FEDERAL PREEMPTION AND STATE LABOR REGULATION IN THE NINTH CIRCUIT: *CHAMBER OF COMMERCE V. LOCKYER*

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Chamber of Commerce v. Lockyer was one of the most controversial Labor Law cases decided by the Ninth Circuit in 2004. The court applied the *Machinists* preemption doctrine to a California regulation and held that the federal interest in preserving free and open debate in labor organization preempted California's attempt to regulate state funding. This Note explains the background and facts of *Lockyer* and attempts to explain its holding in light of seemingly conflicting case law.

I. BACKGROUND

The doctrine of federal preemption declares that federal law displaces overlapping or potentially conflicting state law.[1] Despite the fact that the National Labor Relations Act (NLRA or the Act) does not contain an express preemption provision in its text, two primary federal preemption doctrines have emerged in the field of labor law: *Garmon* preemption and *Machinists* preemption.[2] The Supreme Court enunciated the *Garmon* preemption doctrine in *San Diego Building Trades Council v. Garmon*.[3] In that case, the National Labor Relations Board (NLRB or the Board) declined to exercise jurisdiction over a case where a labor union picketed before being certified as the bargaining agent of the employees.[4] The California Superior Court exercised jurisdiction and eventually the state court awarded

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1. BLACK'S LAW DICTIONARY 1177 (6th ed. 1990) ("Doctrine adopted by U.S. Supreme Court holding that certain matters are of such a national, as opposed to local, character that federal laws preempt or take precedence over state laws. As such, a state may not pass a law inconsistent with the federal law.").

2. Chamber of Commerce of U.S. v. Lockyer, 364 F.3d 1154, 1163-64 (9th Cir. 2004).

3. 359 U.S. 236 (1959).

4. *Id*. at 237.

damages to the employer based on state tort and labor relations law.[5] On appeal, the United States Supreme Court reversed the damages award and declared what is now known as the *Garmon* preemption doctrine. The Supreme Court held that when conduct is "arguably subject to § 7 or § 8 of the Act," federal law preempts state regulation on the subject.[6] Because the conduct at issue in the case (strike action) was arguably covered by § 7 of the Act, the Court reversed the state damages award. Therefore, under *Garmon* preemption, the "NLRA's preemptive orbit proscribes not just actual conflict with state law, but also state action that attempts to regulate conduct that is arguably either protected or prohibited by the NLRA."[7]

The Supreme Court articulated the *Machinists* preemption doctrine in *Lodge 76, International Association of Machinists & Aerospace Workers, AFL-CIO v. Wisconsin Employment Relations Commission*.[8] There, the issue was not whether the NLRA covered specific conduct, but rather, whether it purposefully did not. In that case, a labor union, in order to exert pressure on an employer, called for the employees to refuse overtime hours.[9] The employer filed an unfair labor practice charge with the NLRB, but the Regional Director dismissed the charge after finding that the union's action was not a violation of the Act.[10] The employer filed a separate unfair labor practice charge with the State Employment Relations Commission. That commission applied the rule from *Garmon* and found that the conduct at issue was neither protected nor prohibited by the Act. Therefore, it exercised jurisdiction and applied state labor law.[11] The commission then found that the union activity was an unfair labor practice under state law.[12]

The Supreme Court reviewed the state's action and asserted that although the NLRA may not address specific economic weapons available to unions and employers "Congress meant that these activities . . . were not to be regulable by States . . . ."[13] In other words,

5. *Id*. at 239.

6. *Id*. at 245.

7. Stephen F. Befort, *At the Cutting Edge of Labor Law Preemption: A Critique of* Chamber of Commerce v. Lockyer, *at* http://www.bnabooks.com/abana/nlra/2004/befort.doc (last visited Mar. 8, 2005).

8. 427 U.S. 132 (1976).

9. *Id*. at 134-35.

10. *Id*. at 135.

11. *Id*.

12. *Id*. at 135-36.

13. *Id*. at 149.

when Congress enacted the NLRA, it intentionally left certain areas of conduct unregulated, instead "to be controlled by the free play of economic forces."[14] *Machinists* preemption, then, is the doctrine preempting state regulation of labor relations "intentionally left unregulated" by Congress.[15]

14. *Id*. at 140 (quoting NLRB v. Nash-Finch Co., 404 U.S. 138, 144 (1971)).

15. BLACK'S LAW DICTIONARY 1196 (7th ed. 1999) (defining Machinists preemption as "[t]he doctrine prohibiting state regulation of an area of labor activity or management-union relations that Congress has intentionally left unregulated").