

Marquette University Law School

## Marquette Law Scholarly Commons

---

Faculty Publications

Faculty Scholarship

---

1986

### May a City Put a Taxicab Company Out of Service Because of a Labor Dispute?

Jay E. Grenig

Marquette University Law School, [jay.grenig@marquette.edu](mailto:jay.grenig@marquette.edu)

Follow this and additional works at: <https://scholarship.law.marquette.edu/facpub>



Part of the [Law Commons](#)

#### Publication Information

Jay E. Grenig, May a City Put a Taxicab Company Out of Service Because of a Labor Dispute?, 1985-86 Term Preview U.S. Sup. Ct. Cas. 221 (1986). Copyright 1986 by the American Bar Association. This information or any portion thereof may not be copied or disseminated in any form or by any means or downloaded or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

---

#### Repository Citation

Grenig, Jay E., "May a City Put a Taxicab Company Out of Service Because of a Labor Dispute?" (1986). *Faculty Publications*. 335.

<https://scholarship.law.marquette.edu/facpub/335>

This Article is brought to you for free and open access by the Faculty Scholarship at Marquette Law Scholarly Commons. It has been accepted for inclusion in Faculty Publications by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact [elana.olson@marquette.edu](mailto:elana.olson@marquette.edu).

## *May a City Put a Taxicab Company Out of Service Because of a Labor Dispute?*

by Jay E. Grenig

---

**Golden State Transit Corp.**

**v.**

**City of Los Angeles**

(Docket No. 84-1644)

*Argued December 4, 1985*

---

Comprehensive regulation of industrial relations by Congress has given rise to difficult relations between the federal labor policy law and state and local government regulation of matters affecting labor relations. Accommodating the imperatives of the federal scheme with the diverse and particular needs of state and local government has generally been left to the courts. Here, the Supreme Court is called upon to consider whether a municipality may insist that a private employer immediately settle a labor dispute and resolve a peaceful strike or forfeit its right to continue doing business.

### ISSUE

At issue in *Golden State Transit Corp. v. City of Los Angeles* is whether a city may insist that a private employer settle a labor dispute or forfeit its right to continue doing business. In reaching its decision, the Court must consider whether federal labor law prevents a municipality from refusing to renew a taxi company's license because the company refuses to agree to the demands of its striking employees. Also involved is the degree to which a court can examine the motives for legislative action.

### FACTS

Golden State Transit Corp. operated a fleet of nearly 400 taxicabs in Los Angeles. It was the largest of thirteen companies holding taxicab franchises issued by the city. Golden State's drivers were represented by Teamsters Local 572.

Golden State applied for a renewal of its franchise in March, 1980. In October of that year, the collective bargaining agreement between Golden State and the Teamsters expired. Despite lengthy negotiations, the

parties were unable to reach agreement. A contract extension preventing a strike was scheduled to expire on February 11, 1981.

On January 16, 1981, the city's Department of Transportation recommended to the city's Board of Transportation Commissioners that the existing franchises of six of the taxicab companies, including Golden State, be renewed for a four-year term. The commissioners recommended to the city council's Transportation and Traffic Committee that long term renewals be granted to Golden State and five other franchises. The matter of the renewal franchise was scheduled for action by the full city council on February 11, 1981.

On February 5, the Teamsters advised the mayor and the city council members of the labor dispute. On February 11, Golden State's drivers went on strike. At the February 11 city council meeting, a Teamsters representative appeared and recommended that Golden State's franchise not be renewed because of the labor dispute. The city council granted four-year renewals to the other five franchises and postponed considering renewal of the Golden State franchise to February 17.

At the February 17 meeting, the city council granted Golden State an extension only until April 30, 1981, provided the city council found before March 27, 1981, that the extension was "in the best interests" of the city. No other franchise grant was subject to such a condition.

On March 23, 1981, the city council met to consider whether it was in the "best interests" of the city to allow Golden State the thirty-day extension. Representatives of the Teamsters and the AFL-CIO detailed the facts underlying the labor dispute with Golden State, alleging the company had failed to bargain in good faith, and asked that the extension be denied. Golden State urged the city council to grant the extension to avoid intervening in the labor dispute.

At the city council meeting, the council president stated that "it will be very difficult to get this ordinance passed to extend this franchise if the labor dispute is not settled by the end of the week ... ." A representative of an association of taxi drivers stated that since Golden State's taxicabs had stopped operating, drivers were able to make a decent living for the first time. A city official reported that he had not received any complaints from lack of service since Golden State's drivers had gone out on strike. The council then voted to defeat a motion

---

*Jay E. Grenig is a Professor of Law at Marquette University Law School, 1103 W. Wisconsin Avenue, Milwaukee, WI 53233; telephone (414) 224-3799.*

which recommended that the council find it would be in the best interests of the city to extend the franchise, thus allowing Golden State's franchise to expire on March 31, 1981.

Golden State filed a lawsuit in federal district court, seeking an injunction to preserve its status as a franchised taxicab operator. The district court granted the injunction, holding the city's action was preempted by federal labor law. The district court found that the sole basis for refusing to extend the franchise was the labor dispute with Teamsters' drivers. The city appealed.

Reversing the trial court, the United States Court of Appeals for the Ninth Circuit held that using streets and highways is a matter of local concern and that local regulation of labor relations involving streets and highways was therefore not preempted by federal labor law (686 F.2d 758 (1982)). The court of appeals noted that courts are not permitted to inquire into the alleged motives of legislative acts.

On remand, the district court granted the city's motion for summary judgment. On the second appeal, the Ninth circuit affirmed the district court, holding that federal labor policy was not concerned with local transportation (754 F.2d 830 (1985)).

## BACKGROUND AND SIGNIFICANCE

The extent to which Congress has comprehensively regulated industrial relations and thus displaced state laws or local regulation has been of frequent and recurring concern. In determining when state or local government action must yield to federal authority, the Supreme Court generally considers the impact of the state or local government action on the entire scheme of federal labor law.

In past decisions, the Court has recognized two separate theories for preempting state and local laws and acts which might interfere with administering the National Labor Relations Act. The first theory prohibits states or localities from regulating conduct which is arguably protected by section 7 of the NLRA or arguably prohibited by section 8. This preemption theory is designed to protect the primary jurisdiction of the NLRB to determine in the first instance what kind of conduct is either prohibited or protected by the NLRA.

In determining the permissible scope of local action under this theory, the courts are required to balance the state's interest in controlling or remedying the effects of the questioned conduct against the interference with the board's ability to adjudicate controversies committed to it by the Act and the risk that the state will sanction conduct the Act protects.

The second preemption theory, and the one involved here, relates to attempts by state or local governments to regulate conduct which is not arguably protected or prohibited by the Act, but which nevertheless may impinge upon the federal scheme of labor-

management relations embodied in the Act. This theory of preemption is designed primarily to guard against state interference with the Act's policies of voluntary self-organization and free collective bargaining.

Although the NLRA was intended to be a comprehensive scheme governing the major aspects of labor-management relations, the Supreme Court has recognized two limitations on its reach. First, local authority over the urgent matters of public welfare and safety and the basic relations expressed in the common law are not to be presumed to have been displaced. Second, local governments as they legislate for the general welfare of their citizens cannot help but indirectly affect the situation from which the participants in the economic struggle structured by the labor laws wage bargaining battles.

If the Supreme Court determines the city exercised its right to regulate transportation for the purpose of pressuring a settlement of the labor dispute between Golden State and the Teamsters, it will most likely conclude the city's action conflicted with the federal labor policy. However, in making this determination, the Court would be inquiring into the legislative motives of the city council—something the courts have generally been reluctant to do.

If the Court determines the city's refusal to renew Golden State's taxicab franchise violated federal labor policy because of the impact of the refusal on the labor dispute, regardless of the city council's motives, this would virtually preclude a state or local government from taking any action, no matter how well intentioned, during a labor dispute, whenever that action might affect the outcome.

## ARGUMENTS

*For Golden State Transit Corporation (Counsel of Record, Zachary D. Fasman, 1100 Connecticut Avenue, NW, Washington, DC 20036; telephone (202) 452-5800)*

1. The city's conduct is preempted because it conflicts with two core guarantees of federal labor law: free collective bargaining and resort to economic weapons.
2. The Ninth Circuit's decision rests upon a fundamental misunderstanding of the Supreme Court's preemption decisions and threatens massive and unwarranted local entanglement in collective bargaining.

*For the City of Los Angeles (Counsel, James K. Hahn, 1800 City Hall East, 200 N. Main Street, Los Angeles, CA 90012; telephone (213) 485-4533)*

1. Since Golden State is contending it was entitled to a taxicab franchise which would have terminated on March 31, 1985, the case is moot; that date is now past.
2. The city's regulatory action did not interfere in an ongoing labor dispute, but was merely an exercise of legitimate police powers.

## **AMICUS ARGUMENTS**

### ***In Support of Golden State Transit Corporation***

The National Labor Relations Board filed a brief arguing that Congress protected parties' right to collective bargaining disputes to resolve their differences through the free play of economic forces. It contends invoking the city's legitimate concern with transportation was insufficient to except its actions from the operation of the preemption doctrine.

The Chamber of Commerce of the United States also filed a brief, arguing that the National Labor Relations Act prohibits the city from nullifying Golden State's most fundamental economic weapon and coercing settlement of Golden State's labor dispute.

### ***In Support of the City of Los Angeles***

The National League of Cities, United States Conference of Mayors, National Association of Counties, National Conference of State Legislatures and National

Governors' Association jointly filed a brief arguing that governmental actions furthering neutral public purposes are not preempted simply because they indirectly affect a labor dispute. They also argued there is no evidence the city council did not act in furtherance of transportation policy, which is unquestionably a legitimate public purpose.

The National Institute of Municipal Law Officers also filed a brief urging that invalidating the city council's decision based on the alleged effect of discussion during the hearings would chill the First Amendment rights of private participants and would necessitate unwarranted inquiry into legislative motives.

### ***Additional Brief***

The AFL-CIO filed an amicus brief asserting this case does not provide a proper vehicle for addressing the sensitive and novel legal issue raised. It asks that the writ of certiorari be dismissed as improvidently granted.