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The big split over unions

Debate over collective bargaining puts eyes of the world on Midwest, and fight over future of state laws has just begun

by Tim Anderson (tanderson@csg.org)

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From the moment a restructuring of Wisconsin's collective bargaining system was introduced, it became clear to legislators that state politics and policymaking — and their own jobs — were going to change as well.

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

“It's only recently slowed down,” he says.

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

The measure was signed into law in March by Republican Gov. Scott Walker.

But the fight over AB 11, 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,” says Larson, citing 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.”

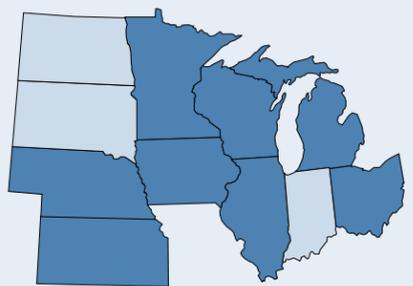
The eyes of the nation have also been on Ohio, another state where significant changes were made in 2011 to the laws governing collective bargaining and public employee unions.

Sen. Kevin Bacon says he received 25,000 e-mails on Ohio SB 5 before it was signed into law in March.

Public interest and debate will only intensify in the coming months, Bacon says, because there will almost certainly be a statewide referendum on SB 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

“Collective bargaining states” in Midwest (as of start of 2011)*



Collective bargaining state

Not a collective bargaining state

*The American Federation of State, County, and Municipal Employees defines “collective bargaining state” as one that affords its employees the right to bargain over wages. Using this definition, 28 U.S. states were collective bargaining states at the start of 2011. According to a 2002 U.S. General Accounting Office report, 12 states (none in the Midwest) had no laws guaranteeing collective bargaining rights for any public workers.

“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 prevent a vote on the collective bargaining proposal.

In doing so, Larson says, 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 says.

In addition, there has always been a

three endorsements revoked, had a protester show up at his home and had a dinner interrupted by SB 5 opponents.

But he believes a “silent majority” of Ohioans support the changes, and that local governments will need them in order to 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,” says Bacon, a former local township trustee.

► PLEASE TURN TO PAGE 6



People gather inside the Wisconsin Capitol earlier this year to protest AB 11. Signed into law in March, the measure restricts collective bargaining and establishes other rules for public employee unions. Ohio legislators also passed a bill this year changing the state's collective bargaining system.

▶ CONTINUED FROM PAGE 1

Wisconsin law limits scope of bargaining; Ohio bans strikes and removes binding arbitration

recognition that the public and private sectors are not the same, and shouldn't be treated as such, says 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 says. "Laws at the state level reflect those differences."

But for two decades after the NLRA was passed, no state laws existed.

Slater says that delay was caused by a 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 says.

"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 says.

"It alleviated concerns about strikes [in the public sector]. It addressed the critical issue of 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 the rules for 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 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.

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 says the union premium in the private sector has been measured at 20 percent.)

The one group of public employees that has been helped out the most by collective bargaining, Jones says, is lower-skilled, less-educated workers. Most studies show that these public-sector workers make more than their counterparts in the private sector. In contrast, higher-skilled, better-educated public employees earn less than their private-sector equivalents, Bender says.

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 says, the state laws and formal mediation processes have generally allowed for stable labor relations.

Slater says, too, that giving a voice to employees over worker conditions and rules adds value to the process.

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 that 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).

Union trends: % of state workforce covered by collective bargaining agreements (1983-2010)

State	Public sector, 2010	% point change since 1983	Private sector, 2010	% point change since 1983
Illinois	52.6%	+4.1	10.1%	-13.3
Indiana	26.8%	-4.9	8.9%	-17.2
Iowa	40.8%	+4.0	7.9%	-9.2
Kansas	22.0%	-11.1	5.8%	-9.5
Michigan	51.7%	-9.5	11.6%	-15.7
Minnesota	59.2%	+0.7	8.6%	-10.2
Nebraska	36.3%	+0.2	6.0%	-4.9
North Dakota	23.1%	-11.0	5.3%	-5.7
Ohio	46.2%	-1.7	9.0%	-15.3
South Dakota	20.9%	-12.9	3.5%	-5.5
Wisconsin	49.6%	-4.4	9.0%	-12.7
U.S. states	40.0%	-5.5	7.7%	-10.8

Source: Barry T. Hirsch and David A. Macpherson (www.unionstats.com)

However, a recent analysis done 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 FY 2011 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, says 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 says, states must also look beyond salaries, pensions and health benefits.

"It's not just the wages that raise the costs," he says. "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 says.

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 says.

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

Collective bargaining systems and union laws in the Midwest

State	Employees covered	Scope of bargaining	"Right to work" state?*
Illinois	State and local employees and teachers	Wages, hours and conditions of employment	No
Indiana	Teachers	Wages, hours and conditions of employment	No
Iowa	State and local employees and teachers	Wages, hours and other specifically listed conditions of employment	Yes
Kansas	State employees and teachers; local employees are covered only if local governing board chooses to participate in state's Public Employer-Employee Relations Act	Wages, hours and other specifically listed conditions of employment	Yes
Michigan	State and local employees and teachers	Wages, hours and conditions of employment	No
Minnesota	State and local employees and teachers	Wages, hours and conditions of employment	No
Nebraska	State and local employees and teachers	Wages, hours and conditions of employment	Yes
North Dakota	Only teachers given statutory authority to engage in collective bargaining	Wages, hours and conditions of employment	Yes
Ohio	State and local employees and teachers	Wages, hours and conditions of employment	No
South Dakota	State and local employees and teachers (collective bargaining agreements not in place for state employees)	For state employees, hours and conditions of employment only; for others, wages, hours and conditions of employment	Yes
Wisconsin	State and local employees and teachers	Wages only, except public safety employees (a voter referendum is required to increase base wages more than changes in the consumer price index)	No

* Twenty-two states have so-called "right-to-work laws," meaning employees cannot be required to pay union dues or fees or join a union as a condition of employment. These laws generally cover the public and private workforce. Recent changes to the law in Wisconsin prohibit salary deductions for union dues among most public employees. In addition, most public employees can now refrain from paying dues and remain a member of a collective bargaining unit. Under the new Ohio law, members in a collective bargaining unit who don't belong to the union can no longer be required to pay "fair share" dues.

Sources: American Federation of State, County, and Municipal Employees; CSG Midwest research; and National Right to Work Legal Defense Foundation

governments will be better able to rein in the rising costs associated with employee health benefits.

Two other provisions in AB 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 NLRA,” Slater says.

Larson cites those two provisions in particular as evidence that AB 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 says the most significant parts of SB 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 SB 5, too, no public employees are allowed to strike. Previously, this ban 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, an impasse in negotiations will ultimately be decided by the local governing body or voters.

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 SB 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 says.

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 SB 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 AB 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. ★

Comparing public and private pay: What studies say about compensation levels

Are public employees overpaid, underpaid or compensated at appropriate wage and benefit levels?

This is one of the many questions that have arisen during discussions in state capitols over budget deficits, pension reform and, most recently, collective bargaining. Last year, University of Wisconsin-Milwaukee professor Keith Bender tried to answer the question in a study he co-wrote for the Center for State & Local Government Excellence and the National Institute on Retirement Security.

His conclusion: Total compensation levels (wages and benefits) are lower for state and local employees when compared to their private-sector counterparts.

Determining what “counterparts” means can be tricky. Some jobs in the public sector simply don’t match those in the private sector, and vice versa. For instance, should a police officer be compared to a private security guard or a private investigator, or neither?

As a result, researchers tend to use the characteristics of individual workers as the basis for comparisons. When he uses the term “counterparts,” Bender means public and private workers with comparable determinants of earnings — factors such as education, union status, gender and race.

When controlling for these individual characteristics, total compensation for state and local workers is 6.8 percent and 7.4 percent lower, respectively, than for employees in the private sector, according to Bender’s 2010 study, “Out of Balance? Comparing Public and Private Sector Compensation over 20 Years?”

In comparison, a recent state-by-state analysis by USA Today did not account for these earnings determinants. It found that in 41 of the 50 states, public workers make more than private workers in pay and benefits. According to the analysis, Kansas is the lone Midwestern state where average earnings for public

workers lags behind those in the private sector. (The study found that average compensation levels for public workers in this region ranged from a high of \$60,274 in Illinois, 10th among U.S. states, to a low of \$41,684 in South Dakota, last among the 50 states.)

Jeffrey Keefe, a labor and employment relations professor for Rutgers University, has recently conducted several state-specific studies comparing public and private sector compensation. He controls not only for factors such as education and experience levels, but also hours worked. (Teachers and university professors, for example, tend to work fewer hours.) In the five Midwestern states he studied, Keefe found that state and local government workers were under-compensated compared

to similar private-sector employees: by 5.9 percent in Indiana; 2.9 percent in Michigan; 7.9 percent in Minnesota; 3.5 percent in Ohio; and 4.8 percent in Wisconsin.

In a 2011 working paper, Andrew Biggs of the American Enterprise Institute and Jason Richwine of the Heritage Foundation question the validity of the findings of previous studies on the subject of public vs. private pay.

In particular, they say these studies underestimate the value of public workers’ benefits, particularly retiree health care and defined-benefit pensions (both of which are much more prevalent in the public sector) and job security (private-sector employees

have a greater chance of being fired or laid off, Biggs and Richwine note).

Bender says that in his study, he calculates the premium for public retiree benefits at about 6 percent. Others have put the premium at 11 percent or more.

Split the difference, he says, and the compensation levels for public and private workers are very similar.

Characteristics of public and private sector workers and comparisons of pay (2008)			
	Private	State	Local
Hourly wage	\$20.57	\$22.17	\$22.15
Completed college	28.3%	55.8%	53.9%
Age, in years	39.8	44.1	43.7
Earnings as a share of total compensation	70.85%	67.35% (state and local combined)	67.35% (state and local combined)
Benefits as a share of total compensation	29.15%	32.65% (state and local combined)	32.65% (state and local combined)
Total compensation differential with private sector*	—	-6.8%	-7.4%

* To determine the compensation differential between public and private workers, various earnings determinants are controlled, such as level of educational attainment, gender and union status.
Sources: Center for State & Local Government Excellence and the National Institute on Retirement Security