

**WISCONSIN SUPREME COURT**  
**NOVEMBER 11, 2013**  
**1:30 p.m.**

*This is a certification from the Wisconsin Court of Appeals, District IV (headquartered in Madison). The Court of Appeals may certify cases that it believes cannot be resolved by applying current Wisconsin law. The Wisconsin Supreme Court, as the state's preeminent law-developing court, often accepts such certifications from the Court of Appeals. This case originated in Dane County Circuit Court, Judge Juan B. Colas, presiding.*

2012AP2067

[Madison Teachers, Inc. v. Scott Walker](#)

This certification from the Court of Appeals, District IV, examines the constitutionality of various statutory changes made by 2011 Wis. Act 10 and 2011 Wis. Act 32, more commonly referred to respectively as the collective bargaining law and 2011-13 state budget.

The Court of Appeals wrote: "We certify this appeal because of its sweeping statewide effect on public employers, public employees, and taxpayers and because of the need to clarify and develop law relating to associational rights and the home-rule authority of municipalities."

A decision by the Supreme Court is expected to clarify the effect of Act 10 and provide guidance to public employers and employees on how to approach collective bargaining. A decision also may help settle other pending cases spawned from Act 10 and possibly reduce future litigation on similar issues.

Some background: The plaintiffs in this action are Madison Teachers, Inc. and one of its members and Public Employees Local 61, a labor union representing employees of the city of Milwaukee, and one of its members.

The plaintiffs filed a complaint contending that specific provisions of the Municipal Employment Relations Act (MERA), as amended by Act 10 and Act 32 violate the constitutional associational and equal protection rights of the employees they represent. They contend the legislation creates similarly situated, but differently treated, classes of employees, namely, municipal employees who choose to associate with a certified agent and municipal employees who do not.

The state argues on behalf of Gov. Scott Walker and defendants James R. Scott, Judith Neumann and Rodney G. Pasch of the Wisconsin Employment Relations Commission. It says that because public employees have no constitutional right to collectively bargain, it makes no sense to say that Act 10 unconstitutionally burdens the right of public employees who choose to participate in statutory collective bargaining.

According to the state, Act 10 does not impose any restrictions on any public employee's right to speak, assemble, or petition government and, therefore, does not infringe on any associational rights of public employees. As to the equal protection claim, the state takes the position that there is no violation because all public employees are treated equally with respect to constitutionally protected associational rights.

Siding with the plaintiffs, the circuit court declared the following statutory provisions unconstitutional:

- The provision prohibiting collective bargaining between municipal employers and the certified representatives for municipal general employee bargaining units on all subjects except base wages. Wis. Stat. § 111.70(4)(mb)1.

- The provisions limiting negotiated base wage increases to the increase in the Consumer Price Index, unless a higher increase is approved by voter referendum. Wis. Stat. §§ 111.70(4)(mb)2., 66.0506, and 118.245.
- The provisions prohibiting “fair share” agreements that previously required all represented employees to pay a proportionate share of the costs of collective bargaining and contract administration. Wis. Stat. § 111.70(1)(f) and the third sentence of Wis. Stat. § 111.70(2).
- The provision prohibiting municipal employers from deducting union dues from the wages of municipal employees. Wis. Stat. § 111.70(3g).
- The provision requiring annual recertification elections of the representatives of all bargaining units, requiring 51 percent of the votes of the bargaining unit members (regardless of the number of members who vote), and requiring the commission to assess costs of such elections. Wis. Stat. § 111.70(4)(d)3.

On Oct. 22, 2012, the circuit court denied the state’s motion for stay pending appeal. The Court of Appeals denied the state’s motion for relief pending appeal on March 12, 2013. It concluded that the circuit court acted within its discretion in denying the stay. The Court of Appeals certified the case on April 25, 2013.

The state contends Act 10 is a proper exercise of authority because it affects only *statutory* rights, not *constitutionally* protected rights. According to the state officials, Act 10 does not “impose a single restriction on [public employees’ rights] to speak, assemble or petition their government.”

The state’s arguments, according to the Court of Appeals, include:

- Act 10 leaves untouched municipal employees’ constitutionally protected right to engage in associational activities, that is, protected associational activities that government officials are free to ignore.
- Act 10 deals solely with a statutory right to collective bargaining, which is *different* and *purely statutory* because it allows employees who opt to comply with the statutory requirements, and under the parameters set by the statutes, to force government employers to listen to their demands and bargain in good faith.
- Thus, the legislature was free, in Act 10, to make changes to the requirements and parameters relating to statutory collective bargaining.

A decision by the Supreme Court also may clarify the test for determining whether a state statute violates Wisconsin’s Home Rule Amendment, Wis. Const. art. XI, § 3(1). The parties in this case dispute whether Wis. Stat. § 62.623, a statute prohibiting the city of Milwaukee from paying its employees’ contributions to the Milwaukee Retirement System, violates the Home Rule Amendment. (Wis. Stat. § 62.623 was created by Act 10 and Act 32). The Court of Appeals indicates a decision on this issue also may determine whether Wis. Stat. § 62.623 violates the constitutionally protected right of parties to contract with each other.