California Supreme Court Holds Municipalities Can Establish Worker Retention Ordinances

The City of Los Angeles Grocery Worker Retention Ordinance regulates the ability of grocery store employers to summarily replace the workforce upon acquiring a new store. On July 18, 2011, the California Supreme Court held the Ordinance is not preempted by state or federal law, and does not violate the Equal Protection Clause.

Case Background

In December 2005, the City of Los Angeles implemented the Grocery Worker Retention Ordinance. The Ordinance, which purported to be designed to provide job protection to employees of larger grocery stores undergoing changes in ownership, places several hiring restrictions on the new owners during a 90-day transition period.

The Ordinance requires sellers of grocery stores over 15,000 square feet to prepare a list of non-managerial employees at the store, and directs the buyer to hire from that list during the transition period. During this time, the hired employees may only be discharged "for cause." Although the Ordinance does not require that anyone be retained at the end of the transition period, if an employee's performance is satisfactory, the employer must "consider" offering continued employment. However, if the workforce is unionized, the union and the employer may agree to terms that supersede the Ordinance.

The California Grocers Association sued the City of Los Angeles, alleging the Ordinance was preempted by state and federal law, and unconstitutional as violating the Equal Protection Clause. The trial court agreed with California Grocers, entering a judgment enjoining enforcement of the Ordinance. The trial court declared the Ordinance void because it affected health and sanitation standards, an area fully occupied and thus preempted by state law. Additionally, the trial court found the Ordinance violated Equal Protection laws, stating there was no rational basis for its differential treatment between large and small grocery stores.

The Court of Appeal affirmed, finding the California Retail Food Code preempted the Ordinance's regulation of retail food establishments. It further concluded that the Ordinance was preempted by the National Labor Relations Act (NLRA), which guaranteed successor employers the right to choose whom they wished to employ.

The Supreme Court's Ruling

The California Supreme Court reversed, finding the Ordinance constitutional and not preempted.

Federal and State Preemption

The court found that the areas governed by the California Retail Food Code and the Ordinance were distinct and did not overlap. The court noted that the Retail Food Code established standards for what certain employees must know or be taught, but did not regulate who must be hired. On the other hand the Ordinance regulated the pool of employees from which a new owner temporarily must hire, but imposed no standards concerning what the newly hired employees must know or be taught about food safety.

The court also found no federal preemption, as neither the text nor structure of the NLRA precluded a municipality's ability to regulate a successor's hiring decisions. The court determined that the purpose of the NLRA instead was to remedy inequality of bargaining power between employees and employers by regulating the process of establishing an employee's terms of employment. It concluded that the Ordinance, in contrast to the NLRA's regulation of *process*, regulated the *content* of employment terms and thus was not preempted.

Equal Protection

The court also found the Ordinance was consistent with both state and federal Equal Protection Clauses. Specifically, the court noted that the Ordinance's exclusive applicability to large grocery stores was rationally permissible because larger stores would be more readily positioned to absorb any short-term burdens imposed by the Ordinance.

What *California Grocers* means for Employers

On its face, *California Grocers* affects only large grocery stores located in Los Angeles. But the decision could encourage other municipalities and counties to enact their own worker retention ordinances, applying not only to large grocery stores but to other types of employers. Of course, the existence of these types of laws only serves to reinforce California's reputation as being hostile toward employers.

Although the impact of this decision falls only on employers doing business in California, its findings could have nationwide implications since a significant portion of the case addresses the court's conclusion that federal statutes and Equal Protection laws do not preempt local worker retention ordinances. Thus, *California Grocers* may provide fuel to a currently small but growing national trend involving the enactment of these types of ordinances.

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