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Does the LMRA preempt a state wrongful death action that charges a union with negligent safety inspections?

by Jay E. Grenig

United Steelworkers of America, AFL-CIO-CLC

v.

Tharon Rawson, et al.

(Docket No. 89-322)

Argument Date: March 26, 1990

ISSUE

Does section 301 of the Federal Labor Management Relations Act, and the duty of fair representation, prevent plaintiffs from proceeding under state law in a wrongful death action against a union when the claims are based on the union's alleged negligence in conducting safety inspections of a mine?

FACTS

The United Steelworkers ("Union") is the exclusive bargaining representative of miners working in a silver mine operated by the Sunshine Mining Co. ("Employer") in Kellogg, Idaho. The collective bargaining agreement between the Union and Employer provided that the Employer must "continue to make reasonable provisions for the safety and health of its employees at the plant during the hours of their employment." It provided for a safety committee composed of members designated by the Union and members designated by the Employer. The collective bargaining agreement also gave the Union the right to observe safety inspections and to make safety inspections of the mine. The Union conducted inspections of the mine and made recommendations to management regarding safety problems.

As a result of a 1972 underground fire in the Sunshine Mine, 91 miners died from asphyxiation and carbon monoxide poisoning. Although it was unable to make a definitive determination of the cause of the fire, the United States Bureau of Mines concluded that the most likely cause was the spontaneous combustion of timbers and debris in an area that had long before been worked out and walled off from the rest of the mine.

Families of the deceased miners received worker's compensation payments from the Employer under Idaho law. Several of the families then filed suit, seeking damages from various third parties, including the Bureau of Mines and certain manufacturers of materials and equipment. (See *House v. Mine Safety Appliances Co.*, 573 F.2d 609 (9th Cir.), *cert. denied*, 439 U.S. 862 (1978).) Four of the miners' families filed another suit against the Union in an Idaho state court, commencing the proceeding that is the subject of review here. These families claimed that the Union had been negligent in conducting the safety inspections. The complaint alleged that the Union owed the decedents a duty of care under Idaho law.

The Union moved for dismissal or summary judgment on the ground that federal law preempted the state action. In 1976 the Idaho trial court granted the motion for summary judgment, ruling in an unreported opinion that the plaintiffs' claims were based entirely on the alleged inadequacy of the Union's performance as a bargaining representative and that the federal duty of fair representation exclusively defined the terms on which a union could be held liable in that capacity. On appeal, the Idaho Supreme Court reversed, holding that the duty of fair representation does not preempt state tort law. 620 P.2d 21 (1979). The Union's petition for review of that decision was denied. *United Steelworkers of America v. Dunbar*, 446 U.S. 983 (1980).

The case was returned to the trial court and, after extensive discovery, the Union moved for summary judgment. The Union argued that on the undisputed facts, there was no ground for Union liability. In 1983 the trial court granted the motion in another unreported opinion, holding that under Idaho tort law the Union did not owe a duty of care to employees as alleged in the complaint. The trial court also ruled that the Idaho claim was preempted by federal law, because the record made it clear that the plaintiffs' negligence claims were based solely on the union's "representational duties" and the manner in which the Union administered the collective bargaining agreement.

On appeal, the Idaho Supreme Court reversed the trial court's decision, holding that the collective bargaining agreement provided for safety inspections by the Union and that the Union was negligent in performing that function. 736 P.2d 742. The Idaho Supreme Court also held that the plaintiffs' tort claims were not preempted by federal labor law, ruling that the federal duty of fair representation does not exclusively define the grounds upon which

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a union can be held liable for its performance as a bargaining representative.

Reviewing the Idaho Supreme Court's decision, the United States Supreme Court vacated the judgment and returned the case to the Idaho court for further consideration in light of *Electrical Workers v. Hechler*, 481 U.S. 85 (1987). See 482 U.S. 901 (1987). On remand, the Idaho Supreme Court held that the Union's duty was not founded on the collective bargaining agreement, but on what the Union actually was doing. 770 P.2d 794. The United States Supreme Court granted the Union's petition for a writ of certiorari.

BACKGROUND AND SIGNIFICANCE

Section 301 of the Labor Management Relations Act permits the federal courts to hear suits for violation of contracts between an employer and a labor organization representing employees. In *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985), the Supreme Court held that an attempt to assert a claim arising under state law was preempted by section 301 if the claim was grounded in a collective bargaining agreement. Asserting that the relationships created by a collective bargaining agreement must be defined by application of an evolving federal common law grounded in national labor policy, the Court stated that questions relating to the terms of the parties' labor agreement, and to the legal consequences they intended to flow from breaches of that agreement, must be resolved by reference to uniform federal law.

In *International Brotherhood of Electrical Workers v. Hechler*, 481 U.S. 851 (1987), the plaintiffs asserted a claim for negligent performance of a duty created by a collective bargaining agreement. Holding that the claim was preempted by section 301, the Supreme Court pointed out that in order to determine the union's tort liability the court would have to ascertain whether the collective bargaining agreement in fact placed an implied duty of care on the Union and the nature and scope of that duty.

A year after *Hechler* the Supreme Court held that a state claim for retaliatory discharge for asserting a workers' compensation claim was not preempted by section 301. *Lingle v. Norge Division of Magic Chef, Inc.*, 108 S.Ct. 1877 (1988). The Court stated that "the state-law remedy in this case is 'independent' of the collective-bargaining agreement in the sense of 'independent' that matters for § 301 preemption purposes: resolution of the state-law claim does not require construing the collective-bargaining agreement." Lower courts have relied on this language in *Lingle*, looking at whether the state claim requires construing the collective bargaining agreement rather than whether the rights sued upon were "created" by the collective bargaining agreement.

In January 1990 the Supreme Court denied a petition for certiorari asking the Court to review a decision of the Wisconsin Supreme Court, which had held that a state claim arising under Wisconsin law to enforce the terms

of a collective bargaining agreement was not preempted by section 301 of the Labor Management Relations Act. *United States Can Co. v. International Association of Machinists & Aerospace Workers*, 110 S.Ct. 718 (1990).

This case provides the Supreme Court with the opportunity to clarify whether, in holding that a state-law tort claim is preempted by section 301, a court must find that the state-law action requires interpretation of the terms of the collective bargaining agreement.

ARGUMENTS

For United Steelworkers of America (*Counsel of Record, George H. Cohen, Bredhoff & Kaiser, 1000 Connecticut Avenue, N.W., Suite 1300, Washington, DC 20036; telephone (202) 833-9340*):

1. The Union's representational activity involving the administration of the contractual right to observe inspections and to make safety inspections is within the area covered by the duty of fair representation and preempted by federal labor law.
2. A union does not have a general duty to discover and report safety hazards. Thus, any duty of the Union to inspect the mine could only be found in the collective bargaining agreement. Section 301 governs the question of whether the union in the safety article of the collective bargaining agreement assumed a duty to its members to inspect the mine.
3. The imposition of state law duties on the union's performance of its representational functions would upset the balance of individual and collective interests.

For Tharon Rawson, et al. (*Counsel of Record, Kenneth B. Howard, Howard & Owens, P.A., P.O. Box 1578, Coeur D'Alene, ID 83814; telephone (208) 667-0683*):

1. The Labor Management Relations Act and the duty of fair representation do not address the right of the plaintiffs to proceed under Idaho law in a wrongful death action against the Union based upon the Union's wrongful conduct. The plaintiffs' claims do not involve the type of representational activity contemplated by the fair representation doctrine.
2. The state law rights enjoyed by the plaintiffs are not dependent on the Union contract, and the duty owed by the Union to the heirs of a Union member is not based on the collective bargaining agreement or the duty of fair representation.
3. Plaintiffs have no standing to pursue claims based upon contract violation under section 301 or for claims under the duty of fair representation.

AMICUS BRIEFS

In Support of the United Steelworkers
Continental Beverage Packaging, Inc.

In Support of Neither Party
The Public Citizen Litigation Group