3-16-2017

Western Cab Co. v. Eighth Jud. Dist. Ct., 133 Nev. Adv. Op. 10, (Mar. 16, 2017)

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LABOR LAW: MINIMUM WAGE AMENDMENT

Summary

An employer challenged the validity of Nevada's Minimum Wage Amendment (MWA). The Court held that (1) the MWA is not preempted by the NLRA, (2) the MWA is not preempted by ERISA, and (3) the MWA is not unconstitutionally vague. The Court declined to address factual issues related to the employer's wage calculations.

Background

In 2004 and 2006, the people of Nevada passed Question 6 to add the Minimum Wage Amendment (MWA) to the Nevada Constitution. The MWA requires employers to pay employees one of two wage rates, depending on whether qualifying employee health benefits are offered.[2] However, the MWA allows for an exception if through collective bargaining, the employer and employees agree to a lower wage in "clear and unambiguous terms."[3]

In 2012, petitioner Western started to require its drivers to pay directly for fuel instead of deducting the costs from drivers' paychecks. Former cab drivers for Western and real parties in interest, Laksiri Perera, Irshad Ahmed, and Michael Sargeant, filed a complaint alleging that considering fuel costs, Western was paying its drivers a wage that fell below the constitutionally mandated minimum. Western moved to dismiss, claiming that fuel costs not be considered when calculating minimum wage, and that the MWA is invalid because (1) it is preempted by the NLRA, (2) it is preempted by ERISA, and (3) it is unconstitutionally vague. The district court denied Western's motion, and Western petitioned the Court for extraordinary writ relief.

Discussion

The Court was asked to address (1) whether the MWA is preempted by the NLRA; (2) whether the MWA is preempted by ERISA; (3) whether the MWA is void for vagueness; and (4) if the MWA is valid, whether fuel costs should be factored into calculating employer compliance. The Court concluded that review was warranted, chose to exercise their discretion to address the validity of the MWA, and held that it is valid on all three challenges. The Court declined to exercise their discretion regarding fuel-calculation because the facts weren't developed in district court.

Considering the facial challenges to the MWA serves the interests of judicial economy and streamlines this case, along with other MWA-related cases currently pending in the district courts

A writ of mandamus is used to compel the performance of a duty required by law or to control an arbitrary or capricious exercise of discretion.[4] A writ of prohibition may be used when a district court oversteps its jurisdiction.[5] The Court generally refuses to issue an extraordinary writ when there is a "plain, speedy, and adequate remedy in the ordinary course of law."[6]

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[1] By Sydney Campau.

[2] Nev. Const. art. 15, § 16(A).

[3] Nev. Const. art. 15, § 16(B).

[4] Int'l Game Tech, Inc. v. Second Jud. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); *see* NEV. REV. STAT. § 34.160 (2016).

[5] Manuela H. v. Eighth Jud. Dist. Ct., 132 Nev., Adv. Op. 1, 365 P.3d 497, 500 (2016); *see* NEV. REV. STAT. 34.160 (2016).

[6] Oxbow Constr., LLC v. Eighth Jud. Dist. Ct., 130 Nev., Adv. Op. 86, 335 P.3d 1234, 1238 (2014); *see* NEV. REV. STAT. § 34.170 (2016); NEV. REV. STAT. § 34.330 (2016).

Generally, the Court will decline to consider writ petitions unless it is clear that the district court is obligated to dismiss an action, or if an important legal issue requires clarification.[7] The Court generally practices judicial restraint and hesitates to entertain writ petitions. However, the Court may use their discretion to consider writ petitions for the purpose of judicial economy.[8]

Western's petition sought reversal of a denial of a motion to dismiss. Although these petitions are typically denied, the Court felt that this was an important legal issue and that resolving it would serve judicial economy, because if the MWA was invalid, the drivers (along with the plaintiffs in many other pending cases) would not have a cause of action.

The Court held that unresolved factual matters precluded consideration of the fuel-calculation issue, because there were facts missing from the record, namely whether Western and the drivers had agreed to the fuel payment system through collective bargaining. The Court reasoned that the constitutional and preemption issues could dispose of the litigation without requiring additional fact-finding.

The NLRA does not preempt the MWA because minimum wage laws are part of the State's police powers

Western claimed that the purpose of the MWA is to help unions and unionized employers compete with nonunionized employers, and that this resulted in NLRA preemption by violating the equitable bargaining process. The Court disagreed with Western. The establishment of labor standards falls within the police power of the State, so NLRA preemption should not be lightly inferred.[9] The Supreme Court has inferred two types of preemption: *Garmon* preemption, which protects the Labor Board's priority right to determine what is regulated under the NLRA,[10] and *Machinists* preemption, which prohibits states from regulating conduct Congress intended to leave open for the free market to decide.[11]

The Court has held that a complaint is not preempted under *Garmon* unless it is the kind that a worker should have presented to the Labor Board, and that a complaint is not preempted simply because the State is enforcing a law relating to labor relations.[12] Minimum wage laws are an authorized exercise of a state's police power.[13] Thus, the MWA is not preempted under *Garmon*.

The Court held that the MWA is not preempted under *Machinists* either. The MWA does not enter a field occupied by the NLRA and even explicitly allows for NLRA priority. Further, the MWA allows employers and employees to collectively bargain around the minimum wage requirements, intentionally leaving this area unregulated for the free market to control.

ERISA does not preempt the MWA because the MWA does not affect the types of benefits an employer must provide or force employers to provide benefits at all

The Court disagreed with Western's argument that ERISA was designed to cover the entire field of employee benefits, and thus, any state regulation is preempted. When evaluating for

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[7] Moseley v. Eighth Jud. Dist. Ct., 124 Nev. 654, 658, 188 P.3d 1136, 1140 (2008).
[8] Renown Reg'l Med. Ctr. v. Second Jud. Dist. Ct., 130 Nev., Adv. Op. 80, 335 P.3d 199, 202 (2014).
[9] Fort Halifax Packing Co., Inc. v. Coyne, 482 U.S. 1, 21 (1987).
[10] Metro. Life Ins. Co. v. Massachusetts, 471 U.S. 724, 748 (1985) (citing *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959)).
[11] Metro. Life Ins., 471 U.S. at 750 (citing *Lodge 76, Int'l Ass'n of Machinists & Aerospace Workers v. Wis. Emp't Relations Comm'n*, 427 U.S. 132 (1976)).
[12] Rosner v. Whittlesea Blue Cab Co., 104 Nev. 725, 726-27, 766 P.2d 888, 888-89 (1988).
[13] MGM Grand Hotel-Reno, Inc. v. Insley, 102 Nev. 513, 518, 728 P.2d 821, 824 (1986).

ERISA preemption, courts should assume Congress was not trying to replace state law.[14] ERISA's preemption clause states that with limited exceptions it should supersede state laws relating to employee benefit plans.[15] However, the Supreme Court has narrowed the scope of ERISA, holding that it would be overreaching to preempt every state law that incidentally mentions ERISA plans. Wages are traditionally a subject of state concern, and are not included in ERISA's definition of employee welfare benefit plan, so regulation of wages per se is not within the scope of ERISA.[16]

The MWA does not refer to employee welfare benefit plans for the purposes of ERISA preemption

When a state law merely mentions a covered employee welfare benefit plan or includes the word ERISA in its text, the law is not necessarily preempted by ERISA.[17] In a similar case, a U.S. district court recently held that a law that mentioned ERISA benefits, but did not force employers to provide a particular set of benefits, alter plans, or provide benefits at all, did not refer to ERISA for purposes of preemption.[18] The MWA does not affect or alter ERISA plans, so the Court held that the MWA does not refer to ERISA for preemption purposes.

The MWA does not impermissibly connect with ERISA plans

The MWA does not regulate the type of benefits granted by ERISA plans, does not require the establishment of a separate benefit plan to comply with state law, does not impose reporting, disclosure, funding, or vesting requirements, and does not regulate ERISA relationships, such as the relationship between the plan and the employer or the employer and employee. Thus, the MWA passes the Ninth-Circuit's four-factor test.[19]

The MWA is not unconstitutionally vague under the United States Constitution or the Nevada Constitution because health benefits are defined within the text of the amendment itself and the related NAC provisions define health insurance

"The void-for-vagueness doctrine is rooted in the Due Process Clauses of the Fifth and Fourteenth Amendments."[20] Civil laws are not held to the same strict vagueness standard that criminal laws are.[21] However, a law must still provide a person of ordinary intelligence fair notice and must not lack standards to the point that discriminatory enforcement is encouraged.[22]

The MWA provides persons of ordinary intelligence fair notice of what is prohibited

The argument that "health benefits" is vague was unpersuasive to the Court because the MWA defines "health benefits": explicitly stating that the employer must make insurance available to the employee and dependents with premiums of not more than 10 percent of the employee's taxable income.[23] "Health insurance" is defined elsewhere[24], and together these provisions adequately explain what health benefits qualify the employer to pay the lower minimum wage.

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[14] N.Y. State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 514 U.S. 645, 654 (1995).
[15] 29 U.S.C. § 1144(a) (2009).
[16] WSB Elec., Inc. v. Curry, 88 F.3d 788, 791 (9th Cir. 1996).
[17] *Id.* at 793.
[18] Calop Bus. Sys., Inc. v. City of L.A., 984 F. Supp. 2d 981, 1002-03 (C.D. Cal. 2013).
[19] Operation Eng'rs Health & Welfare Tr. Fund v. JWJ Contracting Co., 135 F.3d 671, 678 (9th Cir. 1998).
[20] Carrigan v. Comm'n on Ethics, 129 Nev. 894, 899, 313 P.3d 880, 884 (2013).
[21] *Id.*
[22] *Id.*
[23] Nev. Const. art. 15, § 16(A).
[24] Nev. Admin. Code § 608.102(1) (2016).

The MWA does not authorize or encourage seriously discriminatory enforcement

Western offered no evidence that unionized employers were given an unfair advantage by the MWA, and failed to demonstrate that the MWA encourages arbitrary or discriminatory enforcement. The state enforcement agency could simply compare Western's insurance offerings to those specified in Nevada's Administrative Code to make a (non-arbitrary) determination.

Conclusion

The Court held that the MWA is not preempted by either the NLRA or ERISA, and is similarly not void for vagueness. Thus, the Court denied Western's petition for extraordinary relief.