Michigan Law Review

Volume 39 | Issue 2

1940

MUNICIPAL CORPORATIONS - LABOR LAW - CONFLICT OF MUNICIPAL ORDINANCE WITH STATE STATUTE

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MUNICIPAL CORPORATIONS — LABOR LAW — CONFLICT OF MUNICIPAL ORDINANCE WITH STATE STATUTE — Defendant, a member of a machinist's union, was indicted for violation of a city ordinance which prohibited peaceful picketing except by employees employed three months or more at a place of business and who had been so employed within sixty days of the commencement of the picketing. A state statute modeled on the Norris-LaGuardia Act authorized the giving of publicity of labor disputes and forbade the issuing of injunctions for designated types of labor controversies.[1] *Held*, that the ordinance was void and that the defendant was entitled to picket peacefully a company which had never employed him, but which was engaged in a labor dispute with the employees who belonged to the machinist's union. *City of Yakima v. Gorham*, 200 Wash. 564, 94 P. (2d) 180 (1939).

[1] Wash. Rev. Stat. (Remington, Supp. 1940), §§ 7612-1 to 7612-15 (enacted in 1933). The applicable portions are as follows: "No court of the state of Washington shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute or prohibit any person or persons participating or interested in such dispute . . . from doing, whether singly or in concert, any of the following acts. . . . Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence." § 7612-4. "The term 'labor dispute' includes any controversy concerning terms or conditions of employment . . . regardless of whether or not the disputants stand in proximate relation of employer and employee." § 7612-13.

In the cases of Safeway Stores v. Retail Clerks' Union, 184 Wash. 322, 51 P. (2d) 372 (1935), and Blanchard v. Golden Age Brewing Co., 188 Wash. 396, 63 P. (2d) 397 (1936), grave doubts concerning the validity of this statute were expressed by the Washington court. In the Blanchard case the court held that the power to issue injunctions derives from the constitution, and cannot be circumscribed by the legisla-

At the outset, it is interesting to note that as to the result obtaining in the principal case there would not appear to be much controversy, at least in decisions giving due regard to the statute.[2] However, the case does raise the problem of what constitutes a conflict between a municipal ordinance and a state statute. Accompanying the ever-increasing number and scope of both types of regulation come problems of interpretation. Differences in opinion as to proper construction have arisen, especially where the state and municipality exercise concurrent jurisdiction.[3] It seems clear that a municipal corporation has no powers which are not derived from and subordinate to those of the state,[4] and the general rule is that where there is a state law relating to a subject, an exercise of police power by the municipality must be in conformity with such law.[5] Narrowing the problem down to the case in point, the question whether or not a municipal ordinance or regulation is in conflict with the general law is sometimes difficult of solution and cannot always be determined by a fixed rule.[6] Inasmuch as the Norris-La Guardia Act and similar state acts declare a public policy favorable to peaceful picketing regardless of whether or not the disputants stand in proximate relation of employer and employee, it would appear quite clear that a municipal ordinance forbidding peaceful picketing unless a modified employer-employee relation exists would be held in direct conflict.[7] This case

ture by the anti-injunction act. The court expressly invalidated only a portion of the act. Query, whether this is such substantial invalidation of the little Norris-LaGuardia act that it renders the whole statute void.

[2] In the case of Lauf v. E. G. Shinner & Co., 303 U. S. 323, 58 S. Ct. 578 (1938), the Supreme Court held that a dispute between an employer and a union representing none of the employer's employees is a labor dispute within the meaning of the federal and Wisconsin anti-injunction acts. See also: Local Union No. 26, National Brotherhood of Operative Potters v. City of Kokomo, 211 Ind. 72, 5 N. E. (2d) 624 (1937); American Furniture Co. v. I. B. of T. C. & H. of A., 222 Wis. 338, 268 N. W. 250 (1936); New Negro Alliance v. Sanitary Grocery Co., 303 U. S. 552, 58 S. Ct. 703 (1938); Fenske Bros. v. Upholsterers' International Union of North America, 358 Ill. 239, 193 N. E. 112 (1934); Wallace Co. v. International Assn. of Mechanics, 155 Ore. 652, 63 P. (2d) 1090 (1936); Senn v. Tile Layers' Protective Union, 222 Wis. 383, 268 N. W. 270, 872 (1936). For an interesting discussion as to the question whether or not the state anti-injunction act should operate on substantive law and policy, as distinguished from a mere restriction on a former remedy, see 7 UNIV. CHI. L. REV. 388-394 (1940).

[3] See comment, 40 YALE L. J. 647 at 648 (1931).

[4] Mount Pleasant v. Beckwith, 100 U. S. 514 (1879); Williams v. Eggleston, 170 U. S. 304, 18 S. Ct. 617 (1898). State constitutions may vest in municipalities the authority to exercise certain police powers. Melconian v. City of Grand Rapids, 218 Mich. 397, 188 N. W. 521 (1922); Boyd v. City of Sierra Madre, 41 Cal. App. 520, 183 P. 230 (1919).

[5] 3 MCQUILLIN, MUNICIPAL CORPORATIONS, 2d ed., 105 (1928); National Amusement Co. v. Johnson, 270 Mich. 613, 259 N. W. 342 (1935).

[6] See 14 MICH. S. B. J. 368 (1935); In re Desanta, 8 Cal. App. 295, 96 P. 1027 (1908).

[7] Ex parte Sweitzer, 13 Okla. Cr. 154, 162 P. 1134 (1917), holding "If the city commissioners cannot directly prohibit picketing in furtherance of a trade dispute, they certainly cannot accomplish that end indirectly." See also People v. Ribinovich,

seems to illustrate the first of two general approaches to this question, i.e., where the legislature has undertaken to occupy exclusively a given field of legislation, the municipality can no longer regulate unless in harmony with the general law of the state and within its public policy.[8] According to this view, statutes granting powers to municipal corporations are strictly construed, and any fair and reasonable doubt as the existence of a power must be resolved against the municipality.[9] Under the same general approach, a problem arises in certain cases, particularly those involving license and occupation taxes, where the state has acted and there may be concurrent local regulations or even prohibitions within the municipality's limits.[10] Here again the true inquiry would appear to be the purpose of the statute. Mere differences in detail do not render the two enactments conflicting,[11] but the more general rule in this field of concurrent authority is that a city cannot, without express authority, suppress what the legislature permits, yet may make appropriate additional regulations in aid of the general law.[12] A second and somewhat more liberal approach suggested by some courts is that to constitute a conflict between a state enactment and a municipal regulation, the conditions of the two enactments must be irreconcilable with each other.[13] Accordingly, it has been held that a municipal license tax was valid where imposed on a manufacturer as a tax on "goods" although a state statute directly reserved to the state the exclusive power to license the privilege of operating such a plant.[14] The above classifications as set out are not intended to be interpreted as an all-inclusive or a categorical classification into which any particular case involving the question must fall. Rather it would appear that the courts are in agreement that ordinances must be in harmony with the general law of the state and with its public policy,—the real problem being a rule of approach as to what should be declared a conflict. To draw a "rule-of-thumb" line between the limits of authority is not readily accomplished, although a reasonable interpretation of legislative intention as expressed by statute and of the facts and circumstances upon which the statute was intended to operate should serve as a safe rule in most cases.

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171 Misc. 569, 13 N. Y. S. (2d) 135 (1939), where the court held that "The right to peacefully picket being a fundamental right, courts must prevent curtailment of such right, and no regulation should be so interpreted so as to unnecessarily interfere with the right." See also cases in note 3, supra.

[8] 43 C. J. 215 at 217 (1927); Shelton v. City of Shelton, 111 Conn. 433, 150 A. 811 (1930); In re Simmons, 71 Cal. App. 522, 235 P. 1029 (1925).

[9] See annotation in 17 R. C. L. 525 (1917); also Pittsburgh, C., C. & St. L. Ry. v. Crown Point, 146 Ind. 421, 45 N. E. 587 (1896).

[10] 14 MICH. S. B. J. 368 at 369 (1935); Ex parte Rowe, 4 Ala. App. 254, 59 So. 69 (1912) (pool tables); Arms v. Town of Vine Grove, 203 Ky. 213, 262 S. W. 11 (1924) (operation of pool tables). *Contra*: Ex parte Powell, 43 Tex. Cr. 391, 66 S. W. 298 (1902) (pool selling).

[11] McPherson v. Chebanse, 114 Ill. 46, 28 N. E. 454 (1885).

[12] Ex parte Iverson, 199 Cal. 582, 250 P. 681 (1926); 3 MCQUILLIN, MUNICIPAL CORPORATIONS, 2d ed., 105 at 107 (1928).

[13] Provident Loan Soc. v. City and County of Denver, 64 Colo. 400, 172 P. 10 (1918); St. Louis v. Union Dairy Co., 213 Mo. 148, 112 S. W. 525 (1908).

[14] Royster Guano Co. v. Tarboro, 126 N. C. 68, 35 S. E. 231 (1900).