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workers in Wisconsin.

Jan. 20, 2013

A federal appeals court on Friday reversed a decision by a local federal judge and upheld a state law that sharply curtails the collective bargaining rights of public workers in Wisconsin.

A three-judge panel of the U.S. Court of Appeals for the 7th Circuit reversed a ruling issued in March by U.S. District Judge William Conley that struck down key parts of the collective bargaining law. Conley had ruled that the state can't prevent public employee unions from collecting voluntary dues through payroll deductions and can't require annual recertification of unions.

But writing for a 2-1 majority, Judge Joel Flaum wrote that the law's payroll deduction prohibitions do not violate First Amendment free speech rights because "use of the state's payroll systems to collect union dues is a state subsidy of speech that requires only viewpoint neutrality."

Flaum also wrote that unions' arguments against the creation of different collective bargaining rules for two sets of public workers — public safety employees and general employees — were appealing but aren't supported by established law.

"All that matters is whether the statute, as written, furthers a legitimate government objective," Flaum wrote. Once a rational relationship is found "between the disparity of treatment and some legitimate governmental purpose," the law passes constitutional scrutiny, he wrote.

The state, Flaum wrote, reasonably concluded that public safety workers "filled too critical a role" to risk work stoppages caused by labor unrest.

In a partial dissent, Judge David Hamilton agreed with Conley that the state's

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law as applied to municipal and school district workers, finding it to be an unconstitutional infringement on their rights of free speech, freedom of association and equal protection. His decision, which differs from Conley's in that it is based on state law, is before a state appeals court.

Two other lawsuits are still pending. A group that includes the union representing Capitol Police officers filed suit in November over the unequal classes of public workers. And unions representing Madison public works employees and other municipal workers filed suit in federal court in July 2011.

Despite the rulings by Conley and Colas, automatic dues deductions have not restarted. However, some bargaining units whose contracts haven't expired still have automatic dues deductions, along with a few units whose contracts expired after Conley issued his decision.

The Wisconsin Employment Relations Commission stopped scheduling union certification elections after Conley's ruling in March. The commission must decide whether Friday's federal ruling means that certification elections should resume, or if Colas' decision forbids them, general counsel Peter Davis said.

## **Officials react**

Unions said the decision would need further analysis before they decide whether to appeal it to the U.S. Supreme Court.

"Too soon to tell," AFSCME Council 40 executive director Rick Badger said in an email. "Lots of union folks — and their counsel — will be reading the decision."

Wisconsin Education Association Council President Mary Bell said WEAC was disappointed and was weighing its next steps Friday. Madison Teachers Inc. executive director John Matthews said it's possible that unions could ask for the case

to be reheard before entire 7th Circuit court, given the 2-1 decision with a strong

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statement. He also said through a spokesman that he was confident Gorsuch's decision would "similarly be overturned."

State Attorney General J.B. Van Hollen, whose office has been defending the law in court, said he hopes that federal appeals decision "will pave the way for resolving any remaining challenges in a manner that supports the legislative decisions made by our elected officials."

### **Democrats voiced disappointment at the decision.**

"The 7th Circuit's determination that the calculated protection of political favorites and the targeting of political foes is constitutionally permissible is a sad deterioration of our Wisconsin values," State Senate Democratic Leader Chris Larson said.

### **Ruling: Not discriminating by viewpoint**

The collective bargaining law prohibited general employees from collectively bargaining on issues other than base wages, imposed recertification requirements on them and prohibited the state and municipalities from deducting union dues from paychecks.

Public safety employees, however, kept the same rights that they had before the law.

Unions challenged the limits on collective bargaining, the recertification requirements under the federal Equal Protection clause and said the prohibition on payroll deduction of dues violated the First Amendment and the Equal Protection clause.

Conley invalidated the recertification and payroll deduction provisions, but upheld the law's limits on collective bargaining. He found no rational basis for treating public safety and general employee unions separately. He also said the payroll

deduction provision violated the First Amendment because public safety unions,

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