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Labor Racketeering and Labor Law: State Regulation v. Federal Rights: An Analysis of *Brown v. Hotel and Restaurant Employees Union Local 54*

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Labor Racketeering and Labor Law: State Regulation v. Federal Rights

by Barbara J. Fick

G. Michael Brown, Director Department of Law and Public Safety, Division of Gaming Enforcement, State of New Jersey, et al.

v.

Hotel and Restaurant Employees and Bartenders International Union Local 54, et al.

(Docket No. 83-498)

Martin Danziger, Acting Chairman, Casino Control Commission, State of New Jersey, et al.

v.

Hotel and Restaurant Employees and Bartenders International Union Local 54, et al.

(Docket No. 83-573)

Argued March 26, 1984

ISSUES

In recent Senate testimony, FBI Director William Webster noted that organized crime's "interest in labor unions will coincide with their interest in cash-intensive organizations, or with organizations that can influence or intimidate employers that they are trying to take advantage of." With this admonition in mind, the state of New Jersey has attempted to prevent infiltration by organized crime of its fledgling casino gambling industry by regulating labor unions representing casino employees. The method chosen to accomplish this objective, however, collides with federally granted and protected rights given to employees to choose their collective bargaining representative. The Court is being asked to decide which interest prevails.

FACTS

In 1976, the voters of New Jersey amended their state constitution to permit casino gambling in Atlantic City. Recognizing the susceptibility of the gambling industry to infiltration and control by organized crime, and desiring to maintain the public confidence in, and integrity of, the industry, the New Jersey legislature passed the Casino Control Act (CCA). Enforcement of the CCA was vested in two state agencies: the Division of Gaming Enforcement (division) and the Casino Control

Commission (commission).

The CCA is a detailed and comprehensive licensing scheme designed to strictly regulate all persons, locations, practices and associations related to the operation of casinos and related service industries. As part of this overall regulatory scheme, section 93 of the CCA requires all unions which represent casino hotel employees to register with the commission. Section 93 also provides that no registered union may collect dues from casino employees or administer employee benefit plans if any officer of the union is found by the commission to be disqualified from being involved in the casino industry.

The Hotel and Restaurant Employees and Bartenders International Union Local 54 (Local 54) represents, for purposes of collective bargaining with employers, hotel and restaurant service employees who work in certain southern New Jersey counties, including Atlantic City. Of the approximately 12,000 employees represented by Local 54, over 8,000 are employed in casino hotels in Atlantic City as waiters, bartenders, cooks and housekeepers. The sole income received by Local 54 is derived from dues and initiation fees—85% of which come from casino hotel employees. These monies are expended for expenses and salaries related to the negotiation and administration of collective bargaining agreements and other activities related to representing the employees.

Pursuant to section 93 of the CCA, Local 54 and its officers registered with the commission. Thereafter, the division conducted an investigation and reported to the commission that certain officials of Local 54 were disqualified. A hearing was scheduled by the commission to consider these allegations.

Local 54 filed a complaint in federal district court contending that section 93 of the CCA was preempted by the National Labor Relations Act (NLRA), which grants employees the right to choose unions to represent them, and the Employee Retirement Income Security Act (ERISA), which regulates employee benefit plans. Local 54 asked the court to enjoin the commission from holding the hearing. The district court denied the request for an injunction. This decision was appealed to the federal court of appeals.

In the interim, the commission held its disqualification hearing. The commission found that Frank Gerace, president of Local 54, and Frank Materio, a member of Local 54's executive board, have an association with Nicodemo Scarfo, whom the commission identified as a

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career criminal offender and member of organized crime. This association was found to create a reasonable belief that its existence was inimical to the policies of the CCA and the casino industry, although there was no evidence of wrongdoing by the officers or criminal influence on the union. The commission also found that Karlos LaSane, an agent of Local 54 who handles discrimination complaints and grievances for casino employees, had been convicted in 1973 of extortion while he was a City Commissioner of Atlantic City. Based on these findings, the commission held that Gerace, Materio and LaSane were disqualified, and ordered that they be removed as officers and agents of Local 54. In the event they were not removed, the commission ordered that Local 54 be banned from collecting dues from casino employees.

The district court enjoined enforcement of this ban pending the outcome of the appeal to the court of appeals. That court held that the disqualification standards for union representatives, and the dues collection ban, were preempted by the NLRA and that the prohibition on administration of benefit plans contained in section 93 was preempted by ERISA. Accordingly, the court remanded the case to the district court for entry of an order enjoining the commission and division from taking any further action to enforce section 93 of the CCA.

BACKGROUND AND SIGNIFICANCE

The NLRA is a federal statute which guarantees employees the right to organize and to choose a labor union to represent them in collective bargaining with employers. Section 93 of the CCA interferes with that right by prohibiting unions, whose leaders the commission finds disqualified, from collective dues—thereby restricting the unions' ability to effectively carry out their collective bargaining functions. The Supreme Court is faced with the task of further clarifying the extent to which Congress intended to oust the states from regulating labor union activities.

The state of New Jersey claims a deeply rooted state interest in preventing the corruption of its casino industry. This goal cannot be achieved merely through direct regulation of the industry, but must include regulation of labor unions, because such organizations provide a vehicle for organized crime to influence and intimidate the industry through labor racketeering. Local 54, however, asserts that federal labor law grants employees the right to be represented by unions of their own choosing. If the union is prohibited from collecting casino employees' dues, it will have insufficient resources and be unable to function as a collective bargaining representative. Thus, section 93 acts to interfere with the employees' choice of bargaining agent.

Two previous cases dealing with state attempts to impose "licensing" requirements on labor unions have been decided by the Supreme Court with opposite re-

sults. In 1943, Florida passed a law requiring licensing for union business agents and setting certain qualifications standards which had to be met to receive a license. Pursuant to the statute, the state court enjoined a union from engaging in collective bargaining activities until the license was obtained. The Supreme Court struck down the Florida statute because it directly interfered with the right given to employees by federal law to choose their own union. By requiring a union to satisfy prerequisites which the state considered important for a bargaining agent, the state limited the freedom of the employees to make that decision for themselves. (*Hill v. Florida*, 325 U.S. 538 (1945)).

The second case involved the New York Waterfront Commission Act of 1953. This statute was adopted pursuant to an interstate compact between New York and New Jersey designed to combat crime and corruption on the waterfront. The compact was approved by Congress. The Waterfront Commission Act prohibited unions representing waterfront employees from collecting dues if any union officer were a convicted felon. The Supreme Court upheld the Act against a challenge that it interfered with employees' rights under the NLRA to choose their representatives. The Court found that the act did not totally restrict employee rights, and in light of the purpose, scope and background of the law, as well as Congress' relation to it, there was no basis to find a conflict with federal labor law. (*DeVeau v. Braisted*, 363 U.S. 144 (1960)).

The decision of the Supreme Court in this case will have immediate significance only for the state of New Jersey and Nevada, the only states with legalized casino gambling, and those few labor unions representing casino employees. (Although the same state interests in controlling gambling occur in the horse racing industry, the federal-state conflict does not arise because the federal labor laws have not been applied to that industry.) If the Court upholds the validity of the CCA as it applies to labor unions, it will afford the state a significant weapon for combatting organized crime and maintaining the integrity of the casino gambling industry. This goal will be achieved, however, at the sacrifice of the rights and interests of union members. The members of Local 54 voted in secret ballot election to select the officers of their union. The 12,000 employees whom Local 54 represents freely designated that union to represent them in collective bargaining. Both the election of officers and selection of bargaining representative were accomplished in accordance with federal guidelines established to regulate labor activities. To allow the state to disapprove of the employees' choice as to either of these two issues undermines the strength and independence of the union as an institution—thereby undercutting its effectiveness in representing employees.

The long range significance of this case depends on the Court's formulation and implementation of the

preemption doctrine. In clarifying this principle, the boundaries of state regulatory activities in the labor field could be broadened or narrowed. The result will influence state decisions regarding contemplated legislation which either directly or indirectly impacts on labor union activities.

ARGUMENTS

For the Department of Law and Public Safety, Division of Gaming Enforcement, State of New Jersey

1. Federal labor law does not preempt enforcement by the state of New Jersey of the Casino Control Act as it applies to labor unions. Federal labor policy permits state regulation involving deeply rooted state interests. The means chosen by the state to enforce its regulation—a ban on dues collection—does not directly interfere with the performance of the union's functions under federal labor law so as to require preemption. The outcome of this case is directly controlled by *DeVeau v. Braisted*.
2. ERISA does not preempt section 93 of the CCA. Section 93 does not attempt to regulate the terms of employee benefit plans but only affects employee benefit plans indirectly.

For the Casino Control Commission, State of New Jersey

1. The abstention principles enunciated by the Supreme Court in *Younger v. Harris* (401 U.S. 37 (1971)) prohibited the federal court from staying the enforcement of the commission's order. The notion of comity, based on the recognition that our federal system of government will function best when the states and their institutions are allowed to perform their separate functions in their separate ways, generally requires federal courts to refrain from interfering with pending state judicial proceedings except in unusual circumstances. The union has an adequate state forum in which to raise its challenge to the constitutionality of the CCA; it can appeal the commission's decision and order to the state appellate courts. The state courts are fully competent to address the constitutional issue raised and should be afforded the opportunity to do so.
2. The Supreme Court need not decide whether ERISA preempts the CCA remedy relating to pension and welfare fund administration because this remedy was not invoked by the commission in this case.

For Hotel and Restaurant Employees Union, Local 54

1. This case is not an appropriate one for the application of the *Younger* abstention doctrine. The Department of Law and Public Safety did not invoke the abstention doctrine but rather seeks an adjudication on the merits by the Supreme Court. Where the department, on behalf of the state, voluntarily submits the dispute to a federal court, principles of comity are not applicable and abstention by the federal court is not required. Neither is abstention required where a party is challenging the validity of the state proceeding itself. Local 54 asserts that the commission's authority to conduct the disqualification hearing was preempted by federal labor law and therefore the entire proceeding was invalid. Requiring Local 54 to challenge the commission's proceedings and order through the state courts provides an inadequate remedy for the irreparable harm which would be suffered by Local 54 pending state court review.
2. Section 93 of the CCA is preempted by the NLRA. When a state attempts to regulate activity directly protected by federal labor law, the state regulation is absolutely preempted. In such a situation it is unnecessary to balance the federal and state interests involved; the balance was already struck by Congress in enacting the federal law. The outcome of this case is directly controlled by *Hill v. Florida*.
3. Section 514(a) of ERISA provides that ERISA supercedes all state laws relating to employee benefit plans. Section 93 of the CCA relates to employee benefit plans in a direct manner by disqualifying certain persons from serving as plan administrators, an issue which ERISA itself covers.

AMICUS BRIEFS

In Support of Local 54

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

In Support of Department of Law and Public Safety and Casino Control Commission

Atlantic City Casino Hotel Association and Playboy Hotel Casino; state of Nevada; and National Right to Work Legal Defense Foundation.

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