RE: United Automobile, Aerospace and Agricultural Implement Workers of America. Et. al. v. Hardin County, Kentucky - Civil Action No.: 3:15-cv-66-DJH (2-3-2016)

On February 3, 2016, an opinion was issued by the Western District of Kentucky that states the only way for Kentucky to be a right-to-work state is to have the legislation be passed at the state, and not the local, level as required by the National Labor Relations Act.

District Court Judge David J. Hale granted summary judgment to the UAW concluding that the National Labor Relations Act (NLRA) preempts the right-to-work, hiring-hall, and dues-checkoff provisions of Hardin County Ordinance 300. Section 14(b) of the NLRA is the only exception to the NLRA preemption of the field of labor relations, and it does not extend to counties or municipalities. Because Ordinance 300 does not fall under §14(b)'s narrow exception, the ordinance provisions are invalid.

The NLRA permits "state or territorial" laws to prohibit union-security agreements. The question facing Judge Hale was whether a right-to-work law may be solely enacted by a state or territorial government, or whether a local government (city or county) may pass a law prohibiting union-security agreements?

The Hardin County ordinance was passed on January 13, 2015. The plaintiff's filed suit arguing that the ordinance violates the Supremacy Clause of the Federal Constitution. Specifically, that the NLRA preempts right-to-work laws not specifically authorized in §14(b) of the Act.

Specifically the plaintiffs argue, the NLRA preempts the regulation of hiring-hall agreements that require an employee be recommended, approved, referred, or cleared by or through a labor organization. The NLRA preempts the regulation of dues-checkoff provisions requiring employers to automatically deduct union dues, fees, assessments or other charges from the employee's paychecks and transfer funds to the union.

Hardin County argued that the ordinance is a "state law under the provisions of §14(b) and is not preempted by the NLRA.

Section 14(b) under its "Construction of Provisions" section states:

"Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment In any State or Territory in which such execution or application is prohibited by State or Territorial law." 29 U.S.C. §164(b).

Union-security agreements are also addressed in §8(a)(3) and that section states such an agreement is an unfair labor practice by an employer:

"[B]y discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization…to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is later[.]" 29 U.S.C. §158(a)(3).

Section 8(a)(3) provides that no federal statute shall preclude union-security agreements, while §14(b) provides that state and territorial laws prohibiting union-security agreements take precedence over the NLRA.

If the ordinance is state law under §14(b), then the ordinance is valid and enforceable. If it is not a state law, then the NLRA preempts in that the ordinance is a regulation falling outside of §14(b).

The term "State" in §14(b) is not used in an express grant or acknowledgment of a state's regulatory authority. Rather it identifies the political entities whose right-to-work laws are not preempted by the NLRA. 29 U.S.C. §164(b).

Judge Hale read the two uses of "State" in §14(b) as referring to the same thing. Thus "State" law does not include county or municipal law under §14(b) and the ordinance is preempted by the NLRA.

Judge Hale next looked at if §14(b) is the only exception to NLRA preemption? He noted that the Supreme Court observed nothing in either §14(b)'s language or legislative history to suggest that there may be applications of right-to-work laws which are not encompassed under §14(b), but which would be permissible. Mobil Oil Corp., 426 U.S. at 413, n. 7.

The Mobil Oil analysis was premised on the assumption that only right-to-work laws falling under §14(b) can be valid. Therefore, §14(b) is the sole source of authority for right-to-work laws.

This rule of preemption is designed to prevent conflict between, on the one hand, state and local regulation and, on the other, Congress' 'integrated scheme of regulation'.

Section 8(a)(3) of the NLRA protects union security agreements. 29 U.S.C. §158(a)(3). Thus, barring any exceptions, state and local regulation of union-security agreements is preempted by the NLRA. The exception available is the §14(b) allowance for States and Territories to pass laws prohibiting such union-security agreements. 29 U.S.C. §164(b).

"The only logical reading of §14(b)…is that it is the sole exception to NLRA preemption of right-to-work laws. Thus, any regulation that falls outside the confines of §14(b) is preempted. And because §14(b) does not apply to counties, the NLRA preempts Ordinance 300's right-to-work provision.

Hiring Hall

Ordinance 300 also stated that no employee shall be required "to be recommended, approved, referred, or cleared by or through a labor organization" as a condition of employment or continued employment.

Judge Hale declined to depart from the unanimous line of circuit court precedent finding that the NLRA preempts local hiring-hall agreements. Those courts found that §14(b) is the sole exception to the general rule that federal government preempted the field of labor relations and that §14(b), inapplicable to counties in any event, only provides a carve-out for "Compulsory Unionism."

Because hiring halls do not compel union membership, the power to regulate them does not fall within §14(b). The NLRA preempts the hiring-hall provision of the ordinance.

Dues Checkoff

Ordinance 300 also stated that it would be unlawful to deduct from the wages, earnings, or compensation of an employee any union dues, fees, assessments, or other charges to be held for, transferred to, or paid over to a labor organization, unless the employee has first presented, and the employer has received, a signed, written authorization of such deductions, which authorization may be revoked by the employee at any time by giving written notice of such revocation to the employer.

Judge Hale declined to depart from the well-established precedent that the field of labor relations was preempted, that §14(b) permits state regulation "only as to forms of union security which are the practical equivalent of compulsory unionism" and that dues-checkoff provisions do not amount to compulsory unionism. SeaPAK, 300 F.Supp. at 1200-01.