore, approximately $360 million was contributed to WRS accounts during 2023.

HEALTHCARE COSTS

This section required the most significant estimation as we were unable to locate a comprehensive database of healthcare costs for Wisconsin municipalities. If such data is indeed not available, legislators might consider the benefits for transparency of mandating that such data be reported to a central source. That said, we can bring together data from several sources to provide a reasonable estimate of what an end to Act 10 might mean in this area.

A 2020 survey estimates that the average cost for employee health insurance to employers was $13,728 in 2020[2] between family and individual plans. Inflation-adjusting this figure to 2023 gives us $16,214. Because government employee benefits tend to be more generous than those of the private sector,[3] this is likely a conservative estimate of the cost per employee. According to Census data,[4] there are approximately 55,552 employees of local and county governments in Wisconsin that are not part of the police or fire departments. The reason police and fire employees must be excluded is because they were not subject to the contribution requirements of the legislation.

Combining these numbers with the required employee contribution under Act 10 (12.6%) allows us to estimate the annual savings from taxpayers of the legislation when it comes to healthcare costs:

$16,214 x 55,552 x 0.126 = $113,490,736

This yields an estimated employee contribution of more than $113 million per year. Were Act 10 to come to an end, these annual costs would likely have to be made up by taxpayers, or cuts to the number of local government employees would be necessary.

SALARIES

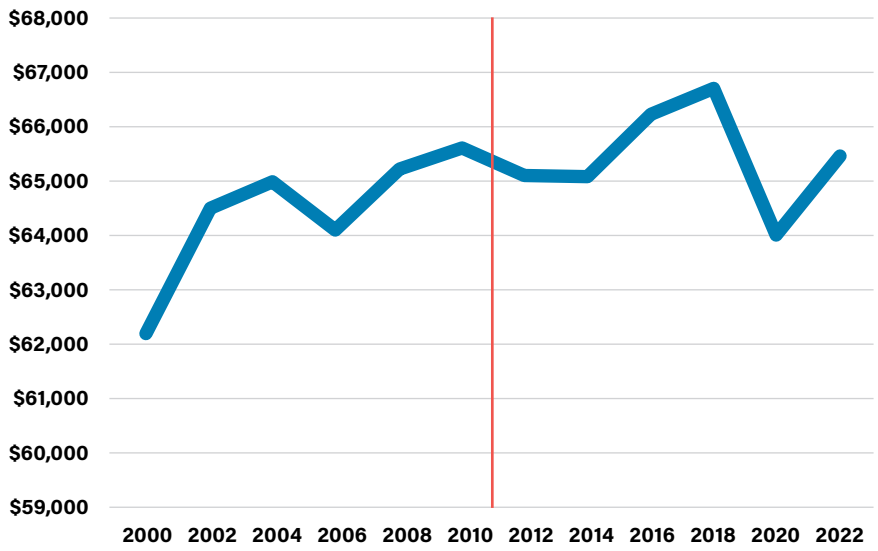
Act 10 allowed municipalities to move away from "step and ladder"-based pay models, which are generally based on seniority, toward alternative pay models that may be based on performance. When it comes to school districts, how this might work is somewhat clear: teachers could be rewarded for higher student outcomes on standardized tests, or for good ratings in reviews by the principal, for example.[5] Research by Dr. Barbara Biasi showed that school districts took advantage of this freedom not necessarily to reduce teacher pay, but rather by recruiting high quality teachers and raising pay in high-demand fields.[6] Do we see evidence of similar results regarding municipal pay?

To answer that question, we gathered data on the salaries of municipal employees from the Census Bureau's Survey of Public Employment & Payroll.[7] We pulled data on a biannual basis going back to the year 2000 and utilized an inflation-adjustment calculator from the Bureau of Labor Statistics[8] to compare

real pay over time. Teachers, firefighters, and police employees were removed from this analysis for the same reasons as described above. The resulting data is depicted graphically in Figure 2.

Like what was found regarding pay in schools, there is no evidence here that Act 10 lead to a reduction in the amount of money that local government employees receive. Pay in 2012—the last year prior to full Act 10 implementation—was $65,101 compared to $65,468 today. However, it seems the pay growth rate was arrested by the legislation. From 2000 to 2012, annual pay increases averaged approximately $241. From 2012 to 2022, pay increases averaged $46.

Figure 2. Real Average Pay-Wisconsin Local Government Employees



If the rate of growth in salary prior to Act 10 had continued to be observed in the past decade, municipal governments would be on the hook for approximately $12,783,807 more in salary costs than they are currently paying. This number is based on the current count of municipal employees (62,502). This number could have changed too were Act 10 not in place, as municipalities would have been faced with the potential need to reduce staffing to account for higher pay, and the benefits discussed in the preceding sections.

A CONVERSATION WITH:

JOSH SCHOEMANN

WASHINGTON COUNTY EXECUTIVE

Can you introduce yourself and tell us about your role?

"I'm Josh Schoemann, the Washington County Executive. This is the freest county in America, so it's exciting to serve the people here. And I just love everybody who lives here in Washington County. And it's been a real privilege to be their county executive."

Talk about your thoughts on Act 10 at the time it was implemented.

"That was a really tough time for our country, right? It was shortly after the Great Recession. And, budgets were really tight, both in the private and the public sector. But for us, in the public sector in particular, I feel like government was growing out of control. And to be able to kind of rein that in, I think we had to do some serious reform thinking. Act 10 was really the epitome of that reform thinking, getting government back in the hands of the people, and maybe not so focused on unions and institutions."

What were your first experiences dealing with Act 10?

"I was in the village of Richfield when it was first implemented. For us, there was a lot of partnering all of a sudden that started happening. We began to work with local school districts. We started conversations with local municipalities about sharing things like building inspection. It really started to change the way people thought about how government needs to work. It also eliminated some barriers where in the past it would have been difficult to work together because of union contracts or, or just the different ways we do business. All of a sudden there was this cultural shift and a logical shift in how government was going to work moving forward."

Did Act 10 increase flexibility for local governments?

"There's no doubt there was more flexibility. One really good example of that is we started to work with Richfield Joint School District on having a shared plowing contract. Once Act 10 was in place, we were able to work through that barrier and have a direct conversation with the school district. and there's been hundreds of examples ever since then."

What do you consider the biggest effect of Act 10?

"A transformational shift in how compensation worked holistically. Initially, I think everybody was kind of frozen and didn't know how to act. There were obviously huge changes to the pension system, but also to health insurance. And it kind of froze people in place with compensation here in Washington County. I arrived in 2014, so a few years later, and they had at that point seen three years of pay freezes, largely because I think people didn't know what to do.

Since then, I instituted pay raises basically every year, netting 4% on average per year and sometimes higher. We've completely now transformed the way that we compensate people. It's much more merit based. We evaluate people based on simple principles like from Daniel Pink. Drive, autonomy, mastery and purpose and trying to really incentivize what it is that drives them, which is serving people. The more they're oriented towards doing that and finding ways to grow within our organization, we're able to incentivize that."

How does this contrast with the pre-Act 10 days?

"In the old union model, it was pay for pulse. you just keep breathing—we put a mirror in front of your mouth and you're going to get an increase. It doesn't work that way anymore. We're trying to see people improve themselves and deliver service to people in Washington County."

What would be the impact on Washington County if Act 10 ended?

"It's almost unfathomable how consequential it would be if Act 10 were repealed. I mean, we've made so much progress in the 10, 15 years since that was adopted. It doesn't matter if it's here in Washington County, one of the most conservative places in Wisconsin or a place like the city of Milwaukee, the city of Madison, there have been huge reforms that have occurred at the local level since then. So to think about taking a step backwards in that way would be extraordinarily detrimental to our organization. And I think municipalities across the state of Wisconsin."

Conclusion

WISCONSIN INSTITUTE FOR LAW & LIBERTY

We estimate that an end to Act 10 would incur approximately $480 million in new costs for local governments around the state of Wisconsin. When faced with a budget shortfall, governments have two main options: raise additional revenue or cut services. It is not clear how this gap would be closed, but it is likely that a significant increase in the tax burden for Wisconsinites would be necessary.

Since Wisconsin already struggles to attract new residents and avoid population decline, this can only be expected to have a negative effect on the competitiveness of our state in modern America.

Endnotes

1 https://docs.legis.wisconsin.gov/misc/lfb/informational_papers/january_2023/0085_wisconsin_retirement_system_informational_paper_85.pdf

2 https://www.statista.com/statistics/240690/companys-medical-and-drugs-costs-in-the-us/

3 https://www.shrm.org/topics-tools/news/benefits-compensation/costs-compared-public-vs-private-sector-health-plans

4 https://www.census.gov/data/datasets/2022/econ/apes/2022.html

5 https://will-law.org/wp-content/uploads/2021/01/Untold-Act-10-apple-cover-FINAL.pdf

6 https://www.educationnext.org/wp-content/uploads/2023/07/ednext_XXIII_3_biasi.pdf

7 https://www.census.gov/data/datasets/2022/econ/apes/2022.html

8 https://www.bls.gov/data/inflation_calculator.htm

WILL
WISCONSIN INSTITUTE
FOR LAW & LIBERTY

330 East Kilbourn Ave. | Suite 725
Milwaukee, WI 53202

will-law.org
414-727-9455

@WILawLiberty