

A WISCONSIN INSTITUTE FOR LAW & LIBERTY REPORT

DEMOCRACY IN THE WORKPLACE

Examining Union Recertification in Wisconsin under Act 10

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Executive Summary

Act 10 was a lightning rod of controversy at the time of its passage. Among its many provisions was a requirement that unions annually hold a vote to recertify the union, with majority vote required to avoid the union coming to an (at least temporary) end. Eight years later, what has been the impact of this provision? To answer this question, WILL gathered extensive data from the Wisconsin Employment Relations Commission that houses data on union recertification elections. Coupling this with data from other sources, we examine the how, when, and why of union success and failure. In a survival analysis, we examine what factors are most predictive of a union failing or continuing to exist. The findings should aid policymakers in understanding the current union landscape in the state of Wisconsin, and in determining whether more work is needed to reduce union power.

Key Findings:

No relationship between union decertification and student outcomes. Student performance on the Forward Exam was statistically similar in districts where the union was decertified and where it wasn't.

Union membership and the number of unions have declined substantially. The number of employees represented by unions has declined from 317,000 in 2013 to 219,000 in Wisconsin today—a decline of about 31%. The number of unions annually holding recertification elections has dropped by 32% since 2014.

The rate of union decertification has decreased over time. While 14% of unions failed

to recertify in 2014, only about 2% failed to recertify in 2018.

The vote share to maintain unions has increased. The percentage of members voting to maintain the union has increased from about 68% in 2014 to more than 82% in 2018.

Since 2014, education-related unions are less likely to fail recertification votes. In survival analysis, teachers' unions and education support staff unions were less likely to be voted down than other types of unions.

Since 2014, public works & highway workers' unions are more likely to lose recertification votes. These unions were more than twice as likely to fail as other unions.

Unions in conservative areas more likely to lose recertification votes. A 1% increase in the vote share for Walker is associated with a 2% increase in the likelihood of union failure in that count.

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Introduction

In 2010, when Scott Walker defeated Tom Barrett in the Wisconsin gubernatorial election, he began work on what would become the landmark legislation of his administration: Act 10. The bill attempting to remedy the multi-billion dollar budget deficit by reforms to public-sector unions was met with tremendous opposition and protests. In addition to provisions mandating employee contributions to health insurance and pensions, the bill also allowed employees to vote for themselves whether or not they wanted to continue to be represented by their union—a first for Wisconsin.

After the passage of the law, opposition moved from public protests to the courtroom. In *Madison Teachers, Inc. v. Walker*, originally filed with the Dane County Circuit Court in 2011, the plaintiffs alleged that four aspects of Act 10 violate the Constitution and equal protection rights of the employees the unions represent, including the annual recertification requirements of unions. WILL partnered with the National Right to Work Legal Defense Foundation to help represent state-employed workers who disagreed with pre-Act 10 union representation and filed amicus briefs during this case. While the Dane County Circuit Court ruled these aspects of Act 10 were unconstitutional, in 2014 the Wisconsin Supreme Court reversed the Circuit Court ruling and decided to uphold Act 10 in its entirety. Another lawsuit ensued, *Rosno v. Wisconsin Employment Relations Commission (WERC)*, in which WILL represented five public school teachers who wanted a court to order WERC to hold recertification elections, or for the judge to declare that they no longer have a collective bargaining represen-

tative. These teachers wished to exercise their right to vote for their representation in the upcoming collective bargaining for the school year. In 2013 the court ruled that WERC will administer and conduct annual certification elections except for those involved in *Madison Teachers, Inc. v. Walker* due to the ongoing lawsuit. Because of the Dane County Circuit Court ruling annual recertification elections unconstitutional in 2012, very few if any unions held elections in 2012. Therefore, there is an inconsistency in the data from 2011–2014. Regular annual recertification elections began in 2014, with the next election happening in November 2019. Wisconsin is one of the only states that has this stipulation—mandatory recertification elections with their unions and has allowed thousands of employees to free themselves from unions they do not want.

Other states have followed Wisconsin's example in creating or reforming their union recertification system. States like Iowa, Florida, and Missouri have passed certification/decertification laws in the last three years, and the Employee Rights Act of 2017 was brought to the floor of Congress. The Employee Rights Act (ERA) was introduced by Congressman Roe in 2017. It would ensure secret ballots in union voting, require union recertification, supply political protection against union lobbying, require a majority vote of all employees for a union to exist, ensure employee privacy protections, ensure decertification coercion prevention, provide a secret ballot strike vote, and criminalize union threats. The ERA bill was referred to the Committee on Education and the workforce, and then hearings were held by the subcommittee on health, employment, labor and pensions prior to referral in June of 2017.

It is apparent that the conversation on union coercion in politics, over employers and employees, and state budgets is far from over. But what can states, and the nation, expect when such laws pass?

The Broader Picture

Act 10 had a dramatic impact on union membership in the initial years after its passage. According to data from the Bureau of Labor Statistics, the number of employees reprinted by unions has declined from 317,000 in 2013 to 219,000—a decline of about 31%. Note that these figures include private-sector union membership, which was not impacted by Act 10 (though may have been impacted by other changes in Wisconsin law, such as the “Right to Work” law).

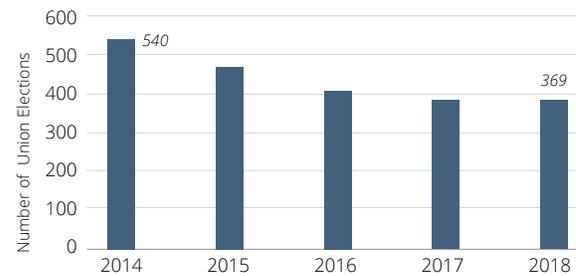
Figure 1. Union Membership by Year, Wisconsin



This decline in membership is not the result of the loss of a few large unions. Rather, the raw number of unions has been declining significantly as well. Figure 2 represents a count of the number of unions holding recertification elections on an annual basis beginning in 2014. 2014 is used here, as it is later in this paper, because prior to 2014, a number of

lawsuits compelled some unions not to participate in annual certification, making 2014 the first year with relatively complete data. In 2014, 540 unions held recertification elections. By 2018, this number had dropped to 369. This represents a decline of 32%, closely mirroring the overall decline in membership that has occurred since 2013.

Figure 2. Number of Unions Holding Annual Recertification Elections



In the remainder of the paper, we move beyond this topline data to examine the state-of-play for unions in Wisconsin eight years after the passage of Act 10.

Methods

In order to answer this question, WILL conducted an extensive analysis looking back at several years of data on recertification. All of the union recertification election results for the reporting unions in Wisconsin are located on the WERC website. WILL utilized these election results to paint a comprehensive picture of the union recertification elections since 2011. Any given union must receive 51 percent of the eligible unit population vote annually in order to recertify, so the first step in analyzing these elections is determining which

unions in any given election did not meet this 51 percent threshold. Despite WERC reporting that “no” votes for most unions were only on average about two, any eligible union member who does not vote counts as a vote against the union. Therefore, WILL subtracted the “yes” votes from the unit population to demonstrate more accurately how many “no” votes there were. Most union members in unions who lost recertification elections do not vote at all. And why would they? Why waste the time and energy going in to vote “no,” with a union representative breathing down your neck, when doing nothing would have the same effect? The WERC also provides data on challenged votes and challenged ballots. Challenged votes and challenged ballots are those members and their votes where their membership is questioned. Prior to the election, the employer sends WERC and the respective Union a list of employees who are eligible to vote. The Union has ten days to challenge this list. Then, within eight days after the election tally, either the employer or the respective union can challenge members or ballots in the election. Those challenged votes and ballots are excluded from the “yes” and “no” votes, since their validity was challenged. Challenged votes and ballots remain excluded unless it could change the outcome of an election. Then, if the outcome is uncertain, the employer and union may either solve the challenge voluntarily by withdrawing their challenge, or by receiving a decision. There have only been three cases where challenged votes could have changed an election in the past eight years, and WILL contacted WERC for the results of those cases.

School union elections occur every November, and state employee union elections occur every April. While there is data on recertification elections starting in 2011, the first set of complete data with both an April and a November election is in 2014 because pending lawsuits made the implications of losing an election unclear.¹ Years prior to 2014 have interesting results, but cannot be used to accurately track union recertification.

This data on recertification will be combined with data from other sources to help us answer a number of questions on where, when, and why unions do and do not recertify. We will also take a deeper look at the data on school districts to determine whether decertification has any impact on student outcomes.

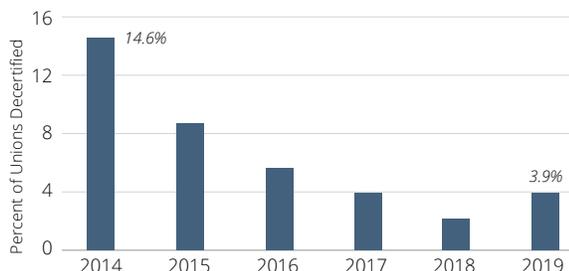
Results

Voting & Vote Share

The rate of failed recertification has gone down over time. In 2014, about 14.63% of union recertification elections resulted in a failure to recertify. That percentage declined consistently through 2018, where only 2.17% of unions failed to recertify. A slight uptick is observed in 2019, however it should be noted that we only have data for the April elections for 2019, since some recertification elections occur in November.

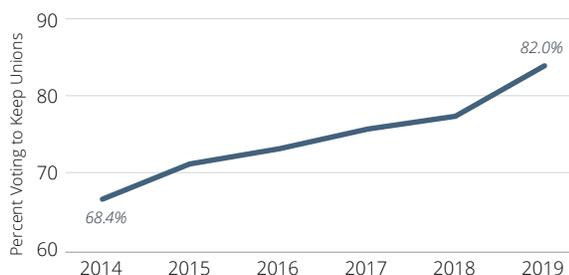
¹ For instance, sometimes in these years, unions would lose an election and continue to vote in subsequent years.

Figure 3. Percent of Unions Decertified by Year



As might be expected given that fewer and fewer unions are decertifying, the percentage of union members voting to keep the union in place appears to be increasing over time. In 2014, the percentage voting to recertify was about 68.4% of the vote in the election. By the 2019 series of votes, more than 82% of members voted to recertify. This is perhaps indicative of higher levels of support among unions that have survived previous rounds of recertification. Those that were in unions that were particularly problematic have already disbanded. However, it is also worth noting that any decertifications result in a shrinking of the pie. Even though the number of unions decertifying sounds quite small at 2% in 2018, this does mean that an additional 2% of unions are no longer in existence.

Figure 4. Share of Union Members Voting to Re-Certify



Failure Rate Predictors

To answer the question of which factors increase and decrease the probability of recertification, we turn to a survival analysis. Survival analysis is borrowed from epidemiology where it is used to predict the change in mortality resulting from a particular intervention. WILL has applied this technique in the past to study the causes of school failure (Flanders 2017; Flanders & DeAngelis 2018). Here, we compared a number of variables with the rate of union failure. In this sort of analysis, coefficients less than 1 are indicative that a particular variable lowers the likelihood of recertification, while a coefficient greater than 0 indicates the variable increases the likelihood of recertification.

School district unions show a lower likelihood of failure than all other unions. Accounting for other factors in the analysis, teachers' unions are 96% less likely to fail than other types of unions in the analysis. School support staff unions are 68% less likely to fail. In contrast, public works unions and highway workers' unions are more likely to fail.

It should be noted that a great wave of teachers' union decertification followed the passage of Act 10. Currently, fewer than half of Wisconsin School Districts now have a union (Beck 2017). But it appears that a point of stability has been reached where the remaining unions have a relatively high level of existing support.

It appears that conservative tendencies in a district also undermine support for continuing to have a union. A 1% increase in support for Governor Walker in 2016 is associated with a 2% increase in the likelihood that a union will end

in a particular county. The size of the union, and the urbanicity of the district (proxied with population density) were not significantly predictive of the risk of failure. Unions in southwest Wisconsin were significantly more likely to fail, while unions in north central Wisconsin were significantly less likely to.

All of the years in the analysis were significant and less than one. Because these are relative to the baseline year, 2014, this further bolsters the finding from the descriptive analysis that failures have declined over time.

Teachers' Unions and Educational Outcomes

Opponents of Act 10 have regularly made the claim that the legislation has hurt student achievement (e.g. Madland and Rowell 2017). While the scope of this research is not broad enough to look at all of the implications of Act 10, we can examine whether the loss of a union in a particular district significantly changes scores on the state's report card. There was no relationship found between teachers' union failure and student performance on the Forward Exam. While the coefficient is negative on "Union Failure," suggesting lower test performance in districts where the union failed, it does not reach traditional levels of statistical significance. This could be indicative that the loss of a union has little impact on the quality of instruction in schools.

Table 1. Risk of Union Decertification

VARIABLES	Hazard Ratio
Teachers' Union	0.0450*** (0.0116)
School Support Staff	0.329*** (.0952)
Public Works Union	2.05** (0.6007)
Highway Workers' Union	2.33** (0.8345)
Conservatism	1.02*** (0.1093)
Membership	0.999 (0.0006)
Population Density	1.000 (0.0001)
SE WI	1.16 (0.3289)
SW WI	1.748** (0.4764)
NE WI	0.804 (0.2216)
NC WI	0.615* (0.1635)
2015	0.659** (0.1276)
2016	0.422*** (0.1023)
2017	0.323*** (0.0916)
2018	0.186*** (0.0695)
2019	0.183*** (0.0943)
Observations	2,228

Standard errors in parentheses

*** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$

Table 2. Effect of Union Decertification on Forward Exam Scores

VARIABLES	(1) Forward Exam Score
Union Failure	-1.782 (1.451)
District Enrollment	-0.00392** (0.00190)
White	-30.96* (17.51)
Disabled	11.17 (13.11)
Economically Disadvantaged	-2.089 (5.905)
2017	0.322 (0.429)
2018	0.273 (0.489)
2019	-8.445** (4.239)
Constant	110.5*** (16.43)
Observations	623
Number of Districts	227
R-squared	0.047

Standard errors in parentheses
 *** p<0.01, ** p<0.05, * p<0.1

Do Unions Come Back?

When a union fails, that is not always the end of the story. In some instances, the union attempts a recertification vote at a later date. Approximately 15% of unions in our sample attempted to recertify after having been decertified during a previous election. It appears unions that experienced low-turnout during recertification elections are the most likely to attempt recertification again. The figure below

shows the turnout percentages in each case. In unions that attempted to recertify, turnout during the initial election was about 12% lower, a statistically significant difference.

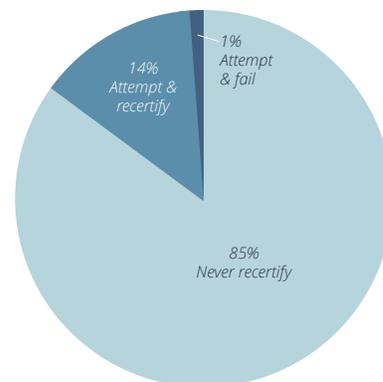
Table 3. Differences of Means Test, Recertification Attempt vs. No Attempt

Did the Union Attempt to Recertify?	Turnout Percentage (SD)
Yes	25.8%(.235)***
No	37.8%(.208)

Standard errors in parentheses
 *** p<0.01, ** p<0.05, * p<0.1

Subsequent recertification elections are likely to be successful. Second attempts at recertification meet with an extremely high level of success. Approximately 93% of unions recertify on a second attempt, with more than 73% of members voting to recertify. It appears that recertification is strategic, with attempts made almost entirely in situations where a significant share of “yes” votes failed to turnout the first time.

Figure 5. Subsequent Efforts at Recertification



Conclusion

The union landscape in Wisconsin eight years after the passage of Act 10 is a complex one. Act 10 gave workers a greater voice in the future of their union, and that has led to a precipitous decline in both the number of unions and total union membership. That said, we appear to be reaching something of an equilibrium point where remaining unions enjoy relatively high recertification rates. Unions will, in all likelihood never go away entirely. The result of Act 10 has not been a wholesale destruction of labor unions, as many opponents of the law claimed it would be (e.g. Nichols 2011), but rather a “trimming of the fat”, leaving it to workers and their individual unions to decide their value and their future.

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