

Wis. Labor Battle May Spur GOP Leaders Across US

By Leigh Kamping-Carder

Law360, New York (February 22, 2011) -- Wisconsin lawmakers convened Tuesday to debate Republican Gov. Scott Walker's controversial budget bill, which would enact broad limits on public workers' collective bargaining rights and, according to experts, embolden other state legislatures to follow suit, potentially weakening public unions nationwide.

Walker introduced the so-called budget repair bill on Feb. 11 to close a \$137 million shortfall and, he said, provide long-term fiscal sustainability without relying on tax hikes.

But critics — including thousands of protesters who have camped out in front of the state capitol building in Madison, Wis. — see the bill as a political power grab aimed at undermining labor interests in Wisconsin, one of the first states to grant public workers collective bargaining rights.

"This is one of the most direct attacks on the ability of employees to engage in collective bargaining, certainly in the last 30 to 35 years," said Andrew Kaplan, a Silver & Freedman partner who has represented cities in labor negotiations. "And, quite honestly, I believe that on both sides, both on Democrat and Republican sides, this is in significant part a political battle."

Provisions restricting public workers' ability to bargain over benefits and work conditions, to collect dues, and to maintain union certification have raised the ire of employees and Democratic senators, who fled Wisconsin on Thursday to slow down a vote on the measure. Without a quorum of 20 senators, Wisconsin's 19-senator Republican majority cannot vote on the bill.

Regardless of whether Walker's bill comes to pass, the battle in Wisconsin is an augur of labor disputes to come in other states, particularly those headed up by Republican governors or facing their own budget woes, labor law experts said.

The bill has "uncorked the genie from the bottle, and I don't think this genie is going away, regardless of what happens in Wisconsin," Kaplan said.

Under the bill, state and local workers could still bargain over base pay, but not on other compensation measures. Wage increases would be capped at a rate set by the Consumer Price Index, and contracts would run for one-year terms with wages frozen until a new contract is reached.

Unions would be required to put certification to a secret ballot every year, while union members would not have to pay union dues and employers would be prohibited from collecting them.

Medicaid home health care workers, University of Wisconsin faculty and other groups would have their collective bargaining rights repealed altogether. The only public employees who would see no changes are members of police and firefighter unions.

Walker has said the budget bill must pass by Friday to allow the state to make debt service payments by mid-March, and he has threatened layoffs if it does not go through.

If the bill does pass, it will likely act as a precedent for lawmakers in other states, depending on the governor's agenda in those states and how powerful he or she perceives the local public unions to be, experts said.

"Other states (and their governors) are standing by to see if ultimately Gov. Walker will be successful doing it his way," said Daniel Murphy, a partner at national labor and employment firm Constangy Brooks & Smith LLP and former Wisconsin city attorney. "If he is, certainly more states will be emboldened to try the same method for resolution of their budget problems."

States with Republican majorities or Republican governors will be the most likely adopters, especially given the traditional union support for Democrats, experts said. But even blue states like California may feel pressure to address collective bargaining laws, given mounting budget woes and electorates that are more open to these legislative changes, they said.

"Something has to give," said Ronald Meisburg, a partner at Proskauer Rose LLP and the immediate past general counsel of the National Labor Relations Board. "States can't print money, and they can't continue to accrue liability without something giving."

Other states already have legislation on the table that would restrict the collective bargaining rights of state employees.

In Ohio, Republican state Sen. Shannon Jones introduced a bill Friday that would amend the state's collective bargaining law, sparking protests outside the state capitol building on Tuesday.

Four Republican senators in Washington introduced a bill in January to prevent state employees from collectively bargaining with the executive over compensation.

And in Indiana, Democratic senators reportedly left the state Tuesday to protest a House bill that would bar private unions from requiring nonunion members to pay dues.

Pennsylvania Gov. Tom Corbett, a Republican, has reportedly pledged to negotiate with unions, while Gov. Andrew Cuomo of New York, a Democrat, and Gov. Chris Christie of New Jersey, a Republican, are angling to have state workers increase benefit contributions.

If Walker's proposal fails, governors in other states could perceive a similar move as facing major hurdles, experts said.

In any case, the protests in the state may "deter quick following elsewhere," said Eli C. Bortman, a law professor at Babson College in Massachusetts.

Then again, Walker's peers may not be at all deterred by the protests in Madison because, like other Republican governors, Walker knows that the union workers are not his constituency, and he doesn't have their vote to lose, Kaplan said.

"If the budget problem is big enough, I don't think the protests would stop a responsible governor from proposing what he or she thinks needs to be done," Meisburg said.

Union representatives reportedly offered to go along with Walker's proposed pay and benefit cuts in exchange for preserving the collective bargaining status quo, but the governor refused. He also shot down a proposal from Republican lawmakers who offered a deal that would put a two-year limit on the collective bargaining provisions, according to news reports.

"If I had to guess, I would say the Democrats can't stay out of the state forever," said Ann C. Hodges, a professor at the University of Richmond School of Law. "At some point they have to come back, and if [Walker] refuses to compromise, and if he has the votes to pass the legislation, then I think it's likely to pass at some point."

Such a law would have little effect on private unions, which are governed by the National Labor Relations Act and not state law. But if other state legislators follow Walker's lead, it could have a lasting impact on public unions across the country, experts said.

"By requiring unions to be recertified every year and by no longer allowing the state to deduct dues from employee paychecks, the bill would seriously hamper unions economically and eventually could lead to their demise," Murphy said.

Primarily, bills that cut in to collective bargaining rights could impact membership levels in public unions, according to experts.

If unions cannot do what they promise to do — increase wages and provide vested pension benefits — they are less attractive to potential members, Kaplan said.

On the other hand, workers join unions for a host of reasons, from a family history of participation to workplace representation, Meisburg noted.

A number of states do not allow public unions to bargain, yet the unions in those states can still help workers, either through lobbying efforts or in administrative proceedings, Hodges said.

But provisions mandating annual certification votes or voluntary dues will impose added costs on unions without alleviating state budget shortages, she said.

"What it does is put the onus, if you will, on unions to educate workers about why they should continue to be members," Hodges said.

Ronald H. Shechtman, chair of the labor and employment group at Pryor Cashman LLP, who has represented unions in negotiations, said nothing in his experience would suggest that Walker's bill would drive down the cost of public employee compensation.

"I am a great believer in the collective bargaining process, and I think to go at and to cut it back so radically — with a machete rather than a scalpel — is ultimately against the public interest," Shechtman said.