

Wisconsin Court of Appeals Green Lights Right-to-Work Law

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On Tuesday, the Wisconsin Court of Appeals lifted an injunction entered by the lower court freezing enforcement of 2015 Wisconsin Act 1, Wisconsin's "Right-to-Work" law, dealing a blow to unions across the state.

In the simplest terms, [Act 1](#) provides that union membership cannot be a condition of employment. That means union contracts cannot, among other things, contain "security" clauses requiring workers to do the following:

- Refrain or resign from membership in, voluntary affiliation with, or voluntary financial support of a labor organization.
- Become or remain a member of a labor organization.
- Pay any dues, fees, assessment, or other charges or expenses of any kind or amount, or provide anything of value, to a labor organization.
- Pay to any third party an amount that is in place of, equivalent to, or any portion of dues, fees, assessments, or other charges or expenses required of members of, or employees represented by, a labor organization.

In [Machinists Local Lodge 1061 v. Walker](#), two Wisconsin unions challenged the law as an unconstitutional taking. The trial court agreed, holding the Act constituted a "taking because unions were still required to represent all persons in the bargaining unit fairly and equally, regardless of whether they paid union dues and fees. Thus, the free-rider problem created by the statute rendered it facially unconstitutional.

The Court of Appeals rejected the trial court's reasoning, holding the law does not effectuate an unconstitutional taking of private property without just compensation. The unanimous panel explained: "Act 1 does not require labor organizations to provide services to anyone. Act 1 merely prohibits employers from requiring union membership or the payment of fees as a condition of employment. The unions have no constitutional entitlement to fees of non-member employees."

Absent an appeal, this decision means labor contracts renewed, modified, or extended after the March 11, 2015 effective date cannot contain security clauses. Likewise, dues check-off provisions must allow employees to revoke their check-off authorization with 30 days' written notice. Unions must also continue to represent all workers within the bargaining unit regardless of union membership. If a contract provision violates the Act, it will

be deemed void. Anyone who violates the Act will be guilty of a Class A misdemeanor, which carries a fine up to \$10,000, imprisonment up to 9 months, or both.

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